

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 _____, 20__ 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 City is owner of certain real property situated in Section 10, Township 28, Range 22, commonly referred to as Pig’s Eye Regional Park, described and depicted in Exhibit “A”, attached hereto and incorporated herein (the “Property”); and

WHEREAS, the Board currently uses a portion of the Property and wishes to lease space from the City and to thereupon construct, maintain, and operate an excavated soils recycling and storage site; and

WHEREAS, the City is willing to enter into a lease agreement with the Board for said public purposes, consistent with the requirements and safety of the Board’s water works system, and consistent with the requirements and safety of City 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 City hereby grants to the Board permission to enter upon those portions of the Property as shown in Exhibit “A” and to use the same to construct, maintain, and operate an excavated soils recycling and storage site (the “Facilities”), subject to the following terms and conditions:

1. Leased Premises

The City does hereby lease to the Board, and the Board does hereby lease from the City, 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

- a. The initial term of this Lease will commence on the date first written above and will terminate on December 31, 2041.

3. Rent

- a. The Board does hereby covenant and agree to pay the City as and for rent of the Leased Premises the sum of One Dollar (\$1.00) per annum.
- b. The Board will pay 25% of the costs incurred by the City up to, but not exceeding, \$100,000, into the City's cost for schematic design of Pig's Eye Regional Park.

4. Board's Use of Leased Premises

- a. The Board may construct, operate, and maintain the Facilities and all other appurtenant facilities as have been approved by the City. Construction of such appurtenant facilities may not commence until acknowledgement of such approval is received.
- b. The Board 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 Board receiving all permits, licenses, or approvals from all local, state, or federal land use jurisdictions or agencies for the Board's permitted use of the Leased Premises. The Board will at its sole cost and expense, obtain all such necessary permits, licenses, or approvals, and the City agrees to cooperate with the Board 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.
- d. The parties agree that the Saint Paul Regional Water Services General Manager or their designee and the City of Saint Paul Director of Parks and Recreation or their designee may from time to time, as deemed necessary, enter into a Memorandum of Understanding concerning operational requirements in a form similar to attached Exhibit C.

5. Board's Use to be Exclusive

- a. The Board will enjoy exclusive use of the Leased Premises, subject to the terms and conditions of this Lease.
 - b. The City will not lease any portion of the Leased Premises to another party, except with the consent of the Board.
6. Planned Improvements
- a. The Board will provide plans and specifications for the construction of the Facilities, subject to approval by the City.
 - b. The Board will not make any changes or additions to the Facilities, except with the consent of the City.
7. Board'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 City will be furnished, done, and paid for by the Board.
 - b. The Board is responsible for the actions of its staff, agents, and employees during their operation of the Facilities.
 - c. The Board 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 Board 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 Board has 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 Board has the sole responsibility for ensuring that access remains open for active Minnesota Pollution Control Agency monitoring wells on or adjacent to the property, and that monitoring wells on site are not negatively impacted by site improvements. Monitoring well locations depicted by Exhibit D.
 - g. The Board will 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 City, and the City will not be liable for any expense whatsoever, either directly or indirectly, in connection with maintenance or other operation of the Facilities.

- h. The Board 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.
 - i. The Board will invest time and materials into a project to build a parking lot and entrance into Pig's Eye Regional Park. The project will be directed by the City's Parks and Recreation Design and Construction Manager and approved by the Director of Parks and Recreation.
 - j. The Board will strive to minimize the removal of any trees within the Leased Premises, and if practicable, the Board will replace one-for-one any tree that it removes within the Leased Premises, with the species and the location determined by the appropriate persons within the Parks and Recreation Department.
8. City's Rights
- a. The City reserves all rights in the Leased Premises not herein or hereby expressly granted to the Board, including but not necessarily limited to: the right to install any facilities City might deem desirable or necessary; the right to alter, extend, relocate, or remove its facilities or portions thereof, now or in the future, as are located within the Leased Premises.
 - b. At all times during the term of this Lease, the City has the right, by itself, through its agents, and employees, to enter into and upon the Leased Premises during reasonable business hours to examine and inspect the same or at any time in case of emergency.
9. No Liability on the City
- a. The City is under no obligation or responsibility to act as engineering consultant to the Board in any matter related to construction of the Facilities or any future Board 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 City regarding the Leased Premises are approximations only and that the City explicitly does not guarantee such plans or data to be either complete or correct.
 - c. The City has no obligation to repair or maintain any improvement, personal property, or equipment brought into the Leased Premises or installed therein by the Board for the Board's purposes. The Board is permitted to remove said personal property of the Board upon the termination of this Lease. The Board will, at its own expense, repair any damage to the Property caused or created by the installation or removal of the Facilities.
 - d. Except due to the City's willful misconduct or gross negligence, the City is not liable for any damage to the Leased Premises or Facilities by third parties, known or unknown, to the Leased Premises or Facilities, nor will the City be liable for any lost revenue, business, or profits of the Board.

