

GRANT AGREEMENT

This Grant Agreement (“Agreement”) is made and entered into by and between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota (“Council”) and the City of St. Paul, a Minnesota municipal corporation (“Grantee”), and is effective as of the date of signature of the last signatory to this Agreement.

RECITALS

1. The Council is empowered to enter into this Grant under 2013 Minnesota Laws 2013, chapter 137, article 2, section 9, subdivision b. (Clean Water Fund).
2. The Grantee represents that it is duly authorized to receive the grant for all work described in this Agreement to the satisfaction of the Council.

NOW, THEREFORE, The Council and the Grantee agree as follows:

I. GRANT PROJECT; APPROVED BUDGET AND MATERIAL REPRESENTATIONS

1.01 Grant Project. The Grantee agrees to perform and complete in a satisfactory and proper manner the Grant Project (hereinafter “Project”) specified in **Exhibit A** in accordance with the terms and conditions of this Agreement. The Project details the activities to be completed by the Grantee and a proposed schedule for the completion of the Project. All Project activities must be consistent with the scope of work and the budget detailed in **Exhibit B**. Any proposed change in the scope of work must be submitted to the Council’s Grant Administrator for written approval. A change in the scope of work will not be funded by the Council unless the Grantee receives written approval from the Council’s Grant Administrator.

1.02 Approved Budget. The Grantee agrees to complete the Project in accordance with the approved budget specified on **Exhibit B**. The Approved Budget details the costs associated with each scope of work activity. Any requests for re-budgeting of project funds among the existing Approved Budget line items of the scope of work must be submitted to the Council for prior approval unless the amount of project funds to be transferred is ten percent (10%) or less than the Approved Budget. This Agreement must be amended for re-budgeting in excess of ten percent (10%) of the Approved Budget. This rule shall apply to individual requests as well as all requests made in the aggregate.

1.03 Use of Contractors. The Grantee may engage qualified consultants and contractors to perform Project activities. However, the Grantee retains total responsibility to the Council for completion of the Project consistent with the terms of the agreement and the use of such contractors does not relieve the Grantee from any of its obligations under this agreement.

II. MAXIMUM GRANT AMOUNT AND DISTRIBUTION

2.01 Maximum Grant Amount. The Council agrees to make available to the Grantee a grant of up to **\$100,000** ("Maximum Grant Amount") for the Project. In no event will the Council's obligation under this agreement exceed the Maximum Grant Amount. The Council shall bear no responsibility to the Grantee or any other entity for cost overruns that may be incurred by the Grantee in performance of the Project.

2.02 Distribution of Grant Funds. Grant funds will be distributed by the Council as follows:

- A. All payments to the Grantee shall be made on a reimbursement basis only.
- B. Final payment to Grantee will occur prior to June 30, 2015.
- C. To obtain reimbursement under this agreement, the Grantee must submit a Grantee Invoice using the form attached hereto as **Exhibit C**.
- D. Each reimbursement request must also include a description of the activities undertaken in connection with the Project and an itemization of expenditures for which reimbursement is requested that identifies the corresponding grant activity line. Each request must also include supporting documentation for all non-reoccurring expenditures. The Grantee must also submit any additional information or documentation requested by the Council to explain and support the Grantee's reimbursement request.
- E. Upon review and approval of the Grantee's Invoice, the Council will distribute to the Grantee the approved reimbursement amount. The Council may deny part or all of any reimbursement request if it finds that it is not warranted or justified under the terms of this agreement.
- F. No reimbursement will be paid which would cause distribution of grant funds to exceed, cumulatively through such payment, the Maximum Grant Amount.
- G. Distribution of any funds or approval of any report is not to be construed as a waiver by the Council of any term or condition imposed on the Grantee under this agreement.

2.03 Repayment of Unauthorized Use of Grant Funds. Upon a determination by the Council that the Grantee has made an unauthorized or undocumented use of grant funds, and upon a subsequent demand by the Council for repayment of such amount, the Grantee agrees to promptly repay such amounts to the Council. The Council retains the option of withholding grant funds rather than require the Grantee to repay funds for unauthorized or undocumented use.

2.04 Reversion of Unexpended Grant Funds. All funds granted by the Council under this agreement that have not been expended for Project activities taking place during the Grant Term shall revert to and become part of the Council's Clean Water Funds and may be reallocated or expended by the Council for other Clean Water Fund projects.

2.05 Council Fund Requirement. Notwithstanding anything to the contrary in this agreement, the payment of grant proceeds shall be made by the Council only if the Council has adequate grant funds on hand at the time that payment is due. The Grantee acknowledges that

Council payments of state-appropriated funds are contingent upon the transfer of the funds to the Council from the State.

III. ACCOUNTING AND RECORDKEEPING REQUIREMENTS

3.01 Documentation of Project Costs. All costs charged to the Project must be supported by proper documentation, including properly executed invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges.

