

**COOPERATIVE AGREEMENT
Between City of St. Paul and
Capitol Region Watershed District**

Maintenance of Snelling-Midway Green Infrastructure

June __, 2019

This cooperative agreement is made by and between the City of St. Paul, a Minnesota municipal corporation (St. Paul) and Capitol Region Watershed District, a watershed district created pursuant to Minnesota Statutes chapter 103D (CRWD) to achieve shared water-resource protection and improvement goals through expert and experienced operation and maintenance of green infrastructure at the Snelling-Midway Soccer Stadium (“Snelling-Midway”) site, which is owned by St. Paul.

Recitals

WHEREAS St. Paul is constructing a comprehensive stormwater management facility that will serve Snelling-Midway;

WHEREAS the Snelling-Midway comprehensive stormwater management facility collects stormwater from all new roof areas for treatment and distribution as beneficial reuse (“Project”);

WHEREAS this Project requires specialized operation and maintenance; CRWD has expertise and experience in maintenance of stormwater infrastructure and St. Paul seeks to utilize CRWD’s expertise;

WHEREAS Snelling-Midway is envisioned as a green infrastructure system service area whereby properties within the Snelling-Midway area are benefitted by the Project;

WHEREAS CRWD has an approved water resources management plan pursuant to Minnesota Statutes section 103B.231 (the Plan) that has as a primary goal the improvement of water quality in the watershed through partnerships, stormwater management, monitoring and data assessment, and watershed management generally;

WHEREAS St. Paul operates its municipal stormwater-management system under the state Municipal Separate Storm Sewer System (MS4) general permit, and construction and maintenance of the Project will accrue to the benefit of St. Paul’s fulfillment of its MS4 permit obligations; and

WHEREAS St. Paul and CRWD acknowledge that their ability to achieve Project objectives depends on both parties satisfactorily and promptly performing individual obligations and working cooperatively with the other parties to this agreement;

Agreement

NOW, THEREFORE St. Paul and CRWD enter into this Agreement to define the scope of CRWD’s responsibilities of the Project’s operation and maintenance duties (“Project O&M”), affirm other commitments as to the responsibilities of and tasks to be undertaken by each party, grant and assign the necessary land-use rights, and facilitate communication and cooperation to successfully complete the Project O&M.

1 Organization and Relationship of the Parties

- A. The CRWD administrator and St. Paul’s sewer utility manager or designee will serve as project leads and the principal contacts for their respective organizations for the Project O&M, charged to conduct the day-to-day activities necessary to ensure that the Project O&M is conducted in accordance with the terms of this agreement.

- B. The project leads will coordinate and communicate informally and formally to timely address any issues of concern to ensure the successful operations and maintenance (“O&M”) of the Project.
- C. St. Paul and CRWD enter this agreement solely for the purposes of O&M of the Project. Accordingly, this agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes section 471.59, and no party agrees to be responsible for the acts or omissions of another pursuant to subdivision 1(a) of the statute. Only contractual remedies are available for the failure of a party to fulfill the terms of this agreement.

2 **Project Design and Construction**

A. **Design, Construction.**

- i. St. Paul will be responsible for Project design and construction in accordance with the Development Agreement between St. Paul and Minnesota United Soccer Club (MUSC) LLC.
- ii. St. Paul may engage and consult CRWD on design review during construction.
- iii. The estimated date of construction completion is December 2018; Project elements are listed in Exhibit A, shown in Exhibit B and included in O&M plan approved by both parties.
- iv. St. Paul will oversee as-built inspection and documentation of Project design and construction.
- v. Nothing herein shall be deemed to amend or waive any regulatory obligation imposed on the City or the Project by CRWD in its regulatory capacity.

B. **Ownership of the Project.** On completion of construction of the Project, St. Paul will retain ownership of all installed and constructed elements of the Project, and will operate the Project.

- i. After completion of the Project, St. Paul will not take any action on the Snelling-Midway site that could reasonably be expected to diminish the effectiveness or function of the Project for the purposes intended.

3 **Operation and Maintenance Plan**

- A. St. Paul will provide an operation and maintenance plan (O&M Plan), including spring start up and fall close-down of the treatment skid, (Vault 200), duplex pump station (Structure 251), and water reuse distribution system. The O&M Plan will delineate routine maintenance and repair of the Project.
- B. CRWD will review and concur in the O&M Plan prior to finalization.
- C. Both parties agree that they will review the O&M Plan annually, and that the O&M Plan shall be updated from time to time with the consent of both parties and agreement as to any amendments. St. Paul, as owner, shall be responsible for any costs associated with updating the O&M Plan.

