

# Agreement #14-1389

City of Saint Paul

And

Three Property Owners Located at:

- 401 Phalen Boulevard, Saint Paul, MN (HealthPartners East Side Holding, LLC),
- 435 Phalen Boulevard, Saint Paul, MN (Westminster Junction Venture, LLC), and
- 840 Westminster Street, Saint Paul, MN (Hiway Federal Credit Union)

Cooperative construction and cost share agreement (“Agreement”), made and entered into, by and between the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “City” and the owners of the properties located at 401 Phalen Boulevard, 435 Phalen Boulevard and 840 Westminster Street, hereinafter referred to as “Private Partners.”

The City and Private Partners in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth agree as follows:

1. As part of a project to widen Cayuga Street between Phalen Boulevard and Westminster Street, which includes the installation of a traffic signal at the intersection of Cayuga Street with Arkwright Street and the 401 Property Driveway, the City and/or its contractors will perform all necessary construction activities to complete the project in compliance with city-prepared plans, specifications and special provisions designated by the City as City Project No. 14-P-1389.
2. Cost participation is required by both the City and Private Partners for the design and construction of widening Cayuga Street between Phalen Boulevard and Westminster Street and for the design and construction of the traffic signal at the intersection of Cayuga Street with Arkwright Street and the 401 Property Driveway. The cost share for the improvements will be 50% City and 50% Private Partners, with the Private Partners splitting their 50% share equally between the three parties. Cost is further addressed in Section 4, below.
3. In addition, the Private Partners agree to pay for their 50% share of the operations and maintenance cost of the traffic signal as a one-time, lump sum payment. The City will be responsible for all future ongoing operations and maintenance cost of the traffic signal system.
4. Under this project, the City will also be widening Arkwright Street between Cayuga Street and Whittall Street which includes the construction of a driveway section along the east side of Arkwright Street to allow permanent access into and out of the 435 Phalen Boulevard property. These construction improvements will be paid for with 100% City funds. The current driveway

access along Cayuga Street for the 435 Property will be permanently closed as part of this project.

5. Any design and/or construction work needing to be performed on, or within, any of the individual properties is the responsibility of each individual property owner. All work performed on private property will be paid for with 100% property owner funds.
6. Upon the City giving at least one business day notice, the property owner at 401 Phalen Boulevard will allow the City and/or its contractor access to work within the driveway section of their property, at no cost to the City or contractor, in order to install loop detection or other equipment necessary to efficiently construct and operate the proposed traffic signal system installation. During such time, the City must allow the property owner's patients and staff access across the driveway into and out of the parking area.
7. In addition, the property owner at 401 Phalen Boulevard, upon at least one business day notification and request by the City, will allow the City or its contractor routine access to the driveway section in order to perform any and all maintenance work necessary to keep the traffic signal operating safely and efficiently. During such time, the City must allow the property owner's patients and staff access across the driveway into and out of the parking area.
8. The City will administer all construction contracts and perform engineering and construction inspection activities associated with the project within the public right-of-way. Any work performed on private property will be the responsibility of the property owner where the work is being performed, with the exception of the traffic signal work needing to be done within the 401 Property Driveway.

## 1. Term of Agreement

**1.1 Effective Date.** This Agreement will be effective on the date the City obtains all signatures required on the signature page of this agreement.

**1.2 Expiration Date.** This Agreement will expire when all obligations from all parties have been satisfactorily fulfilled.

**1.3 Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation the following: 3. Maintenance by the City; 7. Liability; Workers Compensation Claims; 9. Governing Law; Jurisdiction, Venue; and 11. Force Majeure.

## 2. Construction by the City

**2.1 Contract Award.** The City will advertise for bids the contract plans and specifications for the improvements being made as described in this agreement. The City will notify the Private Partners of its

intent to award a contract under City Project No. 14-P-1389. A contract will be awarded following all of the applicable laws, procedures and requirements imposed on the City.

