

**CONSTRUCTION COOPERATION AGREEMENT FOR
CONSTRUCTION STREET MODIFICATIONS IN DOWNTOWN
SAINT PAUL, MN**

THIS AGREEMENT is made and entered into by and between the **Metropolitan Council**, a public corporation and political subdivision of the State of Minnesota (“Metropolitan Council” or “Council”), and the **City of Saint Paul**, a municipal corporation under the laws of the State of Minnesota (“City”).

BACKGROUND RECITALS

1. The City plans to construct roadway improvements and upgrades (pavement mill and overlay and restriping) in approximately 1/3 of the Saint Paul CBD during the **2020** construction seasons (“the City Project”).

2. To minimize disruption of general traffic and Metro Transit operations caused by periodic closures of City Streets (accommodating both the Farmer’s Market and Saint’s Games) the Council desires to make street and signal improvements within the project limits of the City Project (“Council Project”).

3. Both City and Council desire that the Council Project be constructed in conjunction with the City Project to minimize community impacts (“Combined Project”).

4. Therefore, the Council desires to have the City construct the Council Project contemporaneously with the City Project.

NOW, THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

AGREEMENT

I.

Purpose of Agreement

1. This agreement describes the responsibilities of each of the parties for design and construction of the Council Project.

2. The Council appoints the City as its agent to obtain bids, enter into a contract for the construction of the work, and supervise the work performed on the Council Project for compliance with this agreement.

3. The scope of the Council Project is to provide access to Eastbound Kellogg Boulevard from Southbound Wacouta Street by removing a concrete median and installing a new traffic control system.

4. The locations of the Council Project and the City Project are shown on Exhibit A to this agreement.

II. Construction Documents

1. The City will prepare construction documents for the traffic signal and bituminous paving of the Council Project with input from the City.

2. The Council will prepare, at no cost to the City, bid ready design documents for the concrete median removal and modifications for sidewalk and pedestrian access. Design of the concrete work will include the following:

- i. review of the location of the east pedestrian crossing of Kellogg;
- ii. addition of a west pedestrian crossing of Kellogg;
- iii. center median designed to discourage the EB to NB left turn movement;
- iv. identify any required signing modifications and locations; and
- v. include all required ADA pedestrian ramp revisions.

III. Easements and Permits

1. The City will acquire all permanent and temporary permits, easements and property interests necessary in the City's name for the Combined Project. The City is not acquiring any property on the Council's behalf.

2. As of the date of this agreement, no additional property acquisition is required for construction and installation of the Council Project.

IV. Bid Procedure

1. The City will self-perform the construction of the traffic signal system as well as the mill / overlay paving operation. For the concrete work (median removal and sidewalk work) the City may advertise for bids for the construction of the Combined Project, receive and open bids and may enter into a construction contract with the successful bidder in accordance with applicable law.

V. Construction and Contract Administration

1. The City will perform and direct all construction supervision, contract administration and inspections required to complete the Combined Project.

2. The Council's authorized representative George Serumgard, Project Manager, Engineering and Facilities or its designee identified to the City in writing may observe the work during the construction of the Council Project, but the Council's authorized representative is not

responsible for supervising the Council Project. When observing the work, the Council's authorized representative will cooperate with the City's Engineer or designated representative. The Council's authorized representative will be available to the City at all times during construction of the Council Project.

3. If after installation, the Council determines that any portion of the Council Project was not constructed substantially in accordance with the Construction Documents, the Council's authorized representative must inform the City of the deficiency within seven days. The Council's notice to the City must also explain why the portion of the Council Project does not conform to the Construction Documents and the actions the Council believes the contractor must take to correct the deficiency. The City will require the contractor to make the corrections to meet the requirements of the Construction Documents.

4. The Council's authorized representative will participate in the inspection of the Council Project for substantial completion. Within seven days of any substantial completion inspection, the Council will provide the City the punch list items that need to be addressed before final completion of the Council Project. If the Council does not provide punch list items within seven days, the contractor's work will be deemed accepted.

5. The City will inform the Council in writing of final completion of construction (including the punch list items) of the Council Project. Within seven days of receiving the City's written notice, the Council will inform the City in writing whether the Council Project conforms to the Construction Documents.