4 **Operation and Maintenance Activities**

- A. CRWD will oversee, manage, and direct the Project O&M on behalf of St. Paul beginning no earlier than May 1, 2019 and commencing upon satisfaction of both CRWD permit 16-025 close-out and notification to CRWD by St. Paul’s representative (as shown in Section 7G) of post-construction acceptance of the System.
- B. CRWD will act as St. Paul’s authorized agent utilizing easements and right of way for O&M activities carried out pursuant to the O&M Plan.
- C. CRWD will be responsible to direct hiring of contractors, as needed.

- D. St. Paul will be responsible for performing Gopher State One-Call Locate Requests of the Project Elements identified within Exhibit A of this Agreement.
- E. St. Paul will be responsible for Emergency Operations of the Project Elements identified within Exhibit A of this Agreement. After initial intervention and response, CRWD will be responsible to respond within one business day of notification by St. Paul.
- F. CRWD shall coordinate O&M activities with St. Paul and MUSC LLC.
- G. CRWD will consult with St. Paul on any substantive deviation from the O&M Plan. Such deviations may consist of recurring activities that warrant a change in planned frequency or occasional planned or unplanned activities that may increase the prior year's annual costs by more than ten percent. For the first year of the agreement, the CRWD will notify St. Paul if the annual costs are expected to exceed \$45,000.
- H. St. Paul may inspect O&M activities and advise CRWD of any issues or concerns.
- I. CRWD will prepare and submit to St. Paul by March 1 each year an annual O&M report that will include a financial report of costs incurred and an estimate of costs of O&M activities for the coming year.
- J. The first annual O&M report is due March 1, 2020 for O&M activities conducted during 2019, the first year of operations.
- K. CRWD and St. Paul will meet on or before April 1 each year to review the annual O&M report and to resolve any outstanding issues as well as review anticipated activities for the forthcoming year. The meeting shall be arranged by CRWD.

5 Payment and Reimbursement of Operation and Maintenance

- A. St. Paul will reimburse CRWD for all costs and expenses incurred performing the Project O&M, and any other obligations under this Agreement.
- B. Invoices to St. Paul for reimbursement shall be paid within 60 days.
- C. Annually, on March 1st, or as soon after as reasonably possible, CRWD will submit an annual report which shall include all costs and expenses incurred the prior year. The report will include reasonable documentation of expenses paid by CRWD on behalf of St. Paul, as well as documentation of CRWD staff time and rates based on CRWD's current schedule.
- D. No request for reimbursement will be submitted by CRWD until March 1, 2020. At that time, CRWD may request reimbursement for documented expenses incurred before March 1, 2020.

6 Parties' Further Rights and Obligations

- A. CRWD will not be deemed to have acquired by entry into or performance under this agreement any form of interest or ownership in the Snelling-Midway site. CRWD will not by entry into or performance under this agreement be deemed to have exercised any form of control over the use, operation or management of any portion of the Snelling-Midway site or adjacent property so as to render CRWD a potentially responsible party for any contamination or exacerbation of any contamination conditions under state and/or federal law.
- B. St. Paul will provide as-built construction drawings of the Project within 30 days of receipt or as soon after as reasonably possible.
- C. St. Paul will contract the plans and specification for the Project, along with all necessary construction documentation and the O&M Plan. CRWD is not responsible for the system design or efficacy. Saint Paul will be responsible for pursuing any warranty claims associated with system design or construction and, in seeking remedy, may request CRWD to provide related

ordinary documentation typically used to prepare an annual report in advance of established due dates..

