

CONTRACT FOR WATER SERVICE
between
BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL
and
REGENTS OF THE UNIVERSITY OF MINNESOTA

This **AGREEMENT** made and entered into effective December 10, 2019, by and between **REGENTS OF THE UNIVERSITY OF MINNESOTA** (“University”), a municipal constitutional corporation, and the **BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL** (“Board”), a municipal corporation under the laws of the State of Minnesota d/b/a Saint Paul Regional Water Services (“SPRWS”).

WITNESSETH:

WHEREAS, University owns and controls real property in the Cities of Falcon Heights and Saint Paul south of Larpenteur Avenue West, east of Cleveland Avenue North, north of Como Avenue, and west of the Minnesota State Fairgrounds (“University’s Saint Paul Campus”); and

WHEREAS, the Board and University entered into Water Supply Agreements dated April 4, 1972 and April 10, 1963 for the Board’s water supply to University’s Saint Paul Campus (“Existing Water Supply Agreements”); and

WHEREAS, the Board and University desire to continue their relationship by replacing the Existing Water Supply Agreements with a written agreement for the wholesale provision of water to University’s Saint Paul Campus;

NOW, THEREFORE in consideration of the mutual covenants contained herein the Board and University do hereby agree as follows:

ARTICLE 1

SECTION 1.01. Other Contracts

This Agreement supersedes the Existing Water Supply Agreements by and between the parties. All the legal obligations between the parties for the wholesale provision of water to the University's St. Paul Campus shall from this date forward be governed by this Agreement. It is also understood and agreed that this entire Agreement supersedes all oral or written agreements and negotiations between the parties relating to the subject matters herein. For avoidance of doubt, the Memorandum of Understanding between the parties dated September 16, 2016 is not superseded by this Agreement.

SECTION 1.02. Term

This Agreement shall commence on the Effective Date, as described in Section 8.09 *Effective Date of Agreement*, and continue until the later of December 31, 2022 and the completion of the review scheduled for the year 2022 as noted in Section 5.01(B) below ("Initial Term"). University has the option to continue the contract on the same terms and conditions (subject to any changes to the Charges agreed upon by the parties as a result of the review process or otherwise as contemplated by Section 5.01(B) and (C) below) for an additional fifteen (15) years following the Initial Term by providing written notice of its extension option on or before the end of the Initial Term. The Initial Term and any extension terms will be collectively referred to herein as the "Term." If so extended by University, at least two (2) years before the expiration of the Term of this Agreement, representatives of the Parties agree to meet, review the Board's performance and costs, and discuss in good faith whether to continue their contractual relationship for additional terms. This Agreement may be extended for two additional 10-year terms by mutual agreement of both parties.

ARTICLE 2

SECTION 2.01. Water Service

A. Subject to the terms and conditions of this Agreement, the Board agrees to furnish and deliver water to University's Saint Paul Campus on a "Demand Basis", defined as a continuous supply of water for the entire twenty-four (24) hours of the day, subject to and limited by the Board's available system supply and system deliverability, as determined by the Board. In addition, the Board's supply of water to University shall be on an equal and proportionate basis as compared to other Board customers.

B. The Board shall furnish water at a minimum pressure as determined by elevation 367.7 City of Saint Paul Datum. University shall provide supplemental pumpage to meet its required pressures.

C. The Board will furnish water to University at the locations listed below, each a "Point of Delivery".

- a. 1524 Cleveland Avenue North – specifically the water main control valve located 92 feet south of the southern right-of-way line of Dudley Avenue and 13 feet west of the east right-of-way line of Cleveland Avenue North
- b. 1250 Cleveland Avenue North – specifically the water main control valve located 11 feet south of the northern right-of-way line of Scudder Street and 21 feet east of the western right-of-way line of Cleveland Avenue North

D. The quality of water furnished to University by the Board at the Points of Delivery shall be the same as treated water supplied by the Board to its other water consumers and shall meet all State and Federal Drinking Water Standards.

E. University acknowledges that water service can be interrupted due to, among other

things, main breaks, equipment failures, weather conditions, maintenance, repairs or improvements. Therefore, the Board cannot guarantee that there will be no interruptions in service, or that any specific pressures or fluctuations in pressure will or will not occur. The Board will respond promptly to address and minimize such interruptions in service or fluctuations in pressure. University agrees that the Board shall not be liable or responsible for any losses or damages, consequential or otherwise, resulting from any such interruptions in service or fluctuations in pressure.

