

**AGREEMENT
BETWEEN THE CITY OF SAINT PAUL AND THE CITY OF MINNEAPOLIS**

This Agreement (“Agreement”) is made by and between the City of Saint Paul, a political subdivision under the laws of the State of Minnesota (“Saint Paul”) and the City of Minneapolis, a political subdivision under the law of the State of Minnesota (“Minneapolis”) (each individually, a “Party”; and collectively, the “Parties”). This Agreement is effective as of _____, 2021 (“Effective Date”).

WITNESSETH:

WHEREAS, each of the Parties have stated values and adopted policies to help increase local access to sustainable transportation; and

WHEREAS, use of clean energy vehicles powered by an electric motor rather than liquid fossil fuel (“Electric Vehicle or EV”) has become widespread and common in the United States; and

WHEREAS, certain providers have made Electric Vehicles (“EVs”) available to a wide range of consumers for short term, short trip rentals (“EV Car Share” or “EV Car Sharing”); and

WHEREAS, EV Car Sharing serves to eliminate barriers to transportation access and reduces greenhouse gas emissions; and

WHEREAS, for EV Car Sharing to succeed, and for greater conversion of personal internal combustion to EV vehicles, drivers require widespread and pervasive access to EV car charging stations with a constant supply of electricity; and

WHEREAS, the Metropolitan Council has awarded Saint Paul a Federal Highway Administration Congestion Mitigation and Air Quality grant (“CMAQ Grant”) in the amount of \$4,000,000 and the Department of Energy has awarded Saint Paul a \$3,650,237 grant (“DOE grant”) as a subrecipient of a Lung Association application -- to promote and implement the EV Spot Network and Evie Carshare (“the Project”) in the Twin Cities area; and

WHEREAS, Xcel Energy has agreed to contribute \$4 million of “make-ready” (“Xcel Energy Contribution”) to help supply electricity and resources to the project in support of the CMAQ Grant objective; and

WHEREAS, the Parties desire to collaboratively discuss, study, plan for, promote and facilitate the development of the Project between the Twin Cities of Saint Paul and Minneapolis; and

WHEREAS, more specifically, the Parties desire to utilize the CMAQ Grant and Xcel Energy Contribution to introduce and maintain an EV Car Share program in the Twin Cities, as more fully described herein (the “EV Car Share Initiative”); and

WHEREAS, in addition to the CMAQ Grant, DOE grant, and the Xcel Energy Contribution, the Parties recognize the potential need to seek additional funds for the Project as set out herein (“Supplemental Funds or Supplemental Funding”); and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

I. DEFINITIONS

- “Applicable Laws” means all applicable federal and state laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines and policy requirements of both the Customer and Xcel Energy, and orders of any governmental person having jurisdiction over the Pilot Project, the practices involved in the Pilot Project, or any work Xcel Energy or Customer performs.
- “Charging Equipment” means the electric vehicle charging equipment installed by Customer at the Customer Location used to deliver electricity from the EV Supply Infrastructure to an electric vehicle. Charging Equipment includes the ungrounded, grounded, and equipment grounding conductors, the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets or apparatuses associated with the installed device, but does not include EV Supply Infrastructure.
- “Charging Station” means a station consisting of all Charging Equipment which, when connected to the EV Supply Infrastructure, is collectively as a unit required to deliver EV charging services to Consumers at the Customer Location. Charging stations in this network shall be referred to as “EV Spots.”
- “City Contributions” means the cash financial contributions to the EV Spot Network/Envie Carshare project being made by each Party.
- “Consumer” means an individual who uses the Charging Equipment at the Customer Location to charge an electric vehicle.
- “Customer Location” means the Charging Station locations.
- “EV Supply Infrastructure” means all the electric vehicle charging infrastructure (excluding the Charging Equipment) and all associated equipment installed by Xcel Energy at the Customer Location necessary to connect the Charging Equipment to Xcel Energy’s electric distribution system, and includes but is not limited to the following: poles, conduits, ducts, cables, concrete pads, manholes, handholes, supporting foundations, switchboards, meters, and electrical wiring and conduit between the transformer and main power distribution cabinet.

- “Facilities” means any privately, publicly, or cooperatively owned line, system, and or other utility item that produces, transmits, or distributes communications, power, cable, television, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water, signal systems, and other products or services that serve the public, and/or a privately-owned irrigation system. Any necessary appurtenances to each Facility are considered a part of it.
- “Force Majeure Event” means pandemic, fire, floods, explosion, catastrophe, accident, declared war, riot, acts of God, acts of terrorism, insurrection, strike, and applicable laws or orders that prevent performance, to the extent (i) such event is beyond a Party’s control, that due diligence and use of reasonable efforts by the Party claiming the Force Majeure Event could not have avoided or prevented, (ii) that materially and adversely affects a Party’s ability to meet its obligations under this Agreement, and (iii) the Party claiming the Force Majeure Event gives prompt written notice of the same to the other Party. A Force Majeure Event does not include events due to the acts or omissions of the Party claiming the Force Majeure Event.

