

LEASE AGREEMENT

between

THE BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL

and

THE CITY OF SAINT PAUL

THIS LEASE AGREEMENT (“Lease”), is made and entered into this ____ day of _____, 2021 by and between the **BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL**, a municipal corporation under the laws of the State of Minnesota (the “Board”), and the **CITY OF SAINT PAUL, MINNESOTA**, a home rule charter city under the laws of the State of Minnesota (the “City”).

WHEREAS, the Board is owner of certain real property addressed as 2115 Hoyt Avenue East in the City of Saint Paul, County of Ramsey, State of Minnesota, commonly referred to as the Hillcrest Reservoir, described and depicted in Exhibit “A”, attached hereto and incorporated herein (the “Property”); and

WHEREAS, the Board does not currently have use for a certain portion of the Property generally lying to the west of the reservoir; and

WHEREAS, the City desires to lease that portion of the Property from the Board and to thereupon construct, maintain, and operate recreational facilities through its Department of Parks and Recreation; and

WHEREAS, the Board is willing to enter into a lease agreement with the City for said public purposes, consistent with the requirements of safety of the water works system, and consistent with the requirements and safety of Board employees and property, now or in the future.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as follows:

That, in consideration of the mutual promises and agreements of the parties hereto, the Board hereby grants to the City permission to enter upon certain portions of the Property and to use the same to construct, maintain, and operate public recreational facilities (the “Facilities”) subject to the following terms and conditions:

1. Leased Premises

The Board does hereby lease to the City, and the City does hereby lease from the Board, that certain tract of land situated in the City of Saint Paul, County of Ramsey, as more fully described and depicted in Exhibit “B” (the “Leased Premises”).

2. Term of Lease

The term of this Lease will commence on the date first written above and will terminate on December 31, 2041, unless terminated for cause under Section 14.

3. Rent

The City does hereby covenant and agree to pay the Board as and for rent of the Leased Premises the sum of One Dollar (\$1.00) per annum.

4. City’s Use of Leased Premises

- a. The City will be allowed to construct, operate, and maintain the Facilities and all other appurtenant facilities as may be approved by the Board in the future. Such approvals will take the form of addenda to this Lease and will be held to the same terms and conditions herein. Each such addendum will be reviewed and approved by the General Manager or their designated representative on behalf of the Board. Construction of such appurtenant facilities may not commence until acknowledgment of such approval is received.
- b. The City will use the Leased Premises only in accordance with good engineering practices and in compliance with all applicable federal, state, and local rules, laws, and regulations. This Lease is contingent upon the City receiving all permits, licenses, or approvals from all local, state, or federal land use jurisdictions or agencies for the City’s permitted use of the Leased Premises. The City will at its sole cost and expense, obtain all such necessary permits, licenses, or approvals, and the Board agrees to cooperate with the City in its pursuits thereof.
- c. The use of explosives of any kind or for any purpose whatsoever within the Leased Premises, including ammunition in hand-held impact-driven type tools, is expressly prohibited.

5. City’s Use to be Exclusive

- a. The City will enjoy exclusive use of the Leased Premises, subject to the terms and conditions of this Lease.
- b. The Board will not lease any portion of the Leased Premises to another party, except with the consent of the City.

6. Planned Improvements

- a. The City will provide plans and specifications for the construction of the Facilities, subject to written approval by the Board's Engineering Division Manager, which approval must be obtained prior to award of any construction contract.
- b. The City will not make any changes or additions to the Facilities, except with the consent of the Board and such approval will be achieved pursuant to Section 4 of this Lease.

7. City's Obligations and Responsibilities

- a. With relation to the design, installation, construction, maintenance, repair, modification, or operation of the Facilities, or portion thereof, located within the Leased Premises, anything not herein explicitly provided to be furnished, done, or paid for by the Board will be furnished, done, and paid for by the City.
- b. The City will be responsible for the actions of its staff, agents, and employees during their operation of the Facilities.
- c. The City will at all times keep the Leased Premises free from litter or graffiti; keep all components located within the Leased Premises clean and in good condition and state of repair; and will not allow any condition to exist that would create a nuisance or hazard.
- d. The City will not unnecessarily create, cause, or allow any nuisance or hazard to persons or property within or adjacent to the Leased Premises by reason of construction, operation, or maintenance of the Facilities, or permit its employees, agents, engineers, or contractors to do so.
- e. The City will accept sole responsibility for maintenance of the Leased Premises, including but not limited to surface stability, snow removal, trash hauling, normal lawn care, tree-trimming, and other maintenance as may be required.
- f. The City agrees to promptly pay all costs in any way caused by, related to, or arising out of, or resulting from its Facilities, except as may arise out of the negligence of the Board, and the Board will not be liable for any expense whatsoever, either directly or indirectly, in connection with maintenance or other operation of the Facilities.
- g. The City will pay a portion of all special assessments levied against the Property in the percentage of the quotient of Leased Premises area divided by Property area.