VI.

Modifications to Construction Documents

1. The City will give the Council's Authorized Representative all proposed amendments or material changes to the Council Project. The Council will review the documents and communicate in writing its acceptance or rejection to the City within seven days. The Council will not unreasonably withhold acceptance of any amendments or material changes to the Council Project. The City will not amend or change the Council's portion of the project until it receives the Council's written acceptance.

VII.

Cost Participation and Payment

1. The Council will reimburse the City for the costs shown in Exhibit B as specified in this Section VII. The Council will reimburse the City for the actual cost of construction for the Council Project.

2. The Council agrees to pay for actual maintenance. See section VII Warranties/Maintenance for further detail.

4. The parties further agree that the Council Project costs are an estimate. The final Council Project construction costs will be based on the unit prices in the City's construction contract, the final quantities, and any amendments or change orders.

5. After the City awards the Combined Project Construction Contract, the City will prepare a revised Exhibit B and give it to the Council. The revised Exhibit B will update the Council Project costs for construction, land acquisition, and administration based on the actual design costs and contract unit prices. The parties will substitute the revised Exhibit B for the Exhibit B attached to this agreement without any amendment to this agreement.

6. The City will pay its contractor for the contractor's work on the Council Project. The Council will then pay the City under this section. After construction of the Council Project is complete and accepted by the Council, the City will submit an invoice to the Council. The Council must pay the City within 30 days after it receives the invoice. If the Council disputes any portion of an invoice it must give the City notice of the dispute within 14 days after the Council receives the invoice. If the Council disputes any portion of an invoice, the Council must pay the undisputed portion of the invoice within 30 days after receives the invoice, and it must pay the remainder of any amount due within 30 days after the dispute is resolved.

7. When the work on the Combined Project is substantially complete, the City will give the Council an updated cost participation breakdown. This cost participation breakdown will show actual construction costs based on the contract unit prices and the units of work the contractor performed.

VIII. Warranties/Maintenance

1. After acceptance of the Council Project by the City, the City is responsible for operation and maintenance of the Council Project.

2. The Council shall pay for 100% of all reasonable and necessary costs incurred by the City for the maintenance, operation and repair of the signal system installed with this project, including but not limited to labor, materials and equipment. Prior to incurring any expense in excess of one thousand dollars (\$1000), except in cases of repairs needed in emergency situations to safely operate the systems, the City shall notify the Council of such expense. In no event shall the Council be liable for any expense incurred by the City in violation of the terms of this agreement. The City shall also perform periodic inspection of said signal system when, in the City's judgement, is required.

3. City contact for signal maintenance inquires is Traffic Maintenance Supervisor Joe Spah (or successor) at phone number 651-266-977.

IV. Liability

1. To the extent authorized by law each party is responsible only for its own acts and the results of its acts. The Council's and City's liability is governed by the provisions of Minnesota Statutes, Chapter 466.

2. The Council and City each warrant that they have an insurance or self-insurance program with minimum coverage consistent with the liability limits in Minnesota Statutes, Chapter 466. Nothing in this agreement is a waiver or limitation of any immunity or limitation of liability by the Council or City.

3. The City will ensure that the Combined Project construction contract includes clauses that:

A) require the Combined Project contractor to defend, indemnify, and hold harmless the Council, its officers, agents and employees from claims, suits, demands, damages, judgments, costs, interest, expenses (including reasonable attorney's fees, witness fees and disbursements) arising out of or by reason of the acts or omissions of the Contractor, its officers, employees, agents or subcontractors;

B) require the Combined Project contractor to be an independent contractor for the purposes of completing the work on the Council Project.

X. General Provisions

1. All records kept by the Council and City with respect to the Council Project are subject to examination by representatives of each party. All data collected, created, received, maintained or disseminated for any purpose by the Council and City under this agreement are governed by Minnesota Statutes, Chapter 13("Act"), and the Minnesota Rules implementing the Act.

2. The City agrees to comply with all laws applicable to the City relating to nondiscrimination, affirmative action, public purchases, contracting, employment, workers' compensation, and surety deposits required for construction contracts. Minnesota Statutes, Section 181.59 and any applicable local ordinance relating to civil rights and discrimination and the Affirmative Action Policy statement of the Council is considered a part of this agreement.

