

**AGREEMENT BETWEEN THE
CITY OF SAINT PAUL AND THE METROPOLITAN COUNCIL
FOR FIBER OPTIC NETWORK**

THIS AGREEMENT is between the City of Saint Paul, a political subdivision of the State of Minnesota ("City"), and the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Council"), collectively referred to as the "Parties." The Parties are governmental units of the State of Minnesota.

1. Purpose

The Council is in need of access to fiber optic cable ("Fiber") located along Snelling Avenue From Hewitt Avenue to Ford Parkway and on Ford Parkway from Snelling Avenue to Cretin Avenue. The City of Saint Paul Department of Public Works, Traffic and Lighting Division ("The City") owns and has installed the Fiber and it is available to be connected to a fiber optic communications network ("Network") to become operative and utilized by the Council. The Parties agree that the Council will connect the City Fiber located at the intersection of Snelling Avenue and University Avenue in Saint Paul, MN and subsequently connect to the Network at the following intersections along Snelling Avenue and Ford Parkway in St Paul: Hewitt Avenue and Snelling Avenue, Minnehaha Avenue and Snelling Avenue, Spruce Tree Avenue and Snelling Avenue, Marshall Avenue and Snelling Avenue, Grand Avenue and Snelling Avenue, St. Clair Avenue and Snelling Avenue, Randolph Avenue and Snelling Avenue, Highland Parkway and Snelling Avenue, Fairview Avenue and Ford Parkway, Kenneth Avenue and Ford Parkway, Finn Avenue and Ford Parkway.

The intended use for each segment of the Network is to enable the Council to construct and manage fiber optic communications networks for the purpose of delivering communications services among the Bus Rapid Transit Station located along the corridor. The traffic controller cabinets at each intersection listed above will be where the Council ties in to the City Fiber.

The City and the Council have determined that it is in their best interests to enter into this Agreement which sets forth the terms and conditions for operation and maintenance of a Network.

2. Term of Agreement

The term of this Agreement shall commence on the date all of the Parties have signed this Agreement (the Effective Date) and shall remain in full force and effect for twenty years (20) after the Effective Date, unless terminated earlier as provided in this Agreement.

3. Right to Connect and Use Fiber

The City hereby grants to the Council the right to connect to and utilize strands 7, 8, 9, 10, 11 and 12 of the City's Fiber for all authorized Council purposes. The Council will connect the Fiber at the points described in Section 1 of this Agreement and as shown in Attachment A. Upon termination of this Agreement, the Council shall relinquish all rights to the City Fiber, unless otherwise agreed in writing by the Parties.

4. Costs

To compensate the City for future locates, operations and maintenance costs related to the fiber provided to the Council under this Agreement, the Council will pay the City the sum of Ten Thousand (\$10,000) Dollars. Payment will be made within Sixty (60) days of the Effective Date of this Agreement.

5. Network Development, Design, Operation and Management

The Council will design its Network to be used for its purposes and install and manage the electronic devices, such as switches, needed to make its Network operational and connected to the BRT Stations. The parties shall use all reasonable efforts to maintain their respective associated fiber facilities to enable fiber optic communication networks to remain fully functional. The Council is responsible for all costs of designing installing and maintaining its Network as described in this Agreement. The Council will contract with an experienced optical fiber installer to make the fiber connection with the City's Fiber.

6. Liaisons

To assist the Parties in the day-to-day performance of this Agreement and to ensure compliance with the specifications and provide ongoing consultation, liaisons shall be designated by the Parties. The Parties shall inform each other, in writing, of any change in the designated liaison. At the time of execution of this Agreement the following persons are the designated liaisons:

City of Saint Paul:

John McNamara
General Lead Electrician In-Charge
City of St. Paul Department of Public Works
Traffic and Lighting Division
899 Dale St. N.
St. Paul, MN 55103
651-266-9780
John.mcnamara@ci.stpaul.mn.us

Metropolitan Council:

Jason Buranen
Systems Engineer 3
390 North Robert Street
St. Paul, MN 55101
651.602.8354
Jason.buranen@metc.state.mn.us

7. Assignment, Amendments, Waiver, and Contract Complete

7.1 Assignment. Neither Party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party and a fully executed Assignment Agreement, executed and approved by authorized representatives of the Parties.

7.2 Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by authorized representatives of the Parties.

7.3 Waiver. If a Party fails to enforce any provision of this Agreement, that failure does not waive the provision or prevent the Party from enforcing its right in the future.

