

OPERATIONS AND MAINTENANCE AGREEMENT FOR
FOR OPERATION AND MAINTENANCE FOR BUS TRANSIT SIGNAL PRIORITY

This Agreement is entered into by and between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota, hereinafter referred to as the Council, and the City of Saint Paul, a political subdivision of the State of Minnesota, hereinafter referred to as the City, .

RECITALS

1. The Council owns and operates, and may contract for, the bus transit system in the City.
2. The Council owns a Transit Signal Priority System (TSP System) which enhances transit vehicles operations by various signal timing tools such as shortening red lights or prolonging green lights on traffic signals when a transit vehicle is approaching an intersection controlled by the traffic signals, as appropriate.
3. With consent from the City and traffic signal owners, the Council has installed TSP System equipment owned by the Council on property owned or controlled by the City.
4. The City and County entered into a Joint Powers Agreement addressing maintenance of roadways under County jurisdiction within the City (Ramsey County Resolution 93-643 and The City of Saint Paul Council File 93-1974), wherein the City is identified as responsible for operation and minor maintenance of certain traffic signals along roadways under County jurisdiction.
5. The City and the Minnesota Department of Transportation (MnDOT) have entered into various agreements defining the maintenance and operational responsibilities of certain traffic signals along roadways under MnDOT jurisdiction.
6. The City and the Council have determined that it is in their best interest to enter into this Agreement which sets forth the terms and conditions for operation and maintenance of the Council's Bus TSP System located on City property.

NOW THEREFORE, in consideration of the mutual promises and benefits they will derive from this Agreement, the Council and the City do hereby agree as follows:

AGREEMENT

I. Purpose

The purpose of this Agreement is to define the rights and obligations of the Parties with respect to ownership, operation, maintenance and use of the Bus TSP System owned by the Council and located on property owned by the City.

II. Definitions

1. **Agreement** means this Agreement between the Council and City for operation of the Transit Signal Priority Systems.
2. **City** means the City of Saint Paul.
3. **Council** means the Metropolitan Council.
4. **Council Network** means the computer network used and maintained by the Council for communicating between computer systems.

5. **Data** means representation of facts, concepts and instructions in a formalized manner suitable for communication, interpretation or processing by humans or by automatic means including the collection of information, facts and events intended to be organized and used to present information in a usable format.
6. **Database** means the organized system that stores TSP Systems data.
7. **Party** means either the Council or City.
8. **SOP** means Standard Operating Procedures.
9. **TSP System** means the Transit Signal Priority System which provides transit buses the ability to send a request to the traffic signal system which may result in signal timing adjustments to provide preference for the transit bus, as applicable, based on mutually agreed upon parameters. For purposes of this Agreement, TSP System means the TSP System installed at the locations enumerated in Section IV of this Agreement and any other locations which have become subject to the terms of this Agreement pursuant to Section IX of this Agreement.
10. **TSP System Central Management Software** means the central control and processing of TSP System function, including but not limited to software to facilitate data collection, data determination, and viewing/assessing data.
11. **TSP System Components** means all hardware equipment that is associated with the TSP System, including but not limited to VCUs (Vehicle Computer Units) installed on buses and communication equipment installed at specific signalized intersections and within transit garages to send and receive data. The equipment includes the following:
 - a. **Priority Detector.** A detector card used to request signal priority from signal controllers located within a signal cabinet; and
 - b. **Omni-Directional Antenna.** Used to receive requests from transit buses and relay requests to Priority Detector located on traffic signal poles or mast arms.
12. **TSP System Operating Costs** means those expenditures for the cost of operation, administration and maintenance of the TSP System.
13. **Vendor** means the company providing the TSP System's installation and warranty to the Council.
14. **VCU** means Vehicle Computer Unit which is the communication equipment installed on buses that communicates with specific signalized intersections to request transit priority.
15. **Warranty** means the warranty for equipment or software provided by the Vendor.