3. The employees of the parties, and all other persons engaged by each party will not be considered employees of the other party. Each party is solely responsible for all claims arising from its employees including claims under the Worker's Compensation Act, the Minnesota Economic Security Law and all third party claim resulting from an act or omission of an employee.

4. If hazardous wastes, pollutants or contaminants as those terms are defined in law exist on the Combined Project site, the City is responsible for any response or remedial action,

monitoring or reporting under the law. The City will apply for and have the Council named as a beneficiary in any no association letters, no action/no further action letters and other environmental regulatory assurances for the site. The City will give the Council copies of any Phase I and Phase II environmental investigations, approved Response Action Plans, and environmental assurance letters naming the Council as a beneficiary. This paragraph survives the termination of this agreement.

5. This agreement is the entire agreement between the parties and supersedes all oral agreements and negotiations between the parties relating to this agreement. All exhibits and attachments to this agreement are incorporated into the agreement. If there is a conflict between the terms of this agreement and any of the exhibits the agreement governs.

6. The provisions of this agreement are severable. If a court finds any part of this agreement void, invalid, or unenforceable, it will not affect the validity and enforceability of the remainder of this agreement. A waiver by a party of any part of this agreement is not a waiver of any other part of the agreement or of a future breach of the agreement.

7. Any modifications to this agreement must be in writing as a formal amendment.

8. This agreement is binding upon and for the benefit of the parties and their successors and assigns. This agreement is not intended to benefit any third-party.

9. Except as otherwise provided for in this agreement, the agreement may be terminated by the mutual agreement of the parties.

10. If a force majeure event occurs, neither party is responsible for a failure to perform or a delay in performance due to the force majeure event. A force majeure event is an event beyond a party's reasonable control, such as unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

11. Under Minnesota Statutes, Section 16C.05, subdivision 5, the parties agree that the books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by either Party and the state auditor or legislative auditor, as appropriate, for at least six years from the end of this agreement.

12. A party must send all notices or demands under this agreement either by:

- (A) certified mail;
- (B) e-mail, as long as the recipient acknowledges receipt by e-mail or otherwise in writing; or
- (C) delivered in person to the other party addressed to the following authorized representatives:

George Serumgard, Project Manager Metro Transit 560 Sixth Ave N Minneapolis, MN 55411	Randy Newton PE, City Traffic Engineer City of Saint Paul 800 CHA, 25 W 4th St Saint Paul, MN 55102
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13. The parties will use a dispute resolution process for any unresolved dispute between the parties before exercising any legal remedies. The dispute resolution process is a three level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. At each level of the dispute resolution process, the parties' representatives will meet and explore resolution until either party determines that effective resolution is not possible at the current level, and notifies the other party that the process is elevated to the next level. The parties designate the following dispute resolution representatives:

	City Representative	Metropolitan Council Representative
Level 1	Ben Hawkins, PE Project Engineer	Lead Project Manager
Level 2	Randy Newton, PE City Traffic Engineer	Director, Engineering and Facilities
Level 3		General Manager, Metro Transit

The parties must complete the dispute resolution process in good faith before resorting to any other legal process or remedy.

14. Metropolitan Council and the City are each authorized to enter into this agreement.

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	<p>METROPOLITAN COUNCIL, A public corporation and political subdivision of the State of Minnesota</p> <p>By: _____</p> <p>Date: _____</p>
	<p>CITY OF SAINT PAUL A municipal corporation of the State of Minnesota</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>