SECTION 2.02. Regulation, Inspection, and Permitting

A. University agrees that all uses of Board-furnished water to the Point of Delivery shall be governed by the applicable rules, regulations and requirements of any federal, state, or local authority which have been, or which may hereafter be, adopted specifically for the preservation, regulation, and protection of the Board's water supply. From and after the Point of Delivery, all uses of Board-furnished water shall be governed by the applicable rules, regulations and requirements of federal and state authorities and University as the local authority. This provision, however, shall be limited only to what use the Board-furnished water may be put to by University and, for clarity, in no way gives the Board the right to dictate rules of operation for the University's water system on University's Saint Paul Campus.

B. Upon prior notice and coordination with University, University will allow the Board reasonable access to University property to examine and approve new and existing Board master meter settings for compliance with Board standards, and to install, read, remove or reset the Board master water meter for Board-supplied water. University reserves the right to have a University representative accompany the Board during such access.

C. University shall not knowingly allow the unmetered use of water prior to the Board master meters.

ARTICLE 3

SECTION 3.01. Water System Facilities - Board

A. The Board shall make investment in, construct, maintain, finance, operate, repair, replace and retain title to all facilities necessary for the supply, metering, production, storage and transmission of wholesale water to University to the Point(s) of Delivery. All such facilities of the Board shall comply with and conform to the relevant Minnesota Department of Health, and other applicable, health or safety requirements.

B. After the initial Board master meter setting, which costs are the responsibility of University, water delivered to University shall be measured by master meters furnished, installed and maintained by the Board at its own expense at locations mutually agreeable to both parties. Monthly billings to University shall be based on the readings of the Board's master meters. The Board shall make records of its master meter maintenance available to University upon request. The Board's master meter(s) shall be tested annually by the Board and those test results provided to University. The Board shall provide University with advance notice of the master meter(s) testing date to allow a University representative the opportunity to attend the test. It shall be the duty of either party to notify the other party if any Board-owned meter is registering incorrectly or malfunctioning so that the meter(s) can be promptly repaired. In the event a Board-owned meter is discovered malfunctioning, the amount of water that has passed through it will be reasonably estimated by the Board for each day it has not functioned correctly.

SECTION 3.02. Water System Facilities – University

A. University shall make investment in, construct, maintain, finance, operate, repair,

replace, retain title to, and remain responsible for its entire distribution system and all facilities necessary for the receipt, transmission, storage and distribution of water from the Point(s) of Delivery. All such facilities shall comply with and conform to the relevant Minnesota Department of Health, and other applicable health or safety requirements.

B. University may request additional connection point or points from the Board's facilities, which points, if consented to by the Board (which consent shall not be unreasonably withheld), shall be made by the Board and at University's sole cost and expense.

C. University shall promptly inform the Board of water facilities owned by University needing repair that result in the loss of unmetered water and arrange for such repairs as soon as is practicable. If University fails to so arrange for such repairs, the Board shall have the right, and at its sole discretion, to perform such repairs after providing notice of planned entry on University property by phone or email to University's Director of Leasing and Property Management at (612) 625-5345, reo@umn.edu (or such other contact as University provides by written notice pursuant to Section 8.02 below) and University shall be responsible for all costs incurred by the Board. University shall be responsible for the costs of the reasonably estimated amount of unmetered water. The Board reserves the right (following prior notice to University by calling its Public Safety Emergency Communications Center at 612.624.7828) to shut off any connections to the Board's water supply if such repairs are not completed in a timely manner as reasonably determined by the Board until such time that all repairs have been completed.

ARTICLE 4

SECTION 4.01. Supplemental Supply

University shall have the right to supplement its water supply with any water supply

meeting the requirements of the Minnesota Department of Health's statutes and rules, provided that no such supplemental water will be allowed to enter the water system of the Board, and that any connection or transmission of supplemental water through facilities or mains transmitting Board-supplied water prior to the Board master meters shall be subject to the approval of the Board, which approval shall not be arbitrarily withheld.