8. Board's Rights

- a. The Board reserves the right to use any portion of the property required for routine maintenance of the adjacent reservoir upon giving 60-day notice to the City. The area allowed for this use will be only the minimum area required for such maintenance.

- b. The Board reserves the right to use any portion of the property required for planned improvements to the adjacent reservoir upon giving 365-day notice to the City. The area allowed for this use will be only the minimum area required for effectively accomplishing such improvements.
- c. The Board reserves the right to use any portion of the property required for performing emergency repairs if necessary. Notice will be given as soon as practicable to the City. The area needed for this use is dependent on the severity of the emergency. If any emergency is caused by actions or omissions by the City, the City will pay for such repairs as provided in Section 7.
- d. The Board reserves all rights in the Leased Premises not herein or hereby expressly granted to the City, including but not necessarily limited to: the right to install any facilities Board might deem desirable or necessary; the right to maintain, alter, extend, relocate, or remove its facilities or portions thereof, now or in the future, as are located within the Leased Premises.
- e. At all times during the term of this Lease, the Board will have the right, by itself, through its agents, and employees, to enter the Leased Premises during reasonable business hours to examine and inspect the same.

9. No Liability on the Board

- a. The Board will be under no obligation or responsibility to act as engineering consultant to the City in any matter related to construction of the Facilities or any future City improvements as may be permitted.
- b. It is understood and agreed by and between the parties hereto that any plan or data supplied by the Board regarding the Leased Premises are approximations only and that the Board explicitly does not guarantee such plans or data to be either complete or correct.
- c. The Board will have no obligation to repair or maintain any improvement, personal property, or equipment brought into the Leased Premises or installed therein by the City for the City's purposes. The City will be permitted to remove said personal property of the City upon the termination of this Lease. The City will, at its own expense, repair any damage to the Property caused or created by the installation or removal of said property.
- d. Except due to the Board's willful misconduct or gross negligence, the Board will not be liable for any damage to the Leased Premises or Facilities, and the Board will not be liable for vandalism or malicious mischief caused by third parties, known or unknown, to the Leased Premises or Facilities, nor will the Board be liable for any lost revenue of the City.

10. Notices

- a. All notices herein provided to be given, or that may be given by either party to the other, will be deemed to have been fully given when served personally on the Board or the City, or when made in writing and deposited in the United States Mail, certified and postage prepaid, and addressed to the Board or the City at the addresses below:

If to the Board: Board of Water Commissioners
Attn: General Manager, Saint Paul Regional Water Services
1900 Rice Street
Saint Paul, MN 55113

If to the City: City of Saint Paul
Attn: Director, Department of Parks and Recreation
City Hall Annex, Suite 300
25 Fourth St W
Saint Paul, MN 55102

- b. The address to which notices will be mailed may be changed by written notice given by either party to the other.

11. Each Party Liable for its Own Acts; No Waiver of Immunity

Each of the parties will be responsible for its own acts and for those of its agents, officers and employees, and for any liability, damages or consequences resulting therefrom. Each party reserves and expressly does not waive any immunities or defenses available under Minn. Stat. Chapter 466, et.al, or any other law related thereto.

12. Insurance

The Board and the City each individually certify and agree that each is a duly authorized self-insured entity in accordance with Minnesota State Law for purposes of general liability, property damage, and workers compensation claims; and furthermore, the Board and the City each affirm and reserve entitlement to all available immunities, defenses, and protections to the fullest extent provided by law.

13. Assignment and Subletting

The City will not assign, sublet, or transfer this Lease, or assign operation or management of the Facilities, without consent of the Board, which consent must be obtained prior to the execution of any agreement to sublease the Leased Premises.

14. Termination

If for cause, the Board or the City will provide the other party with sixty (60) days written notice of intent to terminate this Lease. If the notified party fails to cure the stated cause

within sixty (60) days of receipt of notice, the Lease will be terminated, with no compensation for damages owed to the notified party.

15. Ownership of City Improvements Following Termination of Lease

Upon termination of this Lease under Section 14 City improvements will become the property of the Board. The City will be allowed to purchase from the Board any and all City improvements it chooses, with purchase price to be 100% of the depreciated value of said City improvements.

16. Miscellaneous.

- a. This Lease constitutes the entire agreement and understanding of the parties regarding the Property. Any modifications of, addenda to, or amendment to this Lease must be in writing and executed by both parties. No provision of this Lease will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver will be implied by delay or any other act or omission of either party. No waiver by either party of any provisions of this Lease will be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.
- b. This Lease will be construed in accordance with the laws of the State of Minnesota. Any legal action may only be commenced and proceed in the relevant district court in Ramsey County, Saint Paul, Minnesota.
- c. If any term of this Lease is found to be void or invalid, such invalidity will not affect the remaining terms of this Lease, which will continue in full force and effect.
- d. Exhibits "A" and "B" listed below are hereby incorporated into this Lease by reference.

Exhibit "A" *Property*

Exhibit "B" *Leased Premises*

- e. The parties may sign this Lease Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- f. The parties agree that the electronic signature of a party to this Lease Agreement will be as valid as an original signature of such party and will be effective to bind such party to this Lease Agreement. The parties further agree that any document (including this Lease Agreement and any attachments or exhibits to this Lease 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 Lease Agreement.

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

Approved:

By _____
Patrick Shea, General Manager
Saint Paul Regional Water Services

By _____
Mara Humphrey, President

By _____
Lisa Veith
Assistant City Attorney

By _____
Mollie Gagnelius, Secretary

CITY OF SAINT PAUL

Approved:

By _____
Sarah Sullivan
Assistant City Attorney

By _____
Jamie Tincher, Deputy Mayor

By _____
Mike Hahm, Director
City of Saint Paul Parks & Recreation

By _____
John McCarthy, Director
Office of Financial Service

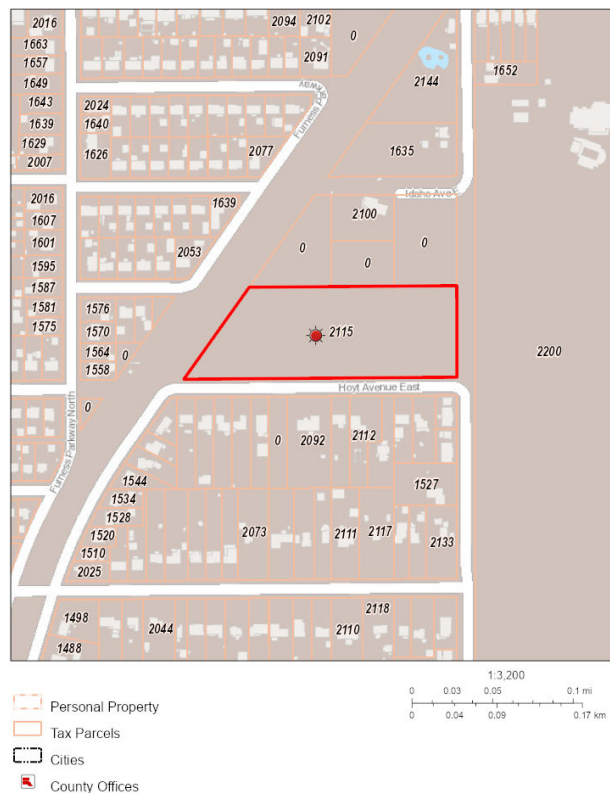
By _____
Shari Moore
City Clerk



Ramsey County Parcel Report

Parcel ID	232922120007
Address	2115 HOYT AVE E
City St ZIP	SAINT PAUL MN 55119-3021
Tax Payer	BOARD OF WATER COMM ST PAUL
Tax Address	1900 RICE ST
Tax City St ZIP	MAPLEWOOD MN 55113-6810
Lot	4
Block	5
Plat Name	FURNESS GARDEN LOTS
Parcel Deed	5.53 acres
EMV Land	\$1,686,200.00
EMV Building	\$3,613,500.00
EMV Total	\$5,299,700.00
Total Tax	\$0.00
Special Assessment	\$0.00
Tax Exempt	Yes
Last Sale Date	No Data
Sale Price	\$NaN
Homestead	No
Use Type	EXEMPT PROP. REG WATER DISTRICT
Dwelling	No Data
Home Style	No Data
Structure	No Data
Living Area	No Data sq.ft.
Year Built	No Data
Garage	No
Garage Area	No Data sq.ft.
Heating Type	No Data
School District	St. Paul School District
Watershed	METRO WATERSHED

Parcel Report Created: Jul 8 2021 9:30



The user of this report acknowledges that the City/County shall not be liable for any damages, and expressly waives all claims, and agrees to defend, indemnify, and hold harmless the City/County from any and all claims brought by the User, its employees or agents, or third parties which arise out of the User's access or use of data provided. *Total Tax includes special assessment due if any.

Exhibit B - Leased Premises