LIST OF EXHIBITS

Exhibit A - City Project and Metropolitan Council Project Locations

Exhibit B - Metropolitan Council Project Construction Costs Estimates



KELLOGG & WACOUTA INTERSECTION IMPROVEMENTS

PROJECT TEAM

OWNER
METRO TRANSIT
560 SIXTH AVENUE NORTH
MINNEAPOLIS, MN 55411-4398
PHONE: (612) 349-7638
FAX: (612) 349-7600

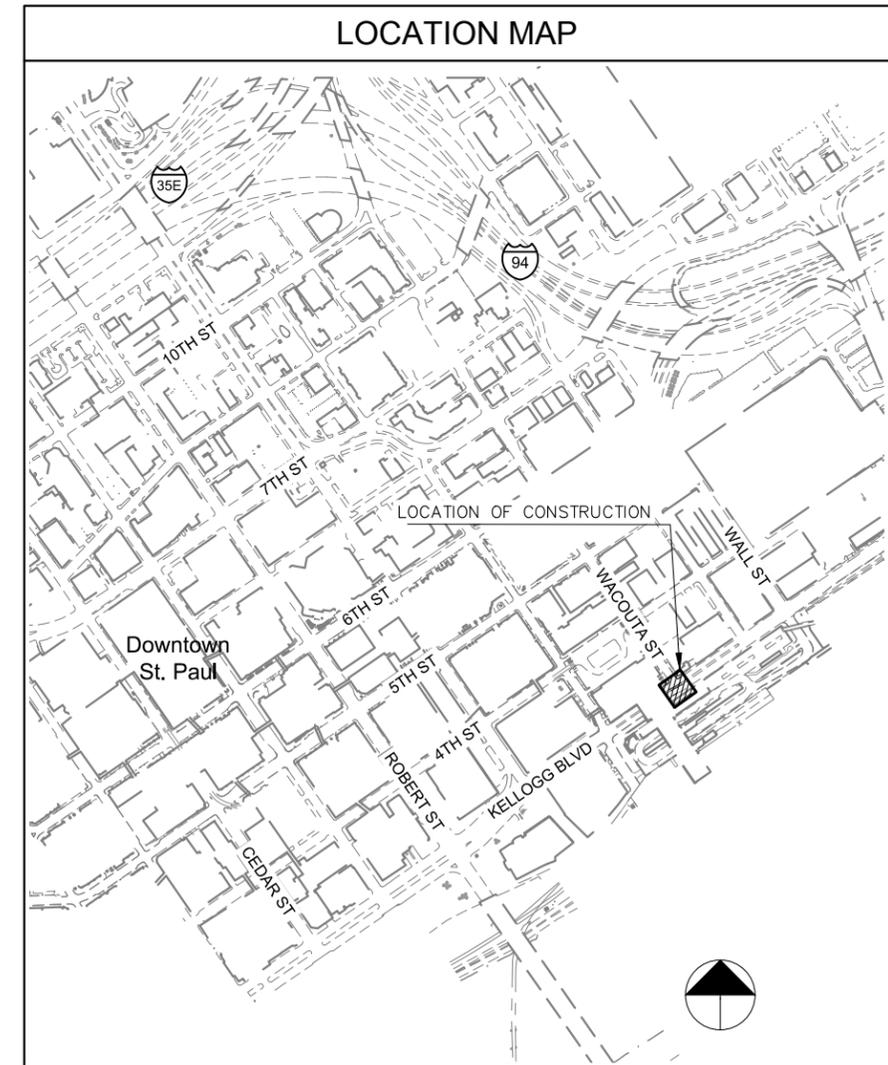
CIVIL ENGINEER
KIMLEY-HORN
767 EUSTIS STREET, SUITE 100
ST. PAUL, MN 55114-2006
PHONE: (651) 645-4197

SIGNAL ENGINEER
CITY OF ST. PAUL
25 WEST 4TH STREET, 800 CITY HALL ANNEX
ST. PAUL, MN 55102-1660
PHONE: (651) 266-6209

SHEET INDEX

G1.0	COVER SHEET
G2.0	CONSTRUCTION NOTES AND LEGEND
C1.0 - C1.7	SITE DETAILS
C2.0	REMOVALS PLAN
C3.0 - C3.1	SITE PLAN
C4.0	INTERSECTION DETAILS
SS1-SS4	TRAFFIC SIGNAL PLANS

LOCATION MAP



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NO.	DATE	DESCRIPTION OF REVISIONS	APP.
0	1/20/2020	ISSUED FOR CONSTRUCTION	JRW

DESIGNED BY: JRW
DRAWN BY: AAL
CHECKED BY: JRW
DATE: 1/20/2020

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

Justin R. Woffinden
JUSTIN R. WOFFINDEN, P.E.
DATE: 1/20/2020 MN LIC. NO. 50995

Kimley»Horn
767 EUSTIS STREET
SUITE 100
ST. PAUL, MINNESOTA 55114
Ph: 651-645-4197 www.kimley-horn.com