**2.2 Construction Inspection.** The City will perform all construction inspection activities on the project in order to insure all requirements and details of the plans and specifications are being satisfied. In the event a Private Partner believes the construction covered under this agreement has not been properly performed, the Private Partner should notify the City's authorized representative in writing of those defects. Although recommendations made by the Private Partners are not binding on the City, if a Private Partner notifies the City of a defect in the construction work, the City must investigate and resolve the defect in a reasonable and professional manner, including without limitation addressing the defect with the applicable contractor. Subject to the foregoing, the City will have the exclusive right to determine whether the City's contractor has satisfactorily performed to all requirements under the contract plans and specifications.

**2.3 Plan and Construction Changes.** The City may request the Contractor to make design changes resulting in additional construction activities, which may include additional Private Partner cost participation. The City will enter into any necessary addenda, change orders and/or supplemental agreements with the City's contractor that are necessary for construction to be performed and completed in a satisfactory manner. The City's authorized representative will inform the Private Partner's authorized representatives of any proposed addenda, change orders and/or supplemental agreements to the contract that will affect the cost participation by the Private Partners covered under this agreement and will provide copies thereof to the Private Partners. If any changes are expected to increase the cost to the Private Partners by twenty percent (20%) or more, then the City must obtain the consent of the Private Partners to such changes prior to instituting the changes. The Private Partners shall not unreasonably withhold such consent and will have a maximum of two business days to provide the consent. Additionally, the Private Partners shall be permitted to pay any increases of twenty percent (20%) or more in cash or through assessment against such Private Partners' property.

**2.4 Satisfactory Completion of Contract.** The City will perform all other acts and functions necessary to cause the contract construction to be completed in a satisfactory manner. Acceptance by the City of the completed contract construction will be final, binding and conclusive upon the Private Partners as to the satisfactory completion of the contract construction.

### **3. Maintenance by the City**

Upon completion of the project, the City, at its cost and without payment by any Private Partner in addition to the one-time lump sum payment for maintenance described in preliminary section 3 above, will be responsible to perform any and all maintenance activities on the newly constructed infrastructure within the public right-of-way and the traffic signal equipment in the driveway to 401 Phalen Boulevard. The Private Partners will continue to be responsible for any ongoing or upcoming assessment or system charges against their properties as determined by law and by the City Council of Saint Paul.

#### 4. Project Cost and Payment to the City

**4.1 Private Partner Cost.** The estimated project cost for the Private Partners is \$299,705.00. This includes one half the cost to widen Cayuga Street between Phalen Boulevard and Westminster Street; one half the cost of the traffic signal system installation including interconnect cable; one half the cost of Engineering and Inspection of the project, and a one time, advanced payment for the operation and maintenance costs of the traffic signal system. Each Partner will be required to pay one-third of this total cost. Should any Partner refuse to pay pursuant to the terms of this Agreement, the identified property of such Partner will be assessed via certification to property taxes. Any excess of the Private Partners' payments over the actual project cost shall be returned to the Private Partners.

**4.2 Conditions of Payment.** The Private Partners will pay the City their known share of the project costs upon recommendation of contract award and receipt of a written request from the City to make an initial payment. Said payment will be due within 30 days of the request of the City. Thereafter, a final bill will be sent to the Private Partners, upon completion and acceptance of the project by the City, for any approved extra work, change orders or supplemental agreements that were performed under the contract, including without limitation Section 2.3 above. Terms and conditions of payment, which include the terms set forth in Section 4.1 herein, will be stipulated on the written billing statement from the City.

