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**GENERAL FUND**

**GRANT AGREEMENT**

**ANNUAL APPROPRIATION GRANT**

**for the**

**CITY OF SAINT PAUL SPORTS FACILITIES**

**PROJECT**

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**PROJECT**

**THIS AGREEMENT** shall be effective as of December \_\_\_\_, 2013, and is between the City of Saint Paul, Minnesota, a Minnesota Home Rule Charter City (the “Grant Recipient”), and Minnesota Management and Budget (the “State Entity”).

**RECITALS**

A. Under the provisions contained in Minnesota Statutes, Section 16A.726, paragraph (c), the State of Minnesota has allocated an annual general fund appropriation of \$2,700,000 for the fiscal years 2014 through 2033, which is to be given to the Grant Recipient as a grant for the operating or capital costs of new or existing sports facilities; and

B. The monies allocated to fund the grant to the Grant Recipient are appropriated money from the State of Minnesota’s general fund; and

C. The Grant Recipient and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Grant Recipient.

**IN CONSIDERATION** of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

**Article I**  
**DEFINITIONS**

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Agreement” - means this General Fund Grant Agreement Annual Appropriation Grant for the City of Saint Paul Sports Facilities Project.

“Commissioner of Management and Budget” - means the State of Minnesota acting through its Commissioner of Management and Budget, and any designated representatives thereof.

“Event of Default” - means those events delineated in Section 2.05.

“Facility” - means any new or existing sports facility.

“Grant” - means a grant of monies from the State Entity to the Grant Recipient in an annual amount of \$2,700,000 for the fiscal years 2014 through 2033.

“Grant Recipient” - means the City of Saint Paul, Minnesota, a Minnesota Home Rule Charter City.

“Project” - means the acquisition of an interest in the Facility, along with the performance of those activities indicated in Section 2.03.

“State Entity” - means Minnesota Management and Budget.

## **Article II GRANT**

Section 2.01 **Grant of Monies.** The State Entity shall issue the Grant to the Grant Recipient and disburse the proceeds in accordance with the provisions of this Agreement. The Grant is not intended to be a loan of money.

Section 2.02 **Use of Grant Proceeds.** The Grant Recipient shall use the Grant solely to reimburse itself for expenditures it has made since July 1, 2013, or will make, for the operating or capital costs of new or existing sports facilities.

Section 2.03 **Operation of the Facility.** The Grant Recipient shall operate the Facility, or cause it to be operated, as sports facilities, or for such other use as the Minnesota legislature may from time to time designate.

Section 2.04 **Grant Recipient Representations and Warranties.** The Grant Recipient further covenants with, and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. This Agreement and all other documents referred to herein are the legal, valid and binding obligations of the Grant Recipient enforceable against the Grant Recipient in accordance with their respective terms.

C. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement and all other documents referred to herein.

D. It has made no material false statement or misstatement of fact in connection with its receipt of the Grant, and all of the information it previously submitted to the State

Entity or which it will submit to the State Entity in the future relating to the Grant or the disbursement of any of the Grant is and will be true and correct.

E. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Facility, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement or any document referred to herein, or to perform any of the acts required of it in such documents.

F. Neither the execution and delivery of this Agreement or any document referred to herein, nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

G. At all times during the term of this Agreement, it will possess an interest in the Facility pursuant to Minnesota Statutes, Section 16A.726, subdivision (c).

H. It will furnish to the State Entity as soon as possible and in any event within 7 calendar days after the Grant Recipient has obtained knowledge of the occurrence of each Event of Default, or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default, or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default, and the action which the Grant Recipient proposes to take with respect thereto.

I. It will furnish to the State Entity on an annual basis, and no later than 30 days following the end of each fiscal year of the State Entity during the term of this Agreement, a certification, in the form contained in Attachment I to this Agreement, showing how the proceeds of the Grant were expended in the immediately preceding fiscal year.

J. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested in writing by either the State Entity or the Commissioner of Management and Budget.

Section 2.05 **Event(s) of Default.** The following events shall, unless waived in writing by the State Entity, constitute an Event of Default under this Agreement upon the State Entity giving the Grant Recipient 30 days written notice of such event, and the Grant Recipient's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Grant Recipient is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months. Notwithstanding the foregoing, any of the following events that cannot be cured shall, unless waived in writing by the State Entity,

constitute an Event of Default under this Agreement immediately upon the State Entity giving the Grant Recipient written notice of such event.

A. If any representation, covenant, or warranty made by the Grant Recipient herein, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Grant Recipient fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement or any other document referred to herein.