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

14. Termination

- a. The City may terminate this lease for any reason upon one-year written notice to the Board after the first five years of the Term. The City will compensate the Board for the termination by paying a prorated amount of the Board's investments into the Leased Premises. This amount shall be the cost of the Board's investment into schematic design under § 3(b) and the Board's investment into a parking lot and entrance under § 7(i),
- b. 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 Board Improvements Following Termination of Lease

Upon termination of this Lease under Section 14, Board improvements become the property of the Board. The City will be allowed to purchase from the Board any and all Board improvements it chooses, with purchase price to be 100% of the depreciated value of said Board 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 may be implied by delay or any other act or omission of either party. No waiver by either party of any provisions of this Lease constitutes 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”, “B”, “C”, and “D” listed below are hereby incorporated into this Lease by reference.

Exhibit “A”	<i>Property</i>
Exhibit “B”	<i>Leased Premises</i>
Exhibit “C”	<i>MOU</i>
Exhibit “D”	<i>Monitoring Wells</i>
- 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 of Parks and
Recreation

By _____

John McCarthy, Director
Office of Financial Service

By _____

Shari Moore
City Clerk



SPRWS Leased Premises

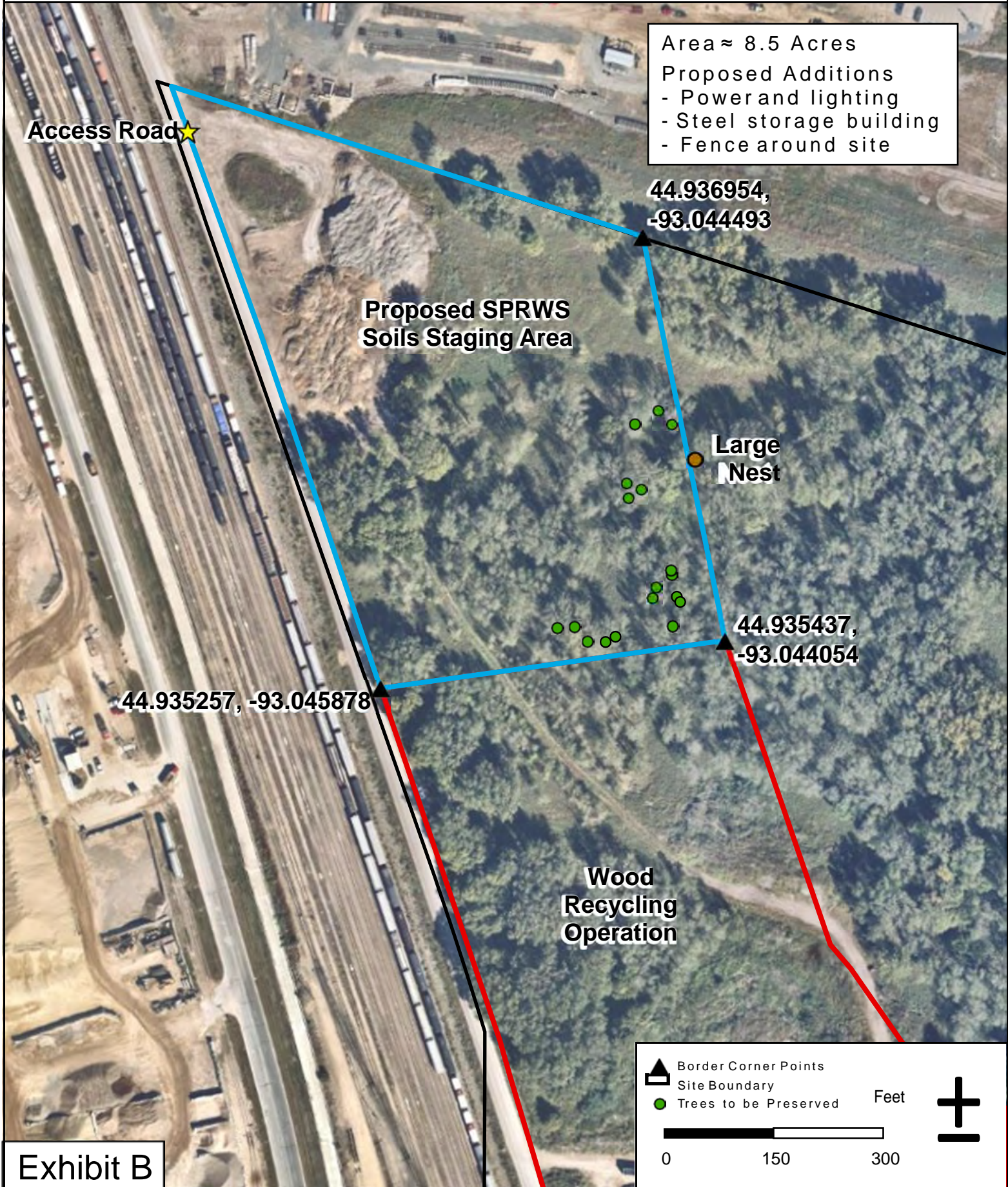


Exhibit B

MEMORANDUM OF UNDERSTANDING
between
THE BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL
and
THE CITY OF SAINT PAUL

This Memorandum of Understanding (“MOU”) made this ___ day of _____, 20_, by and between the **BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL** (“Board”), a board established pursuant to the City of Saint Paul’s Charter and Ordinances d/b/a Saint Paul Regional Water Services (“SPRWS”) and acting through its General Manager, and the **CITY OF SAINT PAUL, MINNESOTA**, a home rule charter city under the laws of the State of Minnesota (the “City”), acting through the Director of its Parks and Recreation Department.

Recitals

- A. A Lease Agreement was made and entered into on the 9th day of March, 2021 (the “Lease Agreement”) in which the City grants to the Board permission to enter upon certain portions of property owned by the City as shown in Lease Exhibit B of the Lease Agreement and to use the same to construct, maintain, and operate an excavated soils recycling and storage site.