KELLOGG & WACOUTA
INTERSECTION IMPROVEMENTS
COVER SHEET

COMM. NO.	160533089
SHEET NO.	G1.0

Exhibit B

KELLOGG AND WACOUTA					
SPEC.NO.	ITEM	TOTAL QUANTITY	UNIT	UNIT PRICE	TOTAL COST
2021.501	MOBILIZATION	1	LS	\$15,000.00	\$15,000.00
2102.518	PAVEMENT MARKING REMOVAL	165	SF	\$2.80	\$462.00
2104.502	REMOVE PARKING METER SIGN AND POST	1	EACH	\$250.00	\$250.00
2104.502	REMOVE PARKING METER SIGN	2	EACH	\$200.00	\$400.00
2104.502	REMOVE SIGN TYPE C	3	EACH	\$50.00	\$150.00
2104.502	REMOVE SIGN PANEL TYPE C	1	EACH	\$34.00	\$34.00
2104.502	SALVAGE SIGN TYPE C	4	EACH	\$100.00	\$400.00
2104.503	REMOVE BITUMINOUS PAVEMENT	50	SY	\$10.00	\$500.00
2104.503	SAWCUT BITUMINOUS PAVEMENT FULL DEPTH	225	LF	\$6.00	\$1,350.00
2104.504	REMOVE CONCRETE WALK	140	SY	\$5.00	\$700.00
2106.501	EXCAVATION	40	CY	\$9.00	\$360.00
2118.507	CLASS 5 GRAVEL BASE	40	CY	\$9.00	\$360.00
2231.604	BITUMINOUS PATCH	70	SY	\$100.00	\$7,000.00
2506.502	ADJUST CATCH BASIN OR MANHOLE COVER TO GRADE	2	EACH	\$800.00	\$1,600.00
2521.518	CONCRETE WALK W/ INTEGRAL CURB	600	SF	\$20.00	\$12,000.00
2521.518	CONCRETE WALK FOR ADA RAMP	225	SF	\$16.00	\$3,600.00
2531.504	CONCRETE MEDIAN	200	SF	\$15.00	\$3,000.00
2531.618	TRUNCATED DOMES	68	SF	\$38.00	\$2,584.00
2540.602	REMOVE / SALVAGE DECORATIVE BOLLARD	1	EACH	\$1,000.00	\$1,000.00
2545.602	ADJUST HANDHOLE COVER TO GRADE	4	EACH	\$300.00	\$1,200.00
2563.601	TRAFFIC CONTROL	1	LS	\$2,000.00	\$2,000.00
2564.502	INSTALL SIGN PANELS TYPE C	2	EACH	\$205.00	\$410.00
2564.518	SIGN PANELS TYPE C	43	SF	\$40.00	\$1,720.00
2573.501	EROSION CONTROL SUPERVISOR	1	LS	\$1,000.00	\$1,000.00
2573.501	INLET PROTECTION	4	EACH	\$150.00	\$600.00
2582.502	4" SOLID LINE PAINT	100	LF	\$1.00	\$100.00
2582.502	12" SOLID LINE PAINT	25	LF	\$3.00	\$75.00
2582.502	24" SOLID LINE PAINT	60	LF	\$4.00	\$240.00
2582.503	4" DOUBLE SOLID LINE PAINT	220	LF	\$1.00	\$220.00
2582.503	CROSSWALK PAINT	234	SF	\$4.00	\$936.00
	TRAFFIC SIGNAL COMPLETE	1	LS	\$250,000.00	\$250,000.00
	SUBTOTAL				\$309,251.00
	ROADWAY SUBTOTAL				\$59,251.00
	INSPECTION* (12%)				\$7,110.12
	ENGINEERING & INSPECTION** (25%)				\$62,500.00
	CONTINGENCY (10%)				\$30,925.10
	*: INSPECTION ONLY FOR ROADWAY IMPROVEMENTS			TOTAL:	\$409,786.22
	** : INSPECTION OF SIGNAL RELATED IMPROVEMENTS				