7 General Terms

- A. **Publicity and endorsement.** CRWD and St. Paul will collaboratively develop, produce and disseminate public education and outreach materials about the Project. Each party, at its sole expense, may develop, produce and, after written approval of the other parties, distribute educational, outreach and publicity materials related to the Project. Any publicity regarding the Project must identify St. Paul, CRWD, the Clean Water Legacy Fund, and Metropolitan Council as sponsoring entities. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for St. Paul or CRWD individually or jointly with others, or any subcontractors, with respect to the Project.
- B. **Data management.** All designs, written materials, technical data, research or any other work in progress will be shared among the parties to this agreement upon completion, except as prohibited by law. As soon as is practicable, the party preparing plans, specifications, contractual documents, materials for public communication or education will provide them to the other parties for recordkeeping and other necessary purposes.
- C. **Data Practices.** All data created, collected, received, maintained or disseminated for any purpose in the course of this agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13, and any state rules adopted to implement the act, as well as federal regulations on data privacy
- D. **Entire agreement.** This agreement, as it may be amended in writing, contains the complete and entire agreement between the parties relating to the subject matter hereof, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters. The recitals stated at the outset are incorporated into and made a part of the agreement.
- E. **Force majeure.** St. Paul will not be liable for failure to complete the Project if the failure results from an act of god (including fire, flood, earthquake, storm, other natural disaster or other weather conditions that make it infeasible or materially more costly to perform the specified work), embargo, labor dispute, strike, lockout or interruption or failure of public utility service. In asserting force majeure, St. Paul must demonstrate that it took reasonable steps to minimize delay and damage caused by foreseeable events, that it substantially fulfilled all non-excused obligations, and that it timely notified St. Paul of the likelihood or actual occurrence of the force majeure event. Delay will be excused only for the duration of the force majeure.
- F. **Waivers.** The waiver by St. Paul or CRWD of any breach or failure to comply with any provision of this agreement by the other parties will not be construed as nor will it constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this agreement.
- G. **Notices.** Any notice, demand or communication under this agreement by any party to the others will be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

St. Paul
Bruce Elder
Sewer Utility Manager
25 West 4th Street
St. Paul, MN 55101
bruce.elder@ci.stpaul.mn.us
651.266.6248

CRWD
Mark Doneux
Administrator
595 Aldine Street
Saint Paul, MN 55104
mark@capitolregionwd.org
651.644.8888

- H. **Term.** This agreement is effective on execution by each of the parties and will terminate five (5) years from the date of execution of this agreement or on the written agreement of both parties. The agreement may be renewed at the termination of this agreement by the review and execution by both parties of a modified agreement.
- I. **Termination.** Either party may terminate this agreement with 180 days written notice to the other party. Early termination will require cost accounting and adherence to the reimbursement schedule for costs CRWD incurs. CRWD will not retain and rights or obligations under this agreement after termination, unless otherwise agreed by both parties.
- J. **Liability.** Minnesota Statutes chapter 466 and other applicable law govern liability of the parties. The limits of liability for the parties may not be added together to determine the maximum amount of liability of any party.
- K. **Immunity.** This agreement creates no right in and waives no immunity, defense or liability limitation with respect to any non-party.
- L. **Indemnification.** Each party agrees to indemnify, defend, and hold harmless the other party, its officers, council members, employees, and agents from any and all actions, costs, damages, and liabilities of any nature arising from the other party's, or any other contracted non-party's, negligent or otherwise wrongful act or omission, or breach of a specific contractual duty.

Compliance with Laws. Each party agrees to comply with all local, state, federal, and other applicable laws in its execution of and performance under this agreement.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have caused the agreement to be duly executed intending to be bounded thereby.

City of St. Paul

By:

Date: _____

and

By:

Date: _____

Approved as to form & execution:

City attorney

Capitol Region Watershed District

By:

Date: _____

Approved as to form & execution:

CRWD counsel

EXHIBIT A

Project Elements to be Operated and Maintained by CRWD

- Duplex Pump Station within Structure 251
- Systems and components within Vault 200, including
 - Skid System provided by RMS including but not limited to filters, pumps, meters, and UV lights
 - Ozone System
 - Recirculating System (pumping/forcemain)
 - Sump Pump for filter backwash to sanitary
 - Opti-System (to pump down Tank A to accommodate a future storm event)
 - RMS-200 Control System (used for tracking flow meters, turbidity, pH, etc.)
 - Lights, alarms, vents, heating and dehumidifying devices
- Outlot reuse distribution system to proposed adjacent properties

EXHIBIT B

Project Plans

- Sheet C8-10, “Cross Section”
- Sheet M1.01, “Rainwater Vault Mechanical Plan and Skid Section Views”
- Sheet M2.01, “Mechanical Schedules”
- Sheet M3.01, “Mechanical Schedules, Points List, and Flow Diagram”
- Sheet EX 1M, “Water Distribution System”

EXHIBIT C [include once finalized]

O&M Plan

Allianz Field Rainwater Reuse Vault Utility and Control Reference (August 22, 2018) by LHB Corp.

RMS Soccer Stadium Startup Plan O&M Manual (October 15, 2018)

Outlot Reuse Distribution O&M Manual (to be provided by the Team)