III. Ownership of TSP System

1. **General Ownership.** Except as otherwise specifically provided below in this Agreement, the Council owns and operates the TSP System, including all TSP System Components, wherever located or installed, including all TSP System Components in the Council's regional vehicle fleet, in the City's signal cabinets, in the City's other facilities and buildings, the Council's Transit Control Center, and other Council owned or Council contracted vendor-controlled buildings, garages and facilities.
2. **Software Ownership.** The Council shall own the control system equipment including the TSP System Central Management Software, licenses for Software, servers housing TSP System Software and all equipment necessary for those servers to run and operate the TSP System as needed. Nothing in this

Agreement shall constitute a conveyance, grant or transfer of ownership on any pre-existing to this Agreement real, personal or intellectual property owned by the City and the City shall continue to exercise exclusive ownership of all property and equipment previously constructed, installed on or integrated into the City's property.

3. **Data Ownership and Use.** The Council shall own the Data generated from the TSP System and equipment and the databases created to house the data. Subject to the requirements and restrictions of Minnesota Statutes chapter 13 ("Data Practices Act") the City has the right to obtain Data during the term of this Agreement for purposes related to its participation in the TSP System. Upon request by the City, the Council will share all intersection TSP System log data with the City for the City's recordkeeping purposes and assessment for the System operations. Council will provide software upgrades and maintenance as necessary to ensure upkeep of the system and the City's ability to review and assess the utility log data. This Agreement is subject to the Data Practices Act.

IV. Installation

Purpose and Installation. As of the date of this Agreement, the Council has purchased and paid for the TSP System and the Council's Vendor has, at Council's expense, installed TSP System Components in the Council's fleet vehicles operated by Metro Transit and in the Council's garages or other facilities and buildings owned or operated by the Council.

As of the date of this Agreement with City's consent, TSP System Components have been installed at signalized intersections owned and operated by the City shown in Exhibit A attached hereto and made a part hereof.

V. Operations of the TSP System

1. **General Operation.** Generally, the Council shall be responsible for operation of the TSP System including, but not limited to, the following operations:
 - a. Ensuring that TSP System requests are being received and properly served by TSP System Components installed at the signalized intersections and on transit vehicles.
2. **City's Rights/Responsibilities.** The City shall have the following rights and responsibilities with respect to the operation of the TSP System:
 - a. All signal timing of traffic control signals operated and maintained by the City will be determined by the City, and no part of this agreement shall be construed to amend, modify, alter, change or supersede any existing or future agreements regarding the operation of any traffic control system operated and maintained by the City, nor amend, modify, alter, change or supersede the authority of the City to determine the timing of traffic control signals within the City.
 - b. The City will notify the Council of changes made to traffic signal operations that are anticipated to impact TSP System operations as soon as is practicable. The Council may propose changes to traffic signal operations to the City, but the final decision on any changes shall be made solely by the City at its discretion.
 - c. The City may deactivate TSP System operations in the City's signal cabinet in the event of disruption to traffic flows along the streets/roadways forming the intersections at which the TSP System is operating. The City will notify the Council of TSP System deactivation at an intersection as soon as is practicable.
 - d. In the event that the TSP System or Components identified are, in the opinion of the City, being misused or no longer viable, the City will notify the Council in writing of such misuse or need to upgrade the system. If, in the opinion of the City, such misuse continues or the system is no longer compatible with City equipment, the City may remove TSP System Components identified at the

traffic signal from the City's signal cabinet. In the event of removal, the City will notify the Council and make the TSP System Components available for retrieval by the Council for a period of thirty (30) days.

VI. Maintenance of TSP System

- 1. Council's Responsibility for Maintenance.** The Council shall have the following responsibilities with respect to maintenance of the TSP System:
 - a. Operating and maintaining the TSP System and Components located in the fleet vehicles operated by Metro Transit.
 - b. Repair or replacement of damaged, faulty or malfunctioning TSP System Components and procuring spare or new TSP System Components for replacement.
 - c. Proper storage of spare priority detectors.
 - d. Ensuring proper operation of replaced priority detectors.
 - e. Reporting malfunctions of the TSP System or components.
 - f. Ongoing preventative maintenance of TSP System Components installed in the City's signal cabinets

- 2. Responsibilities of City for Maintenance of TSP System.** The City is responsible for providing, at the City's cost, electrical power to the TSP System Components installed in City owned and operated traffic signal cabinets at locations identified in Section IV or any traffic signal cabinets added to this Agreement in accordance with the terms of this Agreement.