- B. The term of said Lease Agreement terminates on December 31, 2041
- C. The Board and the City agree that certain operational requirements are best addressed through a Memorandum of Understanding, which the parties will update from time to time as needed and agreed upon. This and any future MOUs will be added as an Exhibit to the Lease Agreement.

Agreement

Consistent with the foregoing Recitals, the Board and the City hereby mutually understand the following:

- 1) Board personnel will remove soils on an annual basis as practicable and as site conditions permit.
- 2) Testing of soils as those soils are removed from the site will be conducted by the Board and copies of the test results will be shared with the City.
- 3) Board personnel will develop the site on an as-need basis, keeping unused portions of the leased premises undisturbed until needed. Previously marked and recorded cottonwood

trees, exceeding twelve inches in diameter at breast height, will not be disturbed by the Board without written consent from the City. See Exhibit B of the Lease Agreement.

- 4) Consent of the City for planned improvements under Section 6 of said Lease Agreement may be considered given upon written consent executed by the Director of the City's Parks and Recreation Department.
- 5) The Board and the City agree that the stipulations of this Memorandum of Understanding will be reviewed on an annual basis and amended as agreed upon by written addendum executed by the SPRWS General Manager and the Director of the City's Parks and Recreation Department, and will become an Exhibit to the Lease Agreement.
- 6) The parties may sign this Memorandum of Understanding in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- 7) The parties agree that the electronic signature of a party to this Memorandum of Understanding will be as valid as an original signature of such party and will be effective to bind such party to this Memorandum of Understanding. The parties further agree that any document (including this Memorandum of Understanding and any attachments or exhibits to this Memorandum of Understanding) 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 Memorandum of Understanding.
- 8) The undersigned concur with this Memorandum of Understanding and hereby certify that he or she is the duly authorized representative of their respective party.