3.02 Establishment and Maintenance of Project Information. The Grantee agrees to establish and maintain accurate, detailed, and complete separate books, accounts, financial records, documentation, and other evidence relating to: i) Grantee's performance under this agreement, and ii) the receipt and expenditure of all grant funds under this agreement. These documents shall include the property records required by article VIII of this agreement. The Grantee shall establish and maintain all such information in accordance with generally accepted accounting principles and practices and shall retain intact all Project information until the latest of:

- A. complete performance of this agreement; or
- B. six (6) years following the term of this agreement; or
- C. if any litigation, claim, or audit is commenced during either such period, when all such litigation, claims or audits have been resolved.

If the Grantee engages any consultants or contractors to perform any part of the Project activities, the Grantee agrees that the contracts for such services shall include provisions requiring the contractor to establish and maintain Project information in accordance with the provisions of this paragraph and to allow audit of such information in accordance with paragraph 4.03.

3.03 Audit. During the time of maintenance of information under paragraph 3.02, authorized representatives of the Council, and the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, section 16C.05, subdivision 5, will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. The Grantee will provide proper facilities for such access and inspection.

IV. PROJECT ACTIVITY PERIOD; TERM; TERMINATION

4.01 Project Activity Period. The Grantee agrees to complete all Project activities by June 30, 2015 ("Project Activity Period").

4.02 Term. The term of this agreement shall extend from the effective date of this agreement to a date sixty (60) calendar days following the end of the Project Activity Period, to permit closeout of this agreement.

4.03 Termination by Council for Convenience. The Council may terminate this agreement, by providing Grantee written notice of such termination at least thirty (30) calendar days prior to the effective date of such termination. Upon such termination Grantee shall be entitled to compensation for Project activities in accordance with this agreement which were incurred prior to the effective date of the termination, but not exceeding the Maximum Grant Amount.

4.04 Effect of Grant Project Closeout or Termination. The Grantee agrees that Project closeout or termination of this agreement does not invalidate continuing obligations imposed on the Grantee by this agreement. Project closeout or termination of this agreement does not alter the Council's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the Grantee's obligation to return any funds due to the Council as a result of later refunds, corrections, or other transactions.

V. CONTACT PERSONS; GRANT ADMINISTRATOR

5.01 Contact Persons. The authorized contact persons for receipt of notices, reports, invoices, and approvals under this agreement are the following:

COUNCIL:

Brian Davis

390 Robert Street North

St. Paul, MN 55101

GRANTEE:

Wes Saunders-Pearce

375 Jackson, Suite 220

St. Paul, MN 55102

or such other person as may be designated in writing for itself by either party.

5.02 Council's Grant Administrator. The Council's Grant Administrator for purposes of administration of this agreement is the contact person listed for the Council in paragraph 6.01, or such other person as may be designated in writing by the Council's Regional Administrator. However, nothing in this agreement will be deemed to authorize the Grant Administrator to execute amendments to this agreement on behalf of the Council.

VI. GENERAL CONDITIONS

6.01 Amendments. The terms of this agreement may be changed only by mutual agreement of the parties. Such changes shall be effective only upon the execution of written amendments signed by authorized officers of the parties to this agreement.

6.02 Assignment Prohibited. Except as provided in paragraph 1.02, the Grantee shall not assign, contract out, sublet, subgrant, or transfer any Project activities without receiving the express written consent of the Council. The Council may condition such consent on compliance by the Grantee with terms and conditions specified by the Council.

6.03 Indemnification. Grantee shall indemnify, defend, and hold harmless the Council, its officers, employees, and agents from and against any and all liabilities, claims, losses, costs or expenses to the person or property of another, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by the Grantee or any of its officers or employees, which may occur during or which may arise out of the performance of this Agreement

6.04 Nondiscrimination. The parties agree to comply with all applicable laws relating to nondiscrimination and affirmative action. In particular, the Grantee agrees not to discriminate against any employee, applicant for employment, or participant in this Project because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation, or age; and further agrees to take action to ensure that applicants and employees are treated equally with respect to all aspects of employment, including selection for training, rates of pay, and other forms of compensation. In undertaking the Project activities, the Grantee agrees to comply with Minnesota Statutes, section 363.03, subdivision 4, regarding non-discrimination in the provision of public services.

6.05 Acknowledgment. The Grantee shall appropriately acknowledge the grant assistance made by the Council under this agreement in any promotional materials, reports, and publications relating to the Project. Appropriate acknowledgment includes water reuse related-signage at Lowertown Ballpark with Metropolitan Council logo, to be designed by Grantee in consultation with Council (paragraph 7.15).

6.06 Compliance with Law; Obtaining Permits, Licenses, and Authorizations. The Grantee agrees to conduct the Project in compliance with all applicable provisions of federal, state, and local laws, ordinances, or regulations. The Grantee is responsible for obtaining and complying with all federal, state, or local permits, licenses, and authorizations necessary for performing the Project.

6.07 Workers Compensation; Tax Withholding. The Grantee represents that it is compliance with the workers compensation coverage requirements of Minnesota Statutes, section 176.181, subdivision 2, and that it, and any of its contractors or material suppliers, if any, under this contract, are in compliance with the tax withholding on wages requirements of Minnesota Statutes, section 290.92.

6.08 Jurisdiction, Venue, and Applicable Law. Venue for all legal proceedings arising out of this agreement, or breach of this agreement, shall be in the state court with competent jurisdiction in Ramsey County, Minnesota. All matters relating to the performance of this agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota.

6.09 Record-Keeping. Seller agrees to keep and maintain during the performance of this contract and a period of six (6) years following, records and files relating to the final financial aspects of this contract, and further agrees to allow the Council or designated federal or state personnel to enter on Seller's premises after reasonable advance notice and to inspect, copy and audit the above records, files, and premises.

6.10 Complete Contract. It is understood and agreed that the entire Agreement between parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

6.11 Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to the parties. One or more waivers by said party of any provision term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

6.12 Design Input. The Grantee shall consult with the Council on a monthly basis regarding the design of the rainwater water reuse system. Grantee is required to consider any changes, suggestions, or alterations that are suggested or advised by the Council. If the Grantee chooses not to implement any of the suggested changes it must provide a reasonable explanation as to why it chose not to do so.

6.13 Possession of water. The Grantee agrees to take possession of the rainwater from 1/6 of the total roof area at the north side of the Council's OMF facility. Grantee agrees that as of the date of execution it will take possession of the rainwater for 50 years. The Grantee also agrees that the Council shall decide the locations for the delivery of the rainwater along the property boundary between the parties. This provision in no way conveys or grants an easement to Grantee or any of its agents, employees, or representatives. Additional agreements regarding

maintenance, future water allotment, and other issues that might arise will be the subject of future agreements.

6.14 Overflow Devices. The Grantee shall be liable for the design and installation of all rainwater overflow and conveyance devices required for the rainwater reuse system. There will be no overflow devices installed on the property of the Council.

6.15 Signage. The Grantee agrees to identify the Metropolitan Council in a prominent manner and position on signage promoting, describing, or identifying the water reuse system at Lowertown Ballpark. Grantee will design such signage and present it to the Council for approval. The Council shall have the right to veto the proposed signage.

6.16 Prevailing Wage. Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. Prevailing wages for this project are attached in Exhibit D.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the persons thereunto duly authorized as of the day and year first written above.

METROPOLITAN COUNCIL

COMMUNITY

METROPOLITAN COUNCIL

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C

Remit to: Brian M. Davis, Ph.D., P.G., P.E., Senior Environmental Scientist
Address: 390 Robert Street North, Saint Paul, MN 55101
Contract No. xxxxx
Grant period: May 15, 2014 through June 30, 2015

Is this the FINAL invoice? Yes _____ No _____

Invoice # _____ Dates covered by this invoice: _____

Attached copies of receipts for all expenses

Income Source	Initial Balance
Metropolitan Council Grant	\$100,000.00

Expense Description	Amount
	\$
	\$
	\$
	\$
Total Expenditures [Amount of Reimbursement Requested]	\$

	Remaining Balance
Initial Balance – Total Expenditures from this invoice	\$

Certification: I certify that the expenditures in this invoice are true and correct and have been made for the purpose of and in accordance with applicable terms and conditions of the grant. I have examined the expenditures in this invoice and determined that each reflects a reasonable price based on market prices offered by the vendors to the general public. Appropriate documentation to support these authorized expenditures is on file and available for review. These expenditures have not been previously claimed.

Authorized Signature: _____ Date: _____

EXHIBIT D

00865 CERTIFIED PAYROLL FORM

PART 1 GENERAL

1.1 USE

- A. The CONTRACTOR and any subcontractors who provide on-site labor for this Project shall be required to certify and submit weekly payroll information.
- B. The CONTRACTOR and its subcontractors may utilize their own computerized payroll forms, forms provided by the United States Department of Labor, Wage And Hour Division, or MnDOT Form 21658A (03-01); however, the information provided must be consistent with the information required in Section 1.2 (B) below.

1.2 PROCEDURE

- A. Weekly forms shall be completed by the CONTRACTOR and its subcontractors for all on-site labor expended on this Project.
- B. The following information is required on all certified payroll forms.

<u>Item</u>	<u>Description</u>
1	The name and complete mailing address of the CONTRACTOR or subcontractor completing the form.
2	The COUNCIL Project Name, COUNCIL Project Number, and COUNCIL Contract Number. This information can be found in the Contract Documents. Enter the ending date of each report period. Use a new form for each weekly report period.
3	The name, address, and Social Security Number of each employee of the CONTRACTOR or subcontractor who provided on-site labor for this Project during the report period.
4	The prevailing wage rate listings used for each employee: Use "MN" for Minnesota Department of Labor and Industry listings; use "US" for U.S. Department of Labor listings. Also indicate the

"construction type" listings used; use "**HH**" for Highway and Heavy; use "**C**" for commercial.

- 5 The appropriate Labor Code (from "**MN**" listings) or the appropriate labor title from "**US**" listings) for each employee.
- 6 The appropriate Labor Classification (from "**MN**" listings) or the appropriate sub-labor title (from "**US**" listings) for each employee.
- 7 The appropriate Prevailing Total Hourly Rate (from "**MN**" listings) or the appropriate total of Basic Hourly Rates plus Fringe Benefits (from "**US**" listings) for each employee.
- 8 The days and dates during the reporting period and for each employee the hours worked each day - both straight time and overtime - on this Project ONLY.
- 9 For each employee, the total hours worked on this Project ONLY.
- 10 For each employee, the total hourly rate actually paid - both straight time and overtime - for this Project ONLY. THE TOTAL HOURLY RATE EQUALS THE BASIC RATE PLUS THE FRINGE RATE.
- 11 For each employee, the amount earned for this Project ONLY during the reporting period.

C. Each payroll form submitted by the CONTRACTOR or subcontractor shall include the following certifications:

- (1) That the person signing the form pays or supervises the payment of the persons employed by [insert name of CONTRACTOR or subcontractor] on said Contract; that during the payroll period described there were [insert number of employees] performing covered work on said Contract; that all persons performing Work under said Contract have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly by or on behalf of said CONTRACTOR or subcontractor from the full weekly wages earned by any person, and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CRF Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Star. 948, 63 Stat. 108, 72 Stat. 967; 76; Stat. 357: 40 U.S.C. 276c); and/or permissible deductions as defined in Minnesota Statutes 177.24, Subdivision 4,

181.06, and 181.79, issued by the Minnesota Commissioner of Labor and industry and described below.

[Describe any permissible deductions that were made]

- (2) That the payroll submitted under said Contract is complete and accurate; that the wage rate(s) of the laborer(s), mechanic(s), and worker(s) performing Work under said Contract is (are) paid according to the wage determination(s) and labor provisions incorporated in said Contract and according to applicable laws; that wages paid to laborer(s), mechanic(s), and worker(s) performing Work under said Contract is at least the prevailing wage rate for the most similar classification of labor performed as defined under applicable law; and that the laborer(s), mechanic(s), and worker(s) performing Work under said Contract is (are) paid for all hours in excess of the prevailing hours at a rate of at least one and one-half times (1 ½) the applicable base rate of pay.
- (3) That any apprentices employed during said payroll period are duly registered in a bona fide apprenticeship program registered with the Minnesota Department of Labor and Industry, or are registered with the Bureau of Apprenticeship and Training; United States Department of Labor.
- (4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO ANY APPROVED PLANS, FUNDS OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer, worker or mechanic listed on said payroll, payments to current, bona fide fringe benefit programs as listed in the Contract have been or shall be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c).

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each laborer, worker, or mechanic listed on said payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic rate plus the fringe rate as listed in the appropriate wage determination incorporated into said Contract.

(c) [List any exceptions]

- D. The CONTRACTOR shall review each certified payroll form prepared by its subcontractors and attach the following certification statement prior to submittal to the COUNCIL:

Certification Statement By General Contractor: I hereby certify that I have reviewed the attached subcontractor certified payroll reports for [Period or Month] and they are in compliance with the Project [XXXXXX] Contract requirements for payment of prevailing wage rates.

The certification statement shall be signed and dated by an authorized representative of the CONTRACTOR.

- E. Submit completed weekly forms, for the CONTRACTOR and all its subcontractors, to the CAR on a monthly basis.
- F. The COUNCIL will perform random checks of certified payroll forms to ensure that prevailing wage requirements have been met.
- G. The COUNCIL may perform random interviews of employees listed on the forms to verify the information contained on the forms.
- H. The COUNCIL may undertake any other actions deemed necessary to fulfill requirements imposed by Federal, State, and local agencies

1.3 REMEDIES

- A. Failure of the CONTRACTOR to submit completed certified payroll forms may result in the COUNCIL withholding monthly progress payments until the completed certified forms are submitted.
- B. Failure of the CONTRACTOR to submit accurate forms or failure of the CONTRACTOR to pay no less than the prevailing wage rate, or both, may result in the COUNCIL taking actions or imposing sanctions as deemed in the best interests of the COUNCIL and may result in other governmental agencies taking actions or imposing sanctions as deemed in the best interests of the agency or as may be provided by law.