Section 2.06 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the State Entity, the State Entity or the Commissioner of Management and Budget may refrain from disbursing the Grant; provided, however, the State Entity may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

Such right and remedy is not exclusive of any rights or remedies that the State Entity or the Commissioner of Management and Budget would otherwise possess.

Section 2.07 **Notification of Event of Default.** The Grant Recipient shall furnish to both the State Entity and the Commissioner of Management and Budget, as soon as possible and in any event within 7 calendar days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Grant Recipient proposes to take with respect thereto.

Section 2.08 **Term of Grant Agreement; Modification.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that is the last day of the last fiscal year in which the Grant Recipient is entitled to the Grant. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect.

In the event that the legislation that authorized the Grant is amended to increase or reduce the amount of the Grant or in any other way, then this Agreement shall be deemed to have been automatically modified in accordance with such amendment and the amount of the Grant shall also be automatically modified in accordance with such amendment. This Agreement shall terminate if the Minnesota legislature repeals Minnesota Statutes, Section 16A.726, subdivision (c) or enacts legislation to no longer fund the Grant.

Section 2.09 **Survival of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due

under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.08.

**Article III**  
**DISBURSEMENT OF GRANT PROCEEDS**

Section 3.01 **Disbursement of Grant.** Upon compliance with all of the conditions delineated in Section 3.02, the State Entity shall disburse the Grant to the Grant Recipient. Under no circumstance shall the State Entity be required to disburse funds in excess of the amount requested by the Grant Recipient under the provisions contained in Section 3.02.A even if such amount is less than the maximum annual amount of the Grant delineated in Section 1.01. If the amount of Grant that the State Entity cumulatively disburses hereunder to the Grant Recipient is less than the maximum amount of the Grant delineated in Section 1.01, then the State Entity and the Grant Recipient shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the Grant to the amount actually disbursed; provided, however, in accordance with the provisions contained in Section 2.09, the State Entity's obligation to make disbursements shall terminate as of the dates specified in such Section even if the entire Grant has not been disbursed by such dates.

Section 3.02 **Condition Precedent to Disbursement of Grant.** The obligation of the State Entity to disburse the Grant to the Grant Recipient is subject to the following conditions precedent, it being the intention of the parties that the condition precedent set out in B. will have been satisfied at or before the initial disbursement:

A. The State Entity shall have received a request for disbursement of the Grant no later than thirty (30) days prior to the end of each fiscal year of the State Entity in which the Grant Recipient is entitled to the appropriation specifying the amount of funds being requested, which such amount shall not exceed the maximum annual amount of the Grant set forth in Section 1.01.

B. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Grant Recipient has legal authority to and has taken all actions necessary to enter into this Agreement, and (ii) this Agreement is binding on and enforceable against the Grant Recipient.

C. The State Entity shall have received the annual certification required by Section 2.04.I showing how the Grant proceeds were expended in the immediately preceding fiscal year.

D. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

E. The Grant Recipient has supplied to the State Entity all other items that the State Entity may reasonably require.

**Article IV**  
**MISCELLANEOUS**

Section 4.01 **Records Keeping and Reporting.** The Grant Recipient shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the operating or capital costs of the Facility, and compliance with the requirements contained in this Agreement, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of its books, records, papers, or other documents relevant to the Grant. The Grant Recipient shall use or cause the entity which is maintaining such books and records to use generally accepted accounting principles in the maintenance of such books and records, and shall retain or cause to be retained all of such books, records, documents and other evidence for a period of 6 years from the date that the Project is fully completed and placed into operation.

Section 4.02 **Data Practices.** The Grant Recipient agrees with respect to any data that it possesses regarding the Grant, the Project, or the Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 4.03 **Non-Discrimination.** The Grant Recipient agrees to not engage in discriminatory employment practices in the operation or management of the Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Minnesota Statutes, Chapters 363A and 181, if and when applicable, that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 4.04 **Antitrust Claims.** The Grant Recipient hereby assigns to the State Entity and the Commissioner of Management and Budget all claims it may have for over charges as to goods or services provided in its operation or management of the Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 4.05 **Review of Plans and Cost Estimates.** The Grant Recipient agrees to comply with all applicable provisions and requirements contained in Minnesota Statutes, Section 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the Project.

Section 4.06 **Liability.** The Grant Recipient and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of both the State Entity and the Commissioner of Management and Budget is governed by the provisions contained in Minn. Stat. § 3.736 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. If the Grant Recipient is a “municipality” as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Grant Recipient is governed by the provisions contained in such Chapter 466.



