

THE HEIGHTS WATER UTILITY AGREEMENT

THIS THE HEIGHTS WATER UTILITY AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2024 (“Effective Date”), by and between the PORT AUTHORITY OF THE CITY OF SAINT PAUL, a public body corporate and politic organized and existing under the laws of the State of Minnesota, located at 400 Wabasha Street North, Suite 240, Saint Paul, MN 55102 (the "SPPA"), and the BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL, a Minnesota municipal corporation, d/b/a Saint Paul Regional Water Services (the “Board”) located at 1900 Rice Street, Saint Paul, MN 55113.

Recitals

- A. The Board of Water Commissioners has the full authority to introduce water for public consumption in the City of Saint Paul and to construct the necessary infrastructure for such purposes.
- B. The Saint Paul Board of Water Commissioners, through SPRWS, is responsible for the maintenance of public infrastructure necessary for the provision of drinking water pursuant to Title XI of the Saint Paul Legislative Code.
- C. SPPA has awarded a contract for the installation of streets and utilities on at its redevelopment project known as “The Heights” and located at 2200 East Larpenteur Avenue, Saint Paul, MN to Designing Earth Contracting.
- D. The Board, by virtue of State law and City ordinance, is responsible for ensuring that said construction is done pursuant to Saint Paul Regional Water Services STANDARDS for the Installation of Water Mains dated April 4, 2024 (the “SPRWS Standards”).
- E. The Board shall be responsible for ongoing maintenance of water infrastructure to be installed at The Heights in the public right of way (the “Water Infrastructure”) upon transfer of ownership of the Water Infrastructure from SPPA to the Board under this Agreement.
- F. In order to allow for the development and construction of The Heights, SPPA may need to obtain easements from the Board, the Developer, or contractors performing work, which would be granted pursuant to a separate agreement.

Now, therefore, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement, and the mutual understandings, promises, undertakings and covenants hereinafter set forth, SPPA and the Board hereby agree as follows:

1. General Provisions
 - a. The terms “infrastructure” or “Water Infrastructure” used throughout this Agreement shall refer to all pipes, hydrants, meters, connection points, appurtenances, and other similar infrastructure necessary for the efficient, safe, and economical provision of safe drinking water, as contemplated by the Saint Paul City Charter, Saint Paul Legislative Code Title XI, and Chapter 110 of the State of Minnesota Special Laws of 1885.
 - b. This Agreement shall be governed by and construed in accordance with the Laws of the State of Minnesota. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled

and determined in accordance with the laws of the State of Minnesota, and the parties agree that all legal actions initiated by either party or any of its successors, assigns, transferees with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Ramsey County, District Court and shall not be removed therefrom to any other federal or state court.

- c. Each of the parties has duly authorized the execution and delivery of this Agreement
- d. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original instrument.
- e. This Agreement is the full, complete, and entire agreement of the parties with respect to the subjects hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this Agreement. This Agreement may be amended only by a writing signed by SPPA and the Board, or the successors, assigns, or transferees of either.
- f. The parties agree that the electronic signature of a party to this Agreement will be as valid as an original signature of such party and will be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature will be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature will not affect the enforceability of this Agreement.

2. Assignment

SPPA shall not assign, convey, or transfer in any mode or manner this Agreement or any of its interests or responsibilities without the prior written consent of the Board, to be granted or withheld in the reasonable discretion of the Board. Any approval of assignment shall be granted by resolution of the Board and shall not be unreasonably withheld, conditioned, or delayed. The Board shall be entitled to require, as conditions to approval of any assignment, conveyance or transfer of this Agreement or any interest hereunder by SPPA, that:

- a. Any proposed assignee shall have the qualifications and financial responsibility, as solely determined by the Board, necessary and adequate to fulfill the obligations undertaken in this Agreement by SPPA;
- b. Any proposed assignee, by instrument in writing satisfactory to the Board, shall, for itself and its successors and assigns, and expressly for the benefit of the Board, have expressly assumed all of the obligations of SPPA under this Agreement and agreed to be subject to all the conditions and restriction to which SPPA is subject;
- c. There shall be submitted to the Board for review all instruments and other legal documents involved in effecting the assignment, conveyance or transfer, and if approved shall be indicated by resolution of the Board.

- d. No such assignment or approval by SPRWS thereof shall be deemed to relieve SPPA or any other party bound in any way by this agreement or otherwise with respect to construction of water infrastructure at The Heights, from any of its obligations with respect thereto unless agreed to in a resolution by the Board.