#### 5. Authorized Representatives.

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

##### 5.1 The City's Authorized Representative will be:

Name/Title: Paul Kurtz – Assistant City Engineer (or successor)  
Address: 25 W. 4<sup>th</sup> Street – City Hall Annex  
City/State/Zip: Saint Paul, MN 55102  
Telephone: (651) 266-6203  
E-Mail: [paul.kurtz@ci.stpaul.mn.us](mailto:paul.kurtz@ci.stpaul.mn.us)

##### 5.2 The Private Partner Representatives will be:

Representing: Westminster Junction Venture, LLC @ 435 Phalen Boulevard  
Name/Title: Mr. Richard Wicka – Manager (or successor)  
Address: c/o Frauenshuh HealthCare Real Estate Solutions, LLC  
7101 W. 78<sup>th</sup> Street  
City/State/Zip: Bloomington, MN 55439  
Telephone: (952) 829-3480  
E-Mail: [Richard.wicka@frauenshuh.com](mailto:Richard.wicka@frauenshuh.com)

Representing: HealthPartners East Side Holding, LLC @ 401 Phalen Boulevard  
Name/Title: Ms. Nancy A. McClure-Chief Operating Officer (or successor)

For notice purposes use the following:

Name: HealthPartners East Side Holding, LLC  
Address: Attn: Real Estate, MS 21106C, 8170 33<sup>rd</sup> Avenue So.  
City/State/Zip: Minneapolis, MN 55440-1309  
Telephone: (952) 883-5311  
Email: Maria.A.Maughn@HealthPartners.com

Representing: Hiway Federal Credit Union @ 840 Westminster Street  
Name/Title: Mr. Aaron Kastner – CFO (or successor)  
Address: 840 Westminster Street  
City/State/Zip: Saint Paul, MN 55130  
Telephone: (651) 291-1515  
E-Mail: [AKastner@Hiway.org](mailto:AKastner@Hiway.org)

Each individual Private Partner Representative hereby individually warrants that s/he is fully authorized to enter into and execute this Agreement on behalf of the owners of the properties, and to agree that the owners shall be fully bound to all terms and conditions of this Agreement without protest, and that this Agreement shall be binding upon all and all successors, representatives and assigns of each property owner.

## **6. Assignment; Amendment; Waiver; Contract Complete**

**6.1 Assignment.** None of the parties may assign or transfer any rights or obligations under this Agreement without the prior consent of the other parties and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office. Notwithstanding the foregoing, HealthPartners East Side Holding, LLC may assign its rights and obligations under this Agreement to an affiliate without the consent of any other party, but shall provide a written assignment agreement upon request.

**6.2. Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

**6.3. Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

**6.4 Contract Complete.** This Agreement contains all prior negotiations and agreements between the City and the Private Partners. No other understanding regarding this Agreement, whether written or oral, may be used to bind any of the parties.

## **7. Liability; Worker Compensation Claims**

**7.1** Each party is responsible for its own acts, omissions and the result thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof.

**7.2** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

## **8. Nondiscrimination**

Provisions of Minnesota Statutes 181.59 and any applicable law including but not limited to City ordinances relating to civil rights and discrimination are considered part of this Agreement.

## **9. Governing Law; Jurisdiction; Venue**

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## **10. Termination; Suspension**

**10.1 By Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties.

**10.2 Termination for Insufficient Funding.** The City may immediately terminate this Agreement if it does not obtain the local funding necessary to construct the project. Termination must be written or by fax notice to the Private Partners.

**10.3 Suspension.** In the event of a total or partial government shutdown, the City may suspend this Agreement and all work, activities and performance of work authorized through this agreement.

## **11. Force Majeure**

No party will be responsible to the others for a failure to perform under this agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

**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.

**PRIVATE PARTNERS**

Recommended for Approval:

Recommended for Approval:

By: \_\_\_\_\_  
(Director of Public Works)

By: \_\_\_\_\_  
HealthPartners East Side Holding, LLC –  
401 Phalen Boulevard  
Chief Operating Officer, Care Group

Date: \_\_\_\_\_

Approved as to form and execution:

By: \_\_\_\_\_  
(Assistant City Attorney)

By: \_\_\_\_\_  
Westminster Junction Venture, LLC  
By: Manager, DRF Westminster LLC  
435 Phalen Boulevard

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Mayor)

By: \_\_\_\_\_  
Hiway Federal Credit Union  
CFO  
840 Westminster Street

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Director of Financial Services)

Date: \_\_\_\_\_

**INCLUDE COPY OF THE CITY COUNCIL RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.**