7.4 Contract Complete. 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 part of this Agreement.

8. Liability and Insurance

Each Party to this Agreement is liable for its own acts or omissions and those of its officers, employees and agents. It is understood and agreed that liability and damages arising from the parties' acts and omissions are governed by the provisions of the municipal Tort Claims Act, Minn. Stat. Ch. 466, as applicable, and other applicable laws. Each Party warrants that it is able to comply with the aforementioned liability and insurance requirements through an insurance or self-insurance program and that each has minimum coverage consistent with the liability limits contained in Minn. Stat. Ch. 466 as applicable and if insured through purchased policies, will maintain such coverages throughout the term of this Agreement.

This agreement shall not be construed as and does not constitute a waiver by either Party of any conditions, exclusions or limitations on the Party's liability provided by Minnesota Statutes, Chapter 466, or other applicable law. This clause will not be construed to bar any legal remedies that either Party may have for the failure of the other Party to fulfill its obligations under this Agreement.

9. Audit; Recordkeeping

The City agrees to keep and maintain during the performance of this Agreement and a period of six (6) years following, records and files relating to the final financial aspects of this Agreement, and further agrees to allow the Council or designated federal or state personnel to enter on City's premises after reasonable advance notice and to inspect, copy and audit the above records, files, and premises. As required by Minnesota Statutes section 16C.05, the records, books, documents, and accounting procedures and practices of City and of any subcontractor relating to services performed under this Agreement shall be subject to audit and examination by the Council and the Minnesota Legislative Auditor or Minnesota State Auditor. Upon reasonable advance notice, City and any subcontractor shall permit Council or its designee to inspect, copy, and audit its accounts, records, and business documents at any time during regular business hours, as they may relate to the performance of this Agreement.

10. Data Practices

The Parties will comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 as it applies to all data provided by or to each Party under this Agreement, and as it applies to all data collected, received, stored, used, maintained, or disseminated by either Party under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either Party.

If either Party receives a request to release data that it received from the other Party to this Agreement, the Party receiving the request shall immediately notify the other Party from who the data originated of the request. The Parties will promptly consult and discuss the best way to respond to the request.

11. Venue

Venue for all legal proceedings arising from this Agreement, or any default of violation of the terms of this Agreement, shall be state district court, Ramsey County, Minnesota.

12. Termination

12.1 Termination. This Agreement may be terminated by either Party, with or without cause, at any time after two (2) years following the Effective Date, upon 180 days written notice of intent to terminate provided to the other Party.

12.2 Termination for Insufficient Funding. Either Party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies or other funding source to perform the work contemplated by this Agreement; or if funding cannot be continued at a level sufficient to allow for the payment of the services provided.

Termination must be by written notice to the other Party. A Party is not obligated to pay for any services provided after notice and effective date of termination. A Party will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding. A Party must provide notice of the lack of funding within a reasonable time of determining that there are insufficient funds to meet the Party's obligations under this Agreement.

12.3 Ownership. At the end of the term of this Agreement or upon its termination, the Parties will continue to own all sections of Fiber and related equipment that they presently own or install pursuant to this Agreement. Upon termination, the Council's right to use the fiber described in Section 3 of the Agreement and all rights of use and ownership of the fiber shall revert to the City.

13. Miscellaneous Provisions

13.1 Subject to Section 7 .2, this Agreement may be amended by written consent of each Party. The addition of a new Party to this Agreement shall require a written amendment approved by each Party.

13.2 Should any provision of this Agreement be found unlawful, the other provisions of this Agreement shall remain in full force and effect if by doing so the purposes of this Agreement, taken as a whole, can be made operative. Should any such provision or article be found

unlawful, representatives of the Parties shall meet for the purpose of arriving at an agreement on a lawful provision to replace the unlawful provision or article. The newly agreed upon provision or amendment must be approved by the governing body of each Party.

13.3 The City and the Council hereby grant each other mutual continuing licenses for access to their respective property as reasonably needed from time to time, for the installation, maintenance and repair of their networks. These mutual licenses will remain in effect for the duration of this Agreement. To the extent practicable, advance notice will be given and mutually convenient arrangements for such access shall be made, and all relevant safety and security policies and procedures of the Party owning the property being accessed shall be followed by the other Party, its employees and agents.

13.4 The Parties shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement and to the facilities, programs and staff for which each Party is responsible.

14. Execution in Counterparts.

This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which counterparts when so executed and delivered shall be deemed to be an original, and all of which counterparts when taken together shall constitute one Agreement.

IN WITNESS WHEREOF, the undersigned governmental units have caused this Agreement to be executed by its duly authorized officers.

SIGNATURE PAGE FOLLOWS

CITY OF ST. PAUL

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

Recommended for Approval:

By:

(Director of Public Works)

Approved as to form and execution:

By:

(Assistant City Attorney)

By:

(Mayor)

Date:

By:

(Director of Finance &
Management Services)

Date:

METROPOLITIAN COUNCIL

A public corporation and political subdivision of the state of Minnesota

By:



General Manager - Metro Transit

Date:


