

PRIVATE WATER MAIN AGREEMENT

THIS AGREEMENT, made this 8th day of March, 2011 by and between the **CITY OF SAINT PAUL**, a Minnesota Municipal Corporation (the “Owner”) and the **BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL**, a Minnesota Municipal Corporation (the “Board”).

WITNESSETH:

WHEREAS, Owner owns real estate commonly known as Como Regional Park Pool addressed as 1151 Como Ave (the “Property”), which real estate is situated within the corporate limits of the City of Saint Paul in the County of Ramsey, State of Minnesota, as depicted in Exhibit “A”, attached hereto and incorporated herein; and

WHEREAS, Owner has made application to the Board for water supply service to be afforded from the public water supply system to the Property according to the rates and charges payable therefore by Owner, its successors or assigns, to the Board, as the same may be established from time to time; and

WHEREAS, the Board during all times herein mentioned did and does manage, control and operate, pursuant to the Home Rule Charter of the City of Saint Paul, its water works and public water supply system primarily for the purpose of furnishing an adequate supply of water for industrial, commercial and domestic purposes to residents of the City of Saint Paul within its corporate limits, pursuant to ordinances of said City of Saint Paul germane thereto; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties, for themselves, their successors and assigns, do hereby mutually agree as follows:

1. Owner does hereby convey and grant to the Board a perpetual water main easement in, under, through, over and across the portions of the Property as described and shown in Exhibit "B", attached hereto and incorporated herein (the "Easement Area").

2. The Board does hereby grant permission to Owner to construct, maintain and repair a private water main necessary for the furnishing of water service to the Property subject to the terms and conditions contained herein.

3. Owner shall construct the private water main within the Easement Area, at its sole cost and expense, in strict accordance with approved plans and specifications on file with the Board, under the supervision and subject to the approval of the Board. Owner shall pay a deposit to the Board to reimburse the Board for inspection costs plus an administrative fee of \$500.00. All service connections from the private water main shall be constructed by Owner at its sole cost and expense, in strict accordance with plans and specifications approved and on file with the Board under the supervision and approval of the Board.

4. All necessary maintenance, repairs, operation and/or replacement of the main and service connections shall be borne by the Owner at its sole cost and expense, in strict accordance with plans and specifications approved and on file with the Board and subject to approval by the Board.

5. The Board, at the request of Owner, or in case of default of Owner in relation to the construction, reconstruction, maintenance, repair or operation of said private main, may enter upon the Easement Area and construct, reconstruct, maintain, repair or operate said private main for the aforesaid purposes of the same and all reasonable cost and expense thus incurred by the Board shall be chargeable by the Board to Owner and shall become due and payable upon presentation of an invoice therefore; and if such charges are not paid when due, they shall

become and constitute a lien upon the Property. In the event of nonpayment, the Board reserves the right to deny service.

6. The Board agrees to supply water service to the Property as the same has been or shall be developed for high volume recreational purposes, subject to and in accordance with applicable rates or charges, rules and regulations as they are or shall be established from time to time by the Board. It is understood and agreed, however, that the Board undertakes to supply such water supply only in case the pressure in its mains is sufficient to enable it so to do, and the Board assumes no responsibility for failure to supply water resulting from acts or conditions beyond its control.

7. It is agreed by and between the parties hereto that this Agreement shall be subject to water service rates, rules and regulations germane to the subject of this Agreement now in force and hereinafter prescribed and promulgated by the Board and further that there shall be and hereby is reserved to the Board the right to change, revise, alter and amend such rates, rules and regulations as their discretion shall direct to that end that such rates, rules and regulations shall be reasonable.

8. No extension of the private main shall be made without the prior written consent of the Board. All necessary service connection taps from the private main shall be installed by the Board upon due application therefore on a form supplied by the Board and shall be installed by the Board at the cost and expense of the party requesting the same. Official addresses for each service connection shall be obtained by Owner and furnished to the Board prior to the installation of service connection taps.

9. The Board reserves the right to shut off the water service when necessary for the extension, replacement, repair or cleaning of the private water main or apparatus appurtenant thereto, and the Board shall not be held liable for any damage occasioned thereby.

10. This agreement shall be binding upon Owner, its successors and assigns. Owner shall not assign its rights and obligations hereunder without first obtaining the written consent of the Board, which consent shall not be unreasonably withheld by the Board. In the event that the Owner desires to transfer its title to a portion of the Property hereof, it is expressly understood and agreed that the Owner and transferees shall enter into an agreement by which the transferees shall agree to pay all or a proportionate share of the cost of maintenance and replacement of the private water main and further agree to assume all or a proportionate share of the responsibility and liability arising out of the operation, maintenance, use and repair of the main or service pipes. This agreement shall be in form as to be subject to the approval of the Board, and the Board shall be provided with two (2) executed copies of the agreement.

11. Owner, in consideration of its being supplied water by the Board, upon the terms and conditions herein outlined, shall comply strictly with all of the rules and regulations of the Board, and shall pay or cause to be paid unto the Board therefore according to all applicable rates and charges prescribed and promulgated therefore by the Board now in existence or as may be modified or amended, which are hereby incorporated by reference. The Board reserves the right to shut off the water supply for nonpayment of applicable water charges, and it is expressly agreed that such unpaid water charges and costs incurred by the Board pursuant to this Agreement shall be and constitute a lien upon the Property.

12. Owner, its successors and assigns, shall indemnify, defend and save harmless the Board, its officers, agents, employees and servants from all suits, actions or claims which shall arise from any injuries or damage caused by any break or leak in any service pipe, private main, other main or connection authorized by this Agreement, except those arising from the negligence of the Board that may occur from the furnishing of a supply of water by the Board to the Owner, its tenants, successors and assigns or other persons, firms or corporations served and to be served

by this private water main; and further, that Owner, its successors and assigns, shall indemnify, defend and save harmless the Board against any claim, action or lawsuit brought against the Board, except those arising from the negligence of the Board, in connection with or as a result of the furnishing of such supply of water, by the Board, to Owner, or other persons, firms or corporations serve on the Property by such private water main or service connections.

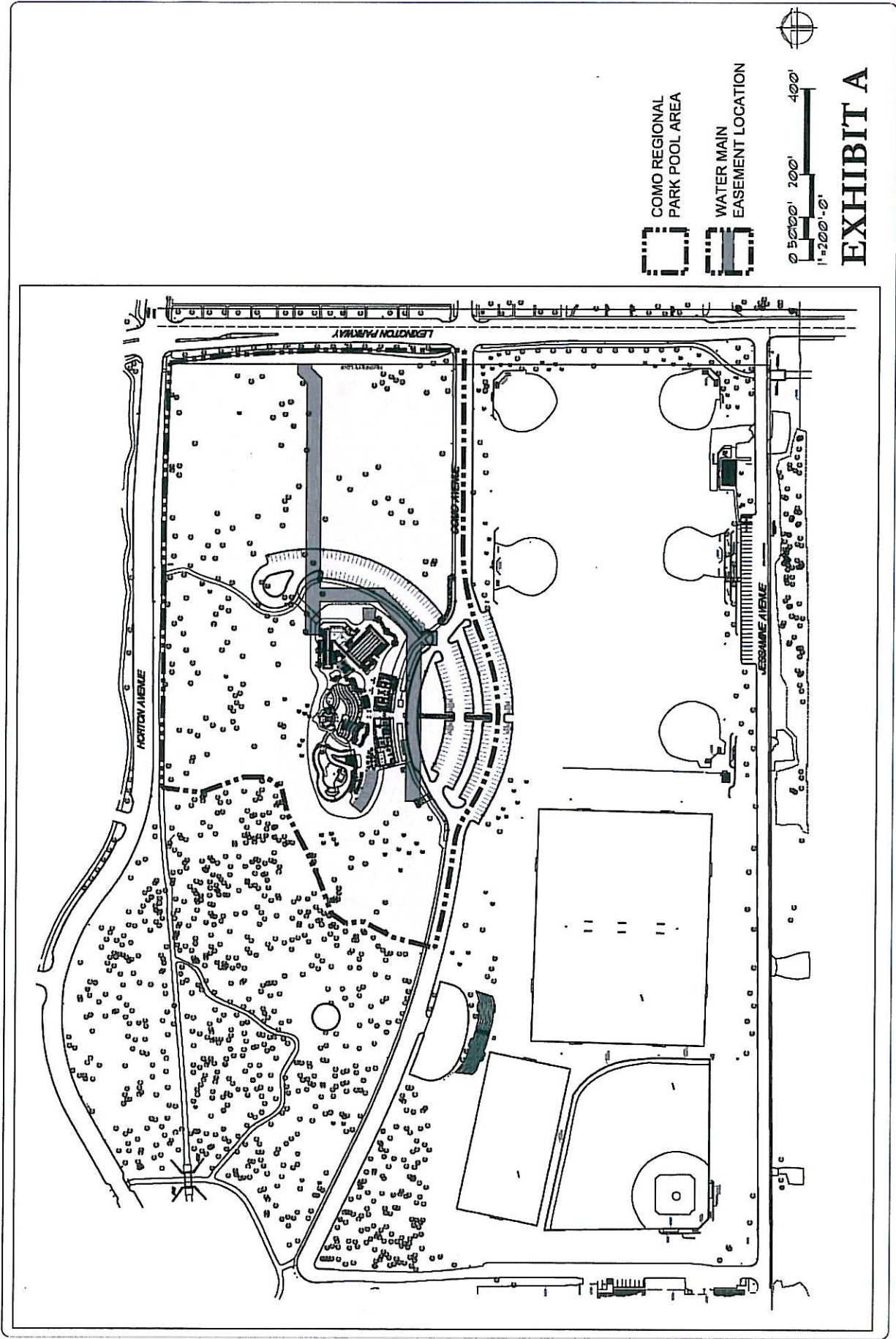
13. Notices. Whenever it shall be required or permitted by this Agreement that notice or demand be given or served by either party to or on the other party, such notice or demand shall be delivered personally or mailed by United States mail to the addresses hereinafter set forth by certified mail. Such notice or demand shall be deemed timely given when delivered personally or when deposited in the mail in accordance with the above. The addresses of the parties hereto for such mail purposes are as follows, until written notice of such address change has been given:

As to the Board: Board of Water Commissioners of the City of Saint Paul
 1900 Rice Street
 Saint Paul, MN 55113

As to the Owner: City of Saint Paul
 Department of Parks and Recreation
 400 City Hall Annex
 25 West Fourth St
 Saint Paul, MN 55102

14. The undersigned represent that they have the power and authority to execute this Agreement on behalf of their respective parties.

[Remainder of page left intentionally blank.]



Water Main Easement

A 30 foot wide easement in, under, through, over, and across a portion of the Northeast Quarter of the Northeast Quarter of Section 27, Township 29, Range 23, Ramsey County, Minnesota, the centerline of said easement is described as follows:

Commencing at the northeast corner of said Section 27; thence South 00 degrees 00 minutes 14 seconds West, along the east line of said section 27, a distance of 316.00 feet; thence North 89 degrees 59 minutes 48 seconds West; a distance of 80.00 feet to the point of beginning of the centerline to be described; thence North 89 degrees 59 minutes 48 seconds West, a distance of 15.09 feet; thence South 45 degrees 00 minutes 07 seconds West, a distance of 29.57 feet; thence South 90 degrees 00 minutes 00 seconds West, a distance of 459.34 feet to a point hereinafter referred to as "Point A"; thence South 90 degrees 00 minutes 00 seconds West, a distance of 85.00 feet to the termination of said centerline.

The side lines of said easement are to be prolonged or shortened to terminate on the west line of Lexington Avenue.

Together with a 30 foot wide easement in, under, through, over and across the following described property, the centerline of said 30 foot wide easement is described as follows:

Beginning at the aforementioned Point "A"; thence South 00 degrees 00 minutes 00 seconds East, a distance of 145.29 feet; thence South 46 degrees 07 minutes 15 seconds West, a distance of 103.85 feet; thence North 89 degrees 59 minutes 06 seconds West, a distance of 17.08 feet to a point hereinafter referred to as "Point B"; thence North 89 degrees 59 minutes 06 seconds West, a distance of 230.22 feet to a point hereinafter referred to as "Point C"; thence North 89 degrees 59 minutes 06 seconds West, a distance of 120.00 feet to the termination of said centerline.

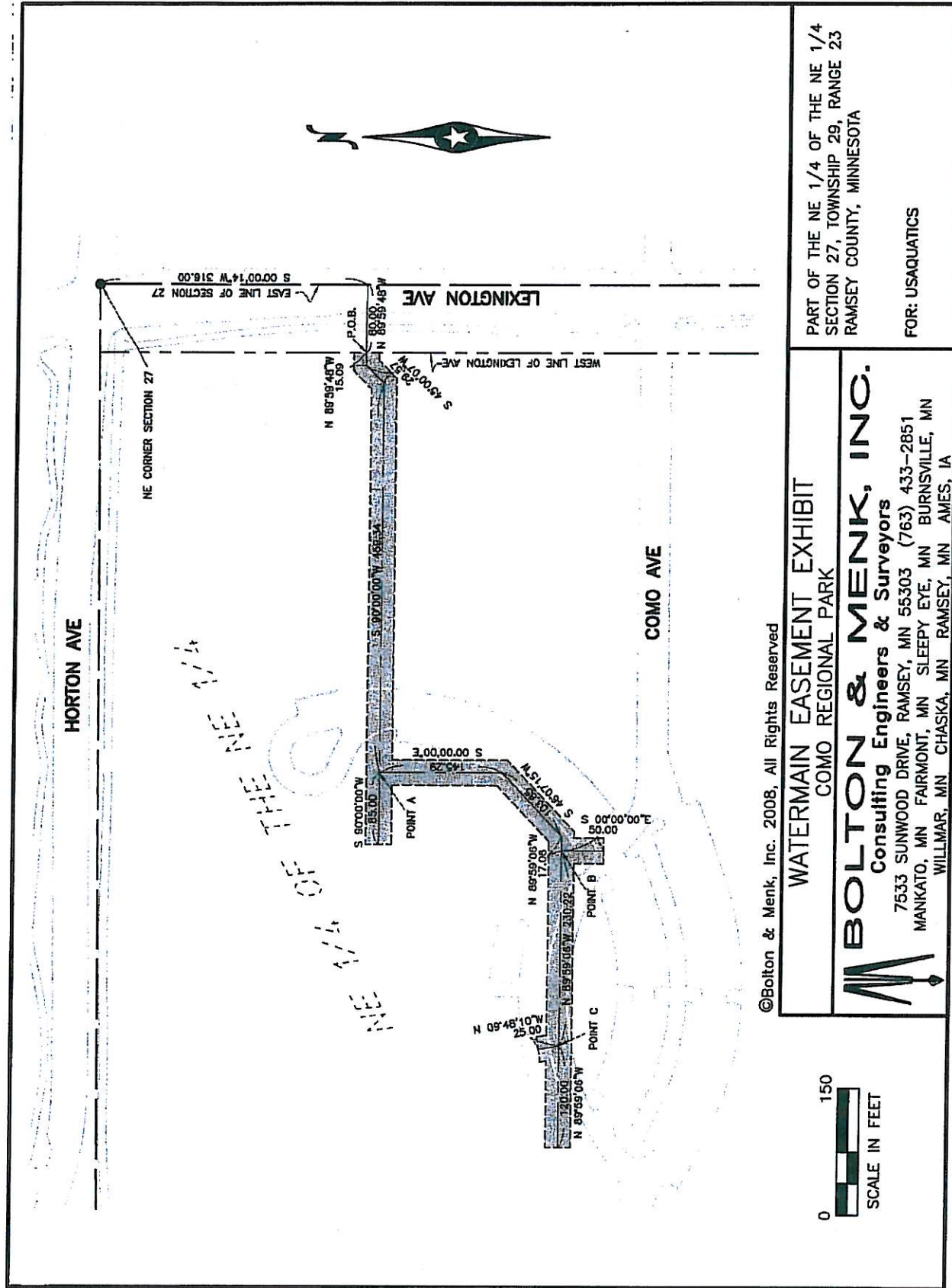
Together with a 30 foot wide easement in, under, through, over and across the following described property, the centerline of said 30 foot wide easement is described as follows:

Beginning at the aforementioned Point "B"; thence South 00 degrees 00 minutes 00 seconds East, a distance of 50.00 feet to the termination of said centerline.

Together with a 30 foot wide easement in, under, through, over and across the following described property, the centerline of said 30 foot wide easement is described as follows:

Beginning at the aforementioned Point "C"; thence North 09 degrees 48 minutes 10 seconds West, a distance of 25.00 feet to the termination of said centerline.

[Remainder of page left intentionally blank.]



BOARD OF WATER COMMISSIONERS
RESOLUTION — GENERAL FORM

No. 7112

PRESENTED BY COMMISSIONER Helgen

DATE March 8, 2011

WHEREAS, the City of Saint Paul has requested permission to install a private water main to serve Como Regional Park Pool at 1151 Como Avenue in the City of Saint Paul with domestic water services and fire protection; and

WHEREAS, the City of Saint Paul has constructed the private water main according to Saint Paul Regional Water Services Standards and agrees to accept full responsibility for the maintenance and repair of the private water main and hold the Board of Water Commissioners harmless from all claims that may arise from the existence or operation of the private water main; and

WHEREAS, staff has prepared a Private Water Main Agreement which sets forth those terms and conditions required by the city attorney's office for the installation and operation of a private water main and Saint Paul Regional Water Services General Manager recommends approval of said Agreement; now, therefore, be it

RESOLVED, that the Board of Water Commissioners hereby approves the Private Water Main Agreement with the City of Saint Paul to provide domestic water services and fire protection to Como Regional Park Pool in the City of Saint Paul in substantially the form submitted and that the proper officers of the Board are hereby authorized and directed to execute said Private Water Main Agreement on behalf of the Board following approval of the assistant city attorney.

Water Commissioners

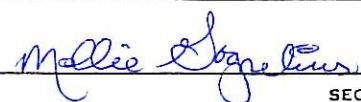
Yeas	Anfang	Nays
	Bykowski	
	Helgen	
Vice President	Zanmiller	
President	Harris	

Adopted by the Board of Water Commissioners

March 8, 2011

In favor 5

Opposed 0



SECY.