ARTICLE 5

SECTION 5.01. Rates

A. The rates for water sold by the Board to University under this Agreement ("Charges") shall consist of two components:

1) Water Service Base Fee

The Water Service Base Fee is intended to recover the fixed costs incurred by the Board for its provision of water to University. The Water Service Base Fee shall be \$7,660 per month and shall be charged monthly.

2) Water Volume Charge

The Water Volume Charge is the product of a rate equal to 92% of the lowest seasonal rate per one hundred (100) cubic feet charged to retail water customers in the City of Saint Paul and the volume of water provided to University at the Points of Delivery. The Water Volume Charge shall be charged at the same time and frequency as the Water Service Base Fee.

B. The parties agree to review the Charges at the same time and at the same intervals as that of the Board's other wholesale customers. These periodic reviews generally occur in five-

year intervals with the next such review scheduled for the year 2022. Each review shall include a cost of service study to analyze the return on Board assets, asset allocations, and other economic factors. University shall be consulted and provided the opportunity to opine on the methodology of the cost of service study, and, at its election, to perform its own cost of service study at its own expense. All costs (excepting any cost of service study University elects to independently conduct) for these periodic reviews shall be shared equally by the Board, University, and the Board's other wholesale customers.

C. Notwithstanding the foregoing, if, whether as a result of such review or otherwise, the Board changes its retail billing structure in any way, either of its own accord or at the requirement of other governmental entities, both parties agree that the Charges will be adjusted. All reasonable effort shall be taken to make sure this adjustment shall not harm University by increasing University's overall cost or harm the Board by decreasing the Board's overall revenue under the contract.

SECTION 5.02. Meter Reading and Reporting

Board shall read all Board-owned water meters for University properties. Readings shall be recorded on the last day of each month, or as close to that day as is practicable if, for whatever reason, readings cannot be recorded on that day.

SECTION 5.03 Billing and Payment

Billings by the Board shall be mailed to University on or before the 10th day of the following month (the "Billing Date") and payment on such bills shall be made by University to the Board within 20 days from the Billing Date. Balances that remain unpaid after thirty (30) days shall be subject to a 5% per month late charge; this charge will be added to the next

monthly billing.

ARTICLE 6

SECTION 6.01. Liability and Indemnification

Each party agrees that it shall be responsible for its own acts and omissions and the results thereof to the extent authorized by law and shall not be responsible for the acts and omissions of the other party and the results thereof. The liability of the parties shall be governed by and limited to the tort liability provisions found in Minnesota Statutes Chapter 466 and Minnesota Statutes Section 3.736, as amended from time to time, and any other applicable law, notwithstanding the foregoing. This section shall survive any termination of this Agreement.

SECTION 6.02. Default

A. In the event one party defaults on a material term or condition of this Agreement, the other party shall provide written notice of said default to the defaulting party. Except as provided in paragraph B. of this section, if said default is not cured to the satisfaction of the notifying party within six (6) months of receipt of said written notice, or within a longer time period as may be chosen and so stated in writing by the notifying party, the notifying party shall have the right to terminate this Agreement, following three (3) months' written notice to the defaulting party of its intent to terminate.

B. Notwithstanding the foregoing, any failure by University to pay the charges lawfully due the Board under the terms of this Agreement shall be deemed a significant material default of this Agreement. Upon such payment default, the Board shall provide University with written notice of same. In the event University does not make full payment to Board of all lawfully due charges, including late charges, within thirty (30) days of receipt of notice of payment default, the Board shall have the right to terminate this Agreement following three (3) months written

notice, and shall have the right to seek payment of any outstanding charges pursuant to any remedy as provided by law, including collection costs, expenses and reasonable attorney fees.

SECTION 6.03. Consolidation or Acquisition – University’s Options

In the event that the Board ceases to operate in its present form due either to consolidation with a local or regional authority or to an acquisition of its assets by another entity, it is the intent of the Board and University to protect the right of University to the continued supply of adequate water service. Therefore, to the extent legally permissible, in any consolidation or conveyance, University will have the option to either terminate this agreement or negotiate a new water service agreement with the authority or entity. In the event University elects not to terminate this Agreement, the Board will require that the alternate authority of new owner assume the Board’s contractual obligations as set forth in this Agreement.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

SECTION 7.01. Authority, Binding Effect

Subject to the satisfaction of the conditions in Section 8.09 below, both parties represent and warrant that the individuals executing this Agreement on behalf of each of the parties have the full power and authority to execute and perform this Agreement, and that this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms.