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

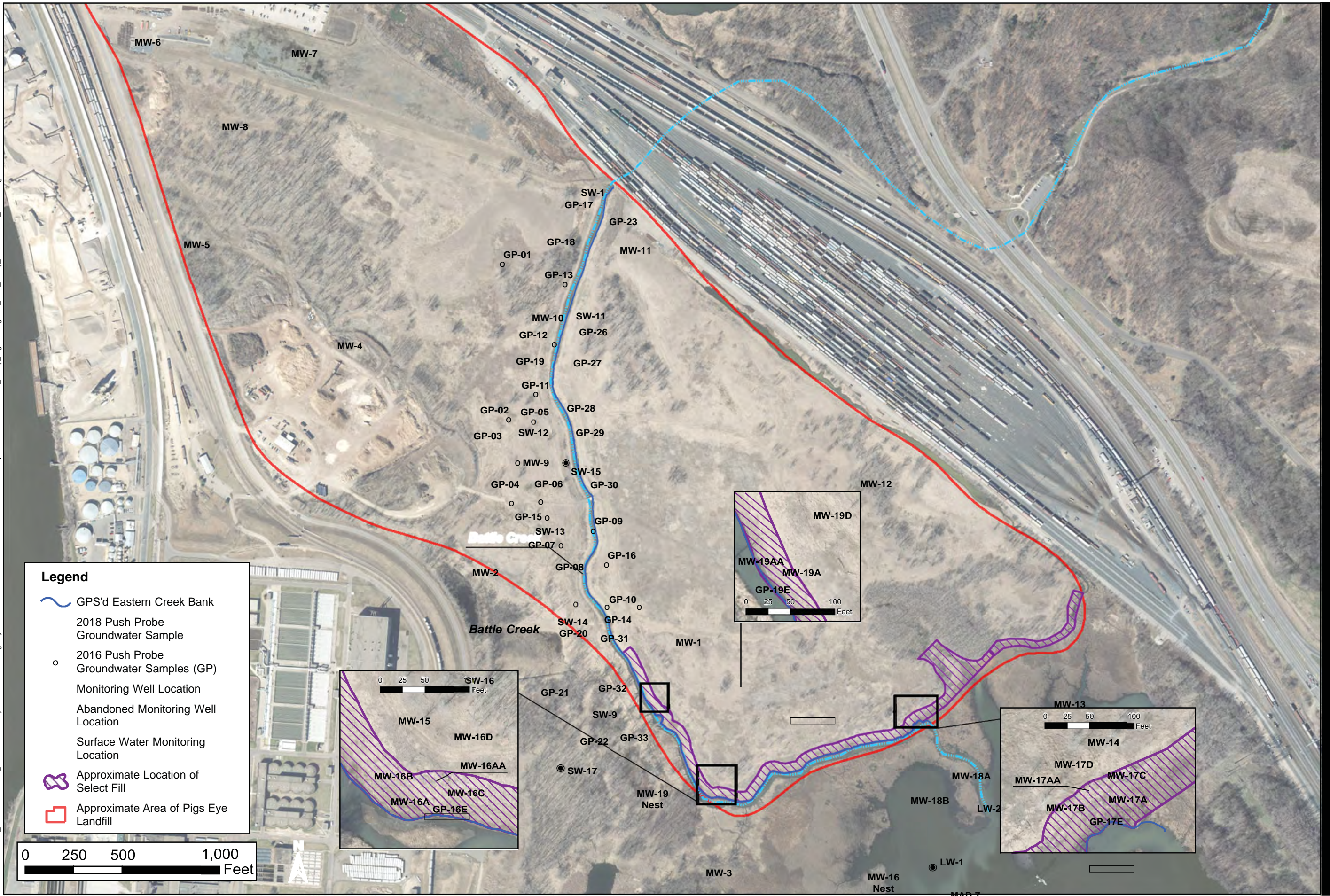
Stephen P. Schneider
General Manager
Saint Paul Regional Water Services

Mike Hahm
Director
Parks and Recreation Department

Date: _____

Date: _____

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Legend

- GPS'd Eastern Creek Bank
- 2018 Push Probe Groundwater Sample
- 2016 Push Probe Groundwater Samples (GP)
- Monitoring Well Location
- Abandoned Monitoring Well Location
- Surface Water Monitoring Location
- Approximate Location of Select Fill
- Approximate Area of Pigs Eye Landfill

MW-17
Nest

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