

**JOINT POWERS AGREEMENT FOR CONSTRUCTION
OF METRO B LINE WITH CITY OF ST. PAUL, MINNESOTA**

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

BACKGROUND RECITALS

1. The Council plans to construct the METRO B Line, a 13-mile bus rapid transit (“BRT”) service generally along Lake Street in Minneapolis and Marshall Avenue and Selby Avenue in Saint Paul, which will include enhanced amenities, such as pre-boarding fare payment for faster stops, faster and more frequent service, enhanced security, real-time bus-schedule signs, and a more comfortable ride in larger, specialized vehicles (“ Project”).

2. Pursuant to Minnesota statutory law and administrative rule, including Minnesota Statutes section 237.163 and Minnesota Rules 7819.0050, *et seq.*, the City has rights-of-way management authority and has adopted a right-of-way management ordinance, St. Paul City Code Ch. 116.

3. Pursuant to Minnesota Statutes section 471.59, subd. 10, the City agrees to exercise its rights-of-way management authority in furtherance of the Project, if requested by the Council.

4. The City and the Council agree to work cooperatively for the efficient construction of the 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.

Permits and Right of Entry

1. The Council will construct the Project in the City generally along Marshall Avenue and Selby Avenue.

2. The City grants the Council and its contractor(s) the right to enter onto City property at no cost to the Council and its contractor(s), including any easements and rights-of-way the City currently owns or maintains, for construction of the Project. The Council or its contractor(s) will restore the properties to the approved plans and specifications. Any work not included in the approved plans and specifications for City-owned properties outside of the right-of-way will be subject to approval by the City. The Council or its contractor(s) will phase the work, and coordinate with the City to minimize interference with regular and typical use of the properties by the City.

3. The Council or its contractor(s) will apply for and obtain all applicable permits required by the City for construction of the Project and will follow all City policies regarding work done in the Right-of-Way.

4. The Council or its contractor(s) is responsible for obtaining all other applicable permits required for construction of the Project.

II. City Right-of-Way Management

The City will exercise its right-of-way management powers over all City rights-of-way necessary for the construction of the Project, including but not limited to those powers pertaining to the relocation of utilities within the City rights-of-way. In the event the Council's Project necessitates the City's use of its rights-of-way management powers, the Council will give notice to the City's authorized representative. The City will notify the Council in writing if the City changes its authorized contact person.

1. Within 14 calendar days of receiving the written notice the City will, following consultation with the Council and its contractor(s), exercise its rights-of-way management powers of relocation of utilities when necessary to enable the Council to complete construction of the Project.

III. General Provisions

1. A Party will send all notices or demands under this Agreement either by (a) certified mail; (b) e-mail, as long as the recipient acknowledges receipt in writing; or (c) delivered in person to the other Party addressed to the following authorized representatives:

Frank Alarcon (or successor)
Project Manager, BRT
Metro Transit
560 6th Avenue North
Minneapolis, MN 55411
frank.alarcon@metrotransit.org

Joseph Widing (or successor)
Senior Transportation Planner
City of Saint Paul
25 West Fourth Street
800 City Hall Annex
Saint Paul, MN 55102
joseph.widing@ci.stpaul.mn.us

The City and the Council will notify the other Party if the City or the Council designates a different authorized representative.

2. To the extent authorized by law each Party is responsible only for its own acts and omissions and the results of its acts and omissions. The City's and Council's liability is governed by the provisions of Minnesota Statutes, Chapter 466. For purposes of determining total liability of damages, the parties will be considered a single governmental unit pursuant to Minnesota Statutes section 471.59, subd. 1a(b) and the total liability of the Parties shall not exceed the limits on governmental liability for a single governmental unit as specified in Minnesota Statutes section

466.04.

3. All data collected, created, received, maintained, or disseminated for any purpose by the City and Council under this Agreement are governed by Minnesota Statutes, Chapter 13 (“Act”), and the Minnesota Rules implementing the Act.

4. This Agreement is the entire agreement between the Parties and supersedes all oral agreements and negotiations between the Parties relating to this Agreement

5. 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 this Agreement or of a future breach of this Agreement.

6. Any modifications to this Agreement will be in writing as a formal amendment executed by the Parties’ authorized signatories.

7. 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.

8. This Agreement terminates at the end of the Project construction or by the mutual agreement of the Parties.

9. The Council and the City are each authorized to