II. PURPOSE

The purpose of this Agreement is to:

- A. Cooperatively plan for and maximize opportunities for EV Car Sharing in the Twin Cities, and to invest the CMAQ Grant, in coordination with Xcel Energy, to carry out and further the Project.
- B. Provide a mechanism whereby the Parties can cooperatively plan, allocate resources, address permitting issues, and manage contractor functions for advancement of the Project.

III. OBLIGATIONS AND SERVICES PROVIDED BY PARTIES

A. Saint Paul’s Obligations.

1. **Management of Project Funds.** St Paul will establish a budget for the Project (“Project Budget”) that will include a cash “Saint Paul Contribution” and a cash “Minneapolis Contribution,” as well as any additional Project funds received by the Parties (“the Project Funds”). The Project Budget will be kept as a separate budget item within the budget of the Saint Paul Department of Public Works. Project Funds will only be spent on goods and services necessary to achieve the purpose of this Agreement. Minneapolis may ask for an accounting of the Project Funds which shall be provided in a reasonable time period.
2. **Grant Recipient and Fiscal Agent.** Saint Paul will act as the responsible grant recipient for purposes of complying with CMAQ Grant conditions and associated FHWA guidelines, as well as DOE grant subrecipient conditions. On behalf of the Project, Saint Paul will submit for reimbursement from the CMAQ grant and DOE grant. Saint Paul will provide budgeting and accounting services and such other good fiscal services necessary or convenient to carry out the intent of this Agreement, including but not limited to,

management of all City contributions and grant monies, payment for contracted services, and relevant bookkeeping and record keeping. The books and records related to the Project Budget shall be subject to the Minnesota Government Data Practices Act and Minn. Stat. § 16C.05, subd. 5.

3. **Saint Paul Contribution.** Saint Paul will contribute \$750,000 in local funds to the Project to meet the necessary local match for Federal funding. Unequal City contributions shall result in a pro-rated distribution of charging station locations per city – 38 EV Spots in Saint Paul, and 32 EV Spots in Minneapolis.
4. **Electric Vehicle Carshare Fleet Operator Contract.** Saint Paul shall be responsible for awarding, executing, and managing the contract with an electric vehicle carshare fleet operator and agrees to confer with Minneapolis prior to awarding and executing the contract.
5. **Electric Vehicle Supply Equipment (EVSE) Vendor.** Saint Paul shall conduct the procurement process and contracting for the purchase, installation, and initial maintenance (at a minimum the first year) of the charging network, as is covered by the DOE grant.
6. **Agreement with Xcel Energy.** Saint Paul has entered into a separate agreement with Xcel Energy to install EV Supply Infrastructure and further clarify the rights and obligations of Xcel and the City of Saint Paul, including with regard to the construction, maintenance and operation of EV Supply Infrastructure, Charging Equipment, Charging Stations, and related Facilities.

B. Minneapolis Obligations.

1. **Minneapolis Contribution.** Subject to Sec. III.C.4., Minneapolis will contribute \$350,000 in local funds to the Project to meet the necessary local match for Federal funding. Unequal local contributions from each city shall result in a pro-rated distribution of charging station locations per city – 32 EV Spots in Minneapolis and 38 EV Spots in Saint Paul.
2. **Agreement with Xcel Energy.** Minneapolis has entered into its own agreement with Xcel Energy to install EV Supply Infrastructure and further clarify the rights and obligations of Xcel and the City of Minneapolis, including with regard to the construction, maintenance and operation of EV Supply Infrastructure, Charging Equipment, Charging Stations, and related Facilities.

C. Joint Obligations.

1. **Project Planning.** The Parties shall jointly plan and design the Project
2. **Contract Execution and Management.** The Parties shall jointly plan and design the Project. Saint Paul will advertise and receive bids for any third-party Project contract not specified herein, including a contract for a charging network provider and for the

installation of Charging Equipment at all Customer Locations. In consultation with Minneapolis, Saint Paul shall award and manage all such third party Project contracts. .

3. **Cooperation.** The Parties will each cooperate and use best efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties will each attempt to align their policy with the other regarding the activities taken pursuant to this agreement, such as policies for use and pricing of the ROW. The Parties agree in good faith to undertake resolutions of disputes, if any, in an equitable and timely manner and in accordance with Sec. VII.H. The Parties also agree to convene periodic progress meetings as needed but no less than every six (6) months to share information, address questions, and reestablish goals that are consistent with the defined purpose of this Agreement. During each progress meeting, each party will, at a minimum, provide performance updates related to third-party contracts, and Saint Paul will provide a financial accounting summary of the Project Budget.
4. **Supplemental Funding.** The Parties agree that Supplemental Funding may be necessary to complete the Project in its currently conceived scope. If supplemental Funding becomes necessary to complete the Project, representatives from each of the Parties will meet and confer to decide on an amount of local funds that will be recommended for contribution by each Party. The Parties each understand and agree that City Contribution amounts are subject to approval via each Party's normal budgeting and governmental approval processes. If adequate Supplemental Funding is not approved, then the Parties will meet and confer to attempt to arrive at a mutually agreed-upon modification of the Project scope. If a modified Project scope is not feasible, or if the Parties cannot agree, then the Parties shall proceed under Sec. VII.H. of this Agreement.
5. **Sponsorships.** The City of Saint Paul, as lead agency, will pursue and coordinate sponsorship dollars to underwrite the marketing, operations, and maintenance of this network. Sponsorship dollars will be shared with Minneapolis on a 70% Saint Paul/30% Minneapolis split, based on Saint Paul's larger administrative burden for the overall program.
6. **EV Charging Equipment and Charging Stations.** Pursuant to this Agreement, the parties will separately own, maintain, repair and inspect the EV Charging Equipment at their respective Charging Stations. Subject to any rights or interests conferred to Xcel Energy, Saint Paul will own, maintain, repair and inspect the EV Charging Equipment at Charging Stations within the City of Saint Paul, and Minneapolis will own, maintain, repair and inspect the EV Charging Equipment at Charging Stations located within the City of Minneapolis. Saint Paul will be responsible for permitting and inspecting construction work that occurs in the City of Saint Paul. Minneapolis will be responsible for permitting and inspecting construction work that occurs in the City of Minneapolis. Nothing in this Agreement should be construed as conferring on either party the obligation to construct, inspect, maintain or repair any EV Charging Equipment at Charging Stations located within the other party's jurisdiction, nor any Charging Supply Infrastructure installed by Xcel and located within the other party's jurisdiction. The DOE grant may cover the cost of some initial parts and maintenance early in the term of the agreement, but after that grant has

expired, Saint Paul and Minneapolis will each be responsible for operations and maintenance within their respective city boundaries. Subject to Sec. III.C.1, the Parties may engage one or more third-party contractors to complete their obligations under this Section.

7. **Location of improvements, branding, and pricing.** The Parties each reserve the right to identify and approve the location of EV Spots in their respective jurisdiction, subject to the Parties' third-party agreements with Xcel Energy. The Parties will cooperate to develop consistent branding to be deployed in both cities. Consumer pricing schedules will be developed in coordination with Xcel and consistent between the parties. Parking charges may differ between the parties. The Parties will each make a concerted and good faith effort to share relevant information, and to develop and promote consistent policies related to or affecting the locating, branding, and pricing of EV Spots.
8. **Issuance of permits.** The Parties agree that all permits required by either Party to support the Project will be granted pursuant to established local laws, policies and procedures, and that such permits shall not be unreasonably delayed or withheld.

IV. TERM AND TERMINATION

- A. **Term.** This Agreement shall be in full force and effect from May 1, 2021, through May 1, 2026, with the option to extend for up to an additional five years, in coordination with the parties' third-party agreements with Xcel Energy ("Term"). The annual option to extend the Term may be exercised with written approval of an authorized representative of each of the Parties and Xcel Energy.
- B. **Termination.** This Agreement may be terminated early upon the occurrence of any one of the following events:
 - (1) When necessitated by a Force Majeure Event; or
 - (2) When the Parties mutually agree to terminate this Agreement; or
 - (3) When either Party provides notice of intent to terminate upon thirty days (30) written notice, with or without cause.
- C. **Disposition of Property and Funds.** At such time as this Agreement is terminated, and subject to any applicable federal grant requirement or limitation, any property interest remaining, following discharge of all obligations owed by the EV Car Share Initiative, shall be disposed of and the proceeds of the property shall be returned to the Parties in proportion to the City contributions.