SECTION 7.02. Corporate Authorization

Subject to satisfaction of the conditions in Section 8.09 below, both Parties represent and warrant that the execution and delivery of this Agreement and the performance of duties contemplated herein have been duly authorized by all necessary legislative, corporate, or other governing board action. The execution, delivery and performance of this Agreement will not

conflict with or result in the breach or violation of any term or provision of any of either party's municipal ordinances or state statutes, charter or constitution, any other state or federal law, or any other provision or authority.

ARTICLE 8

MISCELLANEOUS PROVISIONS

SECTION 8.01. Successors and Assigns

This Agreement and the rights and obligations of any party hereunder shall not be assignable except with the written consent of the other party hereto, which consent shall not be unreasonably withheld. All terms, covenants, and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective successors, heirs, executors and permitted assigns.

SECTION 8.02. Notice

Except as allowed or required by Section 3.02 (C), any notice, request, demand, statement or consent required or permitted to be given hereunder shall be in writing, shall be signed by or on behalf of the party giving notice, and shall be personally delivered or sent by email (provided such delivery is confirmed by the recipient), or by a recognized overnight courier service, or by United States mail, first-class, certified or registered, return receipt requested, postage prepaid, to the other party to the respective address given herein below:

If to Board:

Board of Water Commissioners of the City of Saint Paul
c/o SPRWS General Manager
1900 Rice Street
Saint Paul, MN 55113
Email: water-contracts@ci.stpaul.mn.us

If to University: Regents of the University of Minnesota
Real Estate Office,
Attn: Director, Leasing and Property Management
319 15th Ave SE, Room 270
Minneapolis, MN 55455
Email: reo@umn.edu

Additional copy to: Regents of the University of Minnesota

Office of the General Counsel
Attention: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455
Email: contracts@ogc.umn.edu

Any such notice given as aforesaid shall be conclusively deemed to have been given and received on the day on which such notice was delivered. Either party may, from time to time, furnish in writing to the other party such notice of a change in the address or individual to whom such notices are to be given.

SECTION 8.03. Severability

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the extent permitted by law.

SECTION 8.04. Waivers and Amendments

This Agreement may be amended, superseded, renewed or extended, and its terms or covenants hereof may be waived, only by a written instrument executed by the parties hereto or in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later

time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this Agreement or in any other such instrument, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any breach, or a waiver of the breach of any other term or covenant contained herein.

SECTION 8.05. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall have the same legal effect as delivery of an original signed copy of this Agreement.

SECTION 8.06. Force Majeure

Neither party shall be held responsible for performance of this Agreement if the party's performance is prevented by acts or events beyond the party's reasonable control including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive or administrative authorities.

SECTION 8.07. Venue

The parties agree that this Agreement shall be enforceable in Ramsey County, Minnesota, and if legal action is necessary to enforce it, exclusive venue shall lie in Ramsey County, Minnesota.

SECTION 8.08. Applicable Laws

This Agreement is made subject to all applicable laws of the State of Minnesota and the United States of America. The laws of the State of Minnesota shall be applied to interpret its

terms and provisions.

SECTION 8.09. Effective Date of Agreement

The date of making and entering into this Agreement, the date of execution thereof and the Effective Date thereof, shall be, and shall be shown in the first line of this Agreement, as the date when the Office of Financial Services of the City of Saint Paul signs this Agreement, with the exception that the new rates shall become effective on the water billings issued on and after January 1, 2020.

This agreement shall not be binding until the same has been accepted by resolution of the Board of Water Commissioners of the City of Saint Paul, the Council of the City of Saint Paul, and approved by the Board of Regents of University.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates listed below.

Approved as to form:

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

By: _____
Stephen P. Schneider, General Manager
Saint Paul Regional Water Services

By: _____
Matt Anfang, President

Date: _____

Date: _____

By: _____
Lisa Veith
Assistant City Attorney

By: _____
Mollie Gagnelius, Secretary

Date: _____

Date: _____

By: _____
John McCarthy
Interim Director, Office of Financial Services

Date: _____

Regents of the University of Minnesota

By: _____

Its: _____

Date: _____