The City shall also inform Council of any changes, technical problems, or issues it is aware of related to or impacting the TSP System Components in the City's traffic signal cabinets as soon as is practicable.

- 3. Responsibility for Other Costs of the TSP System.** The Council shall be responsible for operating and maintaining in accordance with the terms of this Agreement servers and network components including, but not limited to, wireless access points and associated wiring on board the Council's transit vehicles and on Council's infrastructure. The Council shall be responsible for maintenance, repair, replacement and operating costs of the TSP System of any kind not specifically provided in the Agreement including, without limitation, relocating TSP components when necessary due to construction projects when notified of the project's timeframe.

- 4. Responsibility for Software/Database Operations.** The Council shall be responsible for operating and maintaining the TSP System Software, Databases and all necessary upgrades.

VII. Standard Operating Procedures/Right of Entry

Operating Procedures. The Council will operate the TSP System based upon a mutually agreed upon SOP as developed for the system, making adjustments as applicable based on current traffic and transit operations.

Right of Entry. Upon reasonable notice the City hereby grants to the Council, its employees and contractors, the right to enter upon the City's property of the traffic signal cabinet and signal mast arm of the City owned or controlled intersections at which the TSP System is installed for the purpose of fulfilling Council's responsibilities for operation and maintenance of the TSP System. The Council must give seven calendar days notice of its need for access to the City. The City reserves the right to require City staff be present when accessing any traffic signal cabinet.

VIII. Changes to TSP

Changes to Systems. Software and hardware changes to the TSP System may be made by the Council after consultation with the City and shall be managed by the Council. The City may propose changes to the software and hardware to the Council, but the final decision on any changes to the software or hardware of the TSP System shall be made solely by the Council at its discretion. The Council shall have the sole responsibility of negotiating approved software and hardware changes with the Vendor. The costs of any changes to the hardware or software of the TSP System shall be the Council's responsibility.

IX. Expansion of TSP System

The Council may, in coordination with the City, expand the TSP System to other signalized intersections or highway or right-of-way that are owned or operated by the City. The City reserves the right to participate or not participate in future TSP System projects initiated or led by the Council.

The process by which the TSP System may be expanded to other locations owned or controlled by the City is as follows: The Council would work with the City in partnership on activities that would need to be completed prior to expanding TSP operations to other locations. These activities may include, but not be limited to, traffic signal timing modification, TSP signal timing parameter implementation, and signal controller replacement. These are all activities that would require the City's written approval prior to the Council expanding TSP operations to other locations.

If the TSP System expands to other City owned or operated signalized intersections or locations in accordance with the process set forth above, new Exhibits A and B will be prepared showing the location of the original and added TSP System sites, new Exhibits A and B will be incorporated into and become a part of this Agreement without the need of formally amending this Agreement in accordance with Section XVI. The added sites will be subject to all of the terms and conditions of this Agreement.

X. Contact Persons; Project Manager

Contact Persons. The authorized contact person for reports, demands and approvals under this Agreement or any statute or ordinance, shall be in writing and shall be sent or delivered in person to the other Party, addressed as follows:

Council:
Gary Nyberg or successor
Manager of Technology Systems
519 10th Ave N.
Minneapolis, MN 55411

City:
Joe Spah or successor
Traffic Operations Engineer
899 Dale Street North
Saint Paul, MN 55103

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

- 1. Council's Project Manager.** The Council's Project Manager for purposes of administration of this agreement is the contact person listed for the Council in paragraph X.1, 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 Project Manager to execute amendments to this Agreement on behalf of the Council.
- 2. City's Project Manager.** The City's Project Manager for purposes of administration of this agreement is:

Mike Klobucar or successor

Traffic Signal Operations Supervisor
800 City Hall Annex
25 4th Street West
Saint Paul, MN 55103

or such other person as may be designated in writing by the City Engineer. However, nothing in this agreement will be deemed to authorize the Project Manager to execute amendments to this Agreement on behalf of the City.

XI. Reserved

XII. Liability

Responsible for Own Acts. Each Party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other Parties and the results thereof. The Council's liability is governed by the provisions of Minnesota Statutes chapter 466 and the Council's obligation under this paragraph shall not be construed to negate or abridge or otherwise waive, with respect to the Council's liability limits of Minnesota Statutes chapter 466. The City's liability is governed by the provisions of Minnesota Statutes chapter 466 and other applicable law and the City's obligations under this paragraph shall not be construed to negate or abridge or otherwise waive, with respect to the City's liability limits of Minnesota Statutes chapter 466.