Section 4.07 **Indemnification by the Grant Recipient.** To the extent permitted by law, the Grant Recipient shall bear all loss, expense (including attorneys' fees), and damage in connection with the completion of the Project or operation of the Facility, and agrees to indemnify and hold harmless the State Entity, its agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, its agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the State Entity or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the completion of the Project or operation of the Facility, whether or not due to any act of omission or commission, including negligence of the Grant Recipient or any Contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, its employees, servants or agents.

The Grant Recipient further agrees to indemnify, save, and hold the State Entity, the Commissioner of Management and Budget, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Grant Recipient, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 5.02.

Section 4.08 **Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, nor shall the Grant Recipient be considered or deemed to be an agent, representative, or employee of either the State Entity, the Commissioner of Management and Budget, or the State of Minnesota in the performance of this Agreement, the completion of the Project, or operation of the Facility.

Section 4.09 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Grant Recipient at:  
The City of Saint Paul  
15 W. Kellogg Blvd.  
700 City Hall  
Saint Paul, MN 55102  
Attention: Finance Director

To the State Entity at:  
Minnesota Department of Management and Budget  
400 Centennial Office Bldg.  
658 Cedar St.  
Saint Paul, MN 55155  
Attention: Commissioner

To the Commissioner of Management and Budget at:

Minnesota Department of Management and Budget  
400 Centennial Office Bldg.  
658 Cedar St.  
St. Paul, MN 55155  
Attention: Commissioner

Section 4.10 **Binding Effect and Assignment or Modification.** This Agreement shall be binding upon and inure to the benefit of the Grant Recipient and the State Entity, and their respective successors and assigns. Provided, however, that neither the Grant Recipient nor the State Entity may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement shall be binding on either the Grant Recipient or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 4.11 **Waiver.** Neither the failure by the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Grant Recipient, the State Entity, or the Commissioner of Management and Budget, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 4.12 **Entire Agreement.** This Agreement and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Grant Recipient and the State Entity, and there are no other agreements, either oral or written, between the Grant Recipient and the State Entity on the subject matter hereof.

Section 4.13 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 4.14 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 4.15 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 4.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 4.17 **E-Verification.** The Grant Recipient agrees and acknowledges that it is aware of Minn. Stat § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order.

Section 4.18 **Additional Requirements.** The Grant Recipient and the State Entity agree to comply with the following additional requirements.

(If there are no additional requirements then insert the word “NONE”.)

NONE

**IN TESTIMONY HEREOF**, the Grant Recipient and the State Entity have executed this General Fund Grant Agreement Annual Appropriation Grant for the City of Saint Paul Sports Facilities Project on the day and date indicated immediately below their respective signatures.

**GRANT RECIPIENT:**

**THE CITY OF SAINT PAUL,**  
a Minnesota Home Rule Charter City

By: \_\_\_\_\_  
Chris Coleman

Its: Mayor

Dated: \_\_\_\_\_, 2013

And: \_\_\_\_\_  
Todd Hurley

Its: Finance Director

Dated: \_\_\_\_\_, 2013

**STATE ENTITY:**

**MINNESOTA MANAGEMENT AND BUDGET**

By: \_\_\_\_\_  
James D. Schowalter

Its: Commissioner

Dated: \_\_\_\_\_, 2013

**Attachment I to Grant Agreement**

**CERTIFICATION OF EXPENDITURES  
AND REQUEST FOR DISBURSEMENT**

Pursuant to Section 2.04.I. of the General Fund Grant Agreement–Annual Appropriation Grant for the City of Saint Paul Sports Facilities Project, dated as of December \_\_, 2013 (the Grant Agreement), between the City of Saint Paul, Minnesota (the Grant Recipient) and Minnesota Management and Budget (the State Entity), the Grant Recipient hereby certifies that all expenditures of Grant proceeds from July 1, 20\_\_ through June 30, 20\_\_, were used solely for the operating or capital costs of new or existing sports facilities, as shown on Exhibit A attached hereto. No Event of Default (as defined in the Grant Agreement) or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse has occurred and is continuing.

Dated: \_\_\_\_\_, 20\_\_.

**CITY OF SAINT PAUL, MINNESOTA,**  
as Grant Recipient

By: \_\_\_\_\_  
Director, Office of Financial Services

**EXHIBIT A**  
**List of Expenditures**

<u>Date</u>	<u>Description</u>	<u>Amount</u> \$
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