3. Construction and inspection of Water Infrastructure.

- a. SPPA will contract with a contractor to install and construct the Water Infrastructure for The Heights.
- b. SPPA will contract with Bolton and Menk, Inc. (“Consultant”) to confirm that all infrastructure is installed according to the most recent version of the SPRWS Standards for the Installation of Water Mains and SPRWS Specifications for Water System Installation and provide the following services:

The Consultant shall provide, for the entire contract duration, appropriate staff experienced in construction inspection and management. The Consultant shall provide detailed daily construction field inspection services to coordinate all contract construction items and related construction activity within the corridor to properly oversee the contractor’s and subcontractors’ workmanship and quantities. The Consultant shall provide the necessary staff to ensure work is completed in accordance with the contract documents. Consultant shall perform all work items listed below:

Watermain

- Inspect the installation, repair, and maintenance of water systems and appurtenances in conformance with the plans and specifications.
- Verify materials and methods of construction conform to the most recent version of SPRWS Standards for the Installation of Water Main
- Maintain accurate detailed records of new water facilities:
 - Reference measurements to valve boxes and hydrants.
 - Model and manufacturer of valves, hydrants, pipe, and fittings.
 - Number of turns on all valves
- Verify workmanship and cleanliness of pipe and fittings.
- Document daily progress and field changes.
- Redline plans as project progresses
- Verify testing protocols as required by the most recent version of SPRWS Standards for the Installation of Water Main
- Visually observe all components before they are buried.

The Consultant shall provide all necessary final documentation as required by the SPRWS Standards and Specifications including the following:

- Post-walk all project areas as completed and compile punch lists for deficiencies
- Compile and create punch list with all applicable stakeholders. Consultant shall conduct pre-acceptance checks for punch list items. All punch list items must be addressed before the Board Acceptance.
- Consultant should coordinate and review post acceptance checks for warranty compliance. Typically about 1-year after acceptance.

- c. SPPA and the Board will execute all necessary easements and permits, and secure the necessary approvals from SPPA, the Board of Water Commissioners, and the Saint Paul City Council to the extent required by law or policy of the respective bodies.
- d. SPPA agrees to pay the costs of construction for the required Water Infrastructure.
- e. SPPA agrees to pay the cost of the Board's staff time for inspection and testing during the construction phase.
- f. SPPA agrees to pay for time and materials, including overhead and additive rates, for the Board's crews to perform the work to make connections to the existing water main systems and to construct and maintain temporary water systems for existing effected customers adjacent to The Heights.
- g. SPPA agrees that the water supply to The Heights will be solely through the Beebe Station Pressure Zone of the water distribution system. Supply from other pressure zones to The Heights may be approved by SPRWS on a temporary basis upon written request. In no case shall temporary connections to alternative pressure zones extend beyond July 31st, 2024.
- h. SPPA agrees to install new water facilities to serve The Heights at SPPA expense, as generally depicted in the draft plan set titled "*The Heights Site Development (aka Hillcrest Golf Course)*", dated March 29, 2024, WSB Project Number 013987-000, sheets 1 to 449, incorporated herein by reference.
- i. The Parties agree the current configuration and design for the stormwater pond in Outlot E as shown on sheets 102 and 113 of the plans must be redesigned to avoid impacts to the existing 20-inch diameter water main through Outlot E prior to proceeding with construction on Outlot E.
- j. SPPA agrees that the Board will have approval of the design and construction of the water infrastructure. The Board will review, approve or deny plans, design, inspections, and other necessary approvals, in accordance with the standards set forth in City of Saint Paul ordinances and charter, State of Minnesota Statutes, and laws of the United States, as applicable.
- k. The Board will review each functional section of the work to ensure it has been completed according to the SPRWS Standards, as defined above. If it deems SPRWS Standards to have been met, street surface has been graded, paved, and certified by the Department of Public Works, and public rights of way have been platted and officially recorded with Ramsey County, the Board will approve the work by issuing a Completion Certificate. Upon issuance of the Completion Certificate, ownership of the Water Infrastructure will transfer to the Board and the Board will assume responsibility for the Operation and Maintenance of the water infrastructure. The date of this issuance shall begin a one-year warranty period during which all repairs and maintenance of the works shall be borne by SPPA or its contractors.
- l. SPPA shall retain all records pertinent to the design and construction of the water distribution infrastructure for a period extending ten years following completion of such

work and make such records available to SPRWS for review and copying. All data generated is governed by the Minnesota Government Data Practices Act, Chapter 13 of the statutes of the State of Minnesota.

- m. SPPA agrees to assign, without recourse against SPPA, to the Board all warranties from any contractor constructing the water infrastructure.
- n. Any default by either party in the performance of its obligations hereunder that remains uncured after ten calendar days written notice of such default by a party to the non-performing party entitles the non-defaulting party to remedies afforded at law and in equity; provided that, if and so long as a party is using reasonable and diligent efforts to cure its default, the period to cure such default shall be extended for up to sixty days.
- o. This Agreement does not convey any interest in real estate and shall not be recorded be either party.

[The remainder of this page left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the Effective Date.

Approved as to form:

**BOARD OF WATER COMMISSIONERS OF THE
CITY OF SAINT PAUL**

By: _____
Racquel Vaske, General Manager
Saint Paul Regional Water Services

By: _____
Mara Humphrey, President

Date: _____

Date: _____

By: _____
Megan Hafner
Assistant City Attorney

By: _____
Mollie Gagnelius, Secretary

Date: _____

Date: _____

By: _____
John McCarthy, Director
Office of Financial Services

Date: _____

PORT AUTHORITY OF THE
CITY OF SAINT PAUL

By_____

Todd P. Hurley, President and CEO

By_____

Bruce A. Kessel, CFO

Reviewed and Approved as to Form:

By_____

General Counsel of the Port Authority
Of the City of Saint Paul