V. NOTICE

For purposes of delivery of any notices hereunder, the notice shall be effective if delivered in writing to:

The City of Saint Paul

Contract Manager:

The City of Minneapolis

Contract Manager:

VI. LIABILITY

- A. Each Party agrees that it will be responsible for its own acts and omissions, the acts and omissions of its commissioners, officers and employees and any liability resulting there from to the extent authorized by law. Neither Party shall be responsible for the acts of the other and the results thereof. Each Party acknowledges and agrees that it is insured or self-insured consistent with the limits established in Minnesota State Statute. Each Party agrees to promptly notify the other Party if it becomes aware of any potential Agreement-related claim(s) or facts giving rise to such claims.
- B. Each Party shall be responsible for injuries to or death of its own personnel. Each Party will maintain workers' compensation insurance or self-insurance coverage covering its own personnel while they are otherwise participating in or assisting with Agreement related operations or activities. Each Party waives the right to, and agrees that it will not, bring any claim or suit against the other Party for any workers' compensation benefits paid to its own employee or dependents, that arise out of participation in or assistance with Agreement operations or activities, even if the injuries were caused wholly or partially by the negligence of any other Party or its officers, employees, or volunteers.
- C. Notwithstanding the foregoing, the terms of this Agreement are not to be construed as, nor operate as, waivers of a Party's statutory or common law immunities or limitations on liability, including, but not limited to, Minnesota Statutes Chapter 466. Further, the Party's obligations set forth in this Article and otherwise in this Agreement, are expressly limited by the provisions of Minnesota Statutes Chapter 466, Minnesota Statutes Chapter 604, Minnesota Statutes Section 471.59, and any other applicable law or regulation providing limitations, defenses or immunities to the Parties.

VII. MISCELLANEOUS PROVISIONS

- A. **Ownership and Control of Right of Way.** This Agreement shall not be construed to transfer ownership or control of any public right of way between or among the Parties, or to any other party. The Parties understand and agree that each Party shall retain ownership and control of its respective right of way interests, and that the terms of this Agreement shall at all times remain subject to this provision. The Parties shall make good faith efforts to align public right of way policies and practices related to the implementation of the Project.
- B. **Delegation of Police Power.** This Agreement does not delegate or otherwise transfer either Party's police power to regulate the use of its respective public rights of way, and/or to enforce ordinances or other laws between the Parties or against any other party.

- C. **Compliance with Laws.** The Parties each agree to comply with all Applicable Laws..
- D. **Amendments.** This Agreement may be formally amended by agreement of the Parties as evidenced by actions or resolutions adopted by the respective governing bodies.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.
- F. **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of the Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.
- G. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral agreements relating to the formation of the EV Car Share Initiative.
- H. **Alternative Dispute Resolution.** In the event of a dispute arising under this Agreement, the Parties agree to attempt to resolve their dispute by following the process described below:
- (1) A Party shall provide written notice to the other, describing perceived conflict, positions, and underlying reasons.
 - (2) The other Party shall provide written response to notice within seven (7) days of receipt of notice.
 - (3) The Parties shall meet within 14 days of receipt of the written response with a neutral facilitator. The neutral facilitator will be a representative from the Minnesota Bureau of Mediation Services. Costs of such facilitator shall be shared equally by all Parties to the dispute.
- I. **Data and Intellectual Property.**
- (1) The Parties, their officers, agents, owners, partners, employees, volunteers and subcontractors agree to abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable State and Federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended. Each Party shall be responsible for any claims resulting from its officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this

Section. The terms of this Section shall survive the cancellation or termination of this Agreement.

- (2) Neither Party shall acquire any right, title or interest in any other Party's data that is restricted from public disclosure by any applicable law, including the MGDPA, HIPAA and all other laws protecting information.
- (3) All right, title and interest in all trademarks and copyrightable material which the Parties may conceive or originate and which arises out of the performance of this Agreement are the property of the City of Saint Paul. The City of Minneapolis agrees, upon request of the City of Saint Paul, to execute all papers and perform all other acts necessary to assist the City of Saint Paul to obtain and register any trademarks or copyrights on those materials if formal registration of the same is desired.
- (4) Each Party may use copyrighted Material for any legal purpose including but not limited to using, disclosing, reproducing, modifying, preparing derivative works from, distributing, performing and displaying the copyrighted material.

- J. **Minnesota Laws Govern.** The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Ramsey, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.
- K. **Counterparts.** The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- L. **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.

CITY OF SAINT PAUL, MINNESOTA

By: _____
Mayor

Date: _____

By: _____
Director of Public Works

Date: _____

By: _____
Office of Financial Services

Date: _____

By: _____
City Attorney's Office (As To Form)

Date: _____

CITY OF MINNEAPOLIS, MINNESOTA

By: _____
Finance Officer or Designee

Date: _____

By: _____
Department Head Responsible
for Contract Monitoring for this Contract

Date: _____

By: _____
Assistant City Attorney

Date: _____