XIII. Term

Term of Agreement and Renewal. The term of this Agreement will begin on the date this Agreement has been fully executed by each party's authorized representative, and will continue for a term of ten (10) years, renewable by written agreement of both Parties for five (5) additional terms of ten (10) years unless the Agreement is earlier terminated pursuant to Section XIV. .

XIV. Termination

1. Termination of Agreement. This Agreement may be terminated by: (i) agreement of the Parties to this Agreement, or (ii) by the Council in the event of lack of funding for the System Projects upon one hundred (100) days prior written notice; (iii) by withdrawal of a Party from this Agreement upon serving thirty (30) calendar days written notice of intent to cancel to the other party; or (iv) failure of the parties to renew the agreement in writing pursuant to Section XIII. Except as otherwise provided herein, upon termination of the Agreement, each of the obligations and duties of the Parties under this Agreement shall be extinguished and no Party shall have any further liability to any of the other Parties arising out of the Agreement.

Upon termination of this Agreement pursuant to this Section XIV, at the Council's expense, the Council will remove communications and equipment from signalized intersections and highway/right-of-way that provide for TSP System operations. Any data generated from the TSP System is the property of the Council and shall remain in the TSP System.

XV. Applicable Provisions of Law

Compliance with Federal, State, Local Law. Each Party shall, at its sole expense, promptly comply with all applicable federal, state and local laws, regulations and ordinances now in force or which or which may hereafter be in force, relating to or affecting the ownership, operation, maintenance of the TSP System, or

in the performance of their respective obligations under this Agreement, except that the City is not required to comply with local ordinances or regulations.

All Parties agree to abide by all applicable state, federal and local laws, regulations, and ordinances regarding confidential information concerning individuals and/or data including but not limited to information made non-public by such laws or regulations, except that the City is not required to comply with local ordinances or regulations.

XVI. General Provisions

- 1. Records.** All records kept by the Council and the City with respect to the performance of each of their responsibilities under the Agreement shall be subject to examination by the representatives of each Party hereto, and by the Legislative Auditor or State Auditor, as appropriate, for a minimum of six years. All data collected, created, received, maintained or disseminated for any purpose by the activities of the City and the Council pursuant to this Agreement shall be governed by Minnesota Statutes, chapter 13, as amended, and the Minnesota Rules implementing such act now in force or hereinafter adopted. Each Party will only be responsible for responding to government data requests that are directed to their respective agencies.
- 2. Employees of Council.** All employees of the Council and all other persons engaged by the Council in the performance of any work or services required or provided for herein to be performed by the Council shall not be considered employees of the City and any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Minnesota on behalf of said employees while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged, or any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the City.
- 3. Employees of the City.** All employees of the City and all other persons engaged by the City in the performance of any work or services required or provided for herein to be performed by the City shall not be considered employees of the Council, and any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Minnesota on behalf of said employees while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged, or any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the Council.
- 4. Civil Rights.** Applicable provisions of Minnesota and federal law and any applicable local ordinance relating to civil rights and discrimination and the Affirmative Action Policy statement of the City and the Council shall be considered a part of this Agreement as though fully set forth herein, except that the City is not required to comply with local ordinances or regulations.
- 5. Entire Agreement.** It is understood and agreed that the entire Agreement between the 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 a part of this Agreement.
- 6. Amendment.** Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the Parties hereto.

7. **Provisions Severable.** 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.
8. **Binding on Successors.** The covenants of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns.
9. **Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
10. **Governing Law.** The laws of the State of Minnesota shall govern the interpretation of this Agreement, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Ramsey, State of Minnesota.
11. **Recitals, Incorporated.** The Recitals are incorporated and made a part of this Agreement.
12. **Counterparts.** The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
13. **Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall 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 shall not affect the enforceability of this Agreement.

IN TESTIMONY WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

CITY OF SAINT PAUL

By: _____

Name: _____

Title: _____

Date: _____

METROPOLITAN COUNCIL

By: _____

Name: _____

Title: _____

Date: _____