

SALE AND PURCHASE OF ASSETS AGREEMENT

BETWEEN CITY OF MENDOTA HEIGHTS AND

BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL

This AGREEMENT is made and entered into this ____ day of _____ 2016, by and between the City of Mendota Heights, a Minnesota municipal corporation (“Seller”), and the Board of Water Commissioners of the City of Saint Paul, a Minnesota municipal corporation (“Buyer”);

WHEREAS, Seller desires to sell and convey to Buyer, and Buyer desires to purchase and accept from Seller, certain assets listed in attached Appendix A which comprise Seller's water supply system situated within the City of Mendota Heights, Dakota County as of December 29, 2015 (the "Water System Assets"); and

WHEREAS, on December 8, 2015, Buyer and Seller entered into an Omnibus Agreement having an effective date of December 30, 2015 (“Omnibus Agreement”), the terms of which are incorporated herein by this reference, for Buyer to provide water services to properties located within the Seller's borders; and

WHEREAS, the Omnibus Agreement states that Seller will, by resolution of its City Council, and by appropriate deed of conveyance acceptable to the Board, convey to the Board all of its rights, title and interest to all water mains, hydrants, service connections, tanks and appurtenances owned by Seller; and

NOW, THEREFORE, pursuant the Omnibus Agreement, and in consideration of the terms and conditions therein, Buyer and Seller mutually agree as follows:

ARTICLE I

SALE AND PURCHASE OF ASSETS

SECTION 1.01. Sale and Purchase. Subject to the terms and conditions of this

Agreement, and of the Omnibus Agreement, Seller shall sell, transfer, assign and deliver to Buyer and Buyer agrees to purchase and accept from Seller on the date of closing, all Water System Assets.

SECTION 1.02. It is the parties' express intent that the Omnibus Agreement shall remain in full force and effect, notwithstanding any provisions to the contrary found in this Agreement.

ARTICLE II PURCHASE PRICE AND POSSESSION OF THE ASSETS

SECTION 2.01. Purchase Price. In consideration of Seller's agreement to sell the Water System Assets, Buyer agrees to pay to Seller as the full purchase price the sum of \$1.00 (the 'Purchase Price') to be paid in full on the date of closing, and Buyer shall take possession of the Water System Assets on the date of closing.

ARTICLE III LICENSES, PERMITS

SECTION 3.01. Assignment. To the extent transferable, all licenses, permits, registrations, and other written forms of authorization required or utilized in the construction or operation of the Seller's water supply system (collectively the "Permits") shall be assigned or transferred to Buyer at the date of closing. A list of all of the Permits (whether or not transferable) shall be provided to Buyer prior to the date of closing, along with a copy of all environmentally-related Permits, and a copy of any and all reports sent to any entities with regard to those Permits or potential violations thereof.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

SECTION 4.01. Representations and Warranties. Seller represents and warrants as

follows to Buyer, such representations and warranties to be true and correct on the date hereof, and on the date of closing, that it has full power and authority to execute and perform this Agreement; this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to applicable bankruptcy or insolvency laws; and that Seller is a municipal organization in good standing under the laws of the State of Minnesota.

SECTION 4.02. Survival of Warranties and Indemnification. All the warranties and representations given by Seller in this Article or elsewhere in this Agreement, all of which are relied upon by the Buyer, shall survive the date of closing. Seller agrees to indemnify and hold Buyer harmless from and against any loss, damage, claim, liability, cost or expense (including reasonable attorneys' fees and costs of defense) which Buyer may incur or sustain, before or after the date of closing resulting from or arising out of any breach of said representations and warranties.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

SECTION 5.01. Representations and Warranties. Buyer represents and warrants as follows to Seller, such representations and warranties to be true and correct on the date hereof, and on the date of closing, that it has full power and authority to execute and perform this Agreement; this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy or insolvency laws; and that Buyer is a municipal organization in good standing under the laws of the State of Minnesota.

SECTION 5.02. Survival of Warranties and Indemnification. All the warranties and representations given by Buyer in this Article or elsewhere in this Agreement, all of which

are relied upon by the Seller, shall survive the date of closing. Buyer agrees to indemnify and hold Seller harmless from and against any loss, damage, claim, liability, cost or expense (including reasonable attorneys' fees and costs of defense) which Seller may incur or sustain, before or after the date of closing, resulting from or arising out of any breach of said representations and warranties.

ARTICLE VI
DISCLAIMER OF WARRANTIES

SECTION 6.01. Disclaimer. Except as otherwise expressly and explicitly provided herein, Buyer agrees to accept the Water System Assets on an "AS IS, WHERE IS" basis.

ARTICLE VII
CLOSING

SECTION 7.0.1. Closing Date. The closing for the transaction contemplated by this Agreement shall be held on or before _____, 2016, and shall take place at such time and place as may be mutually agreed upon by the parties hereto.

SECTION 7.02. Seller's Obligations at Closing. On or before the date of closing, Seller shall deliver, or cause to be delivered to Buyer the Bills of Sale and such other documents (e.g., Certificates of Title) necessary to transfer title to the Personal Property to Buyer free and clear of any and all liens or encumbrances.

SECTION 7.03. Buyer's Obligations at Closing. On or before the date of closing, Buyer shall deliver or cause to be delivered to Seller the payment of funds in the amount of the Purchase Price as determined in accordance with Section 2.01 hereof.

ARTICLE VIII
REMEDIES FOR DEFAULT

SECTION 8.01. Remedies. If any party hereto should default in the performance of any

of its obligations hereunder, the non-defaulting party may resort to any remedy specified herein or available to it for said default, at law, in equity, by statute, or otherwise.

ARTICLE IX
MISCELLANEOUS PROVISIONS

SECTION 9.01. Successors and Assigns. 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 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.

SECTION 9.02. Notices. 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 express service, or certified or registered mail, return receipt requested, postage prepaid, to the other party to the respective address given herein below:

If to Seller: Mendota Heights City Administrator
 1101 Victoria Curve
 Mendota Heights, MN 55118

If to Buyer: General Manager
 Board of Water Commissioners
 1900 Rice Street
 Saint Paul, MN 55113

Any such notice shall be conclusively deemed to have been given and received on the day on which such notice was delivered. Either party may send written notice of a change in the address above.

SECTION 9.03. Waivers and Amendments. This Agreement and any other instruments to be executed pursuant hereto may be amended, superseded, canceled, renewed or extended,

and their 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. The parties reserve the right by mutual written consent to amend, modify, supersede and cancel this Agreement, or waive the terms or conditions hereof.

SECTION 9.04. 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.

[Remainder of page is left intentionally blank.]

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

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

By: _____
Lisa Veith
Assistant City Attorney

By: _____
Mollie Gagnelius
Secretary

By: _____
Todd Hurley
Director, Office of Financial Services

Approved as to form:

CITY OF MENDOTA HEIGHTS

By: _____
City Attorney

By: _____
Sandra Krebsbach
Mayor, City of Mendota Heights

By: _____
Mark McNeill
City Administrator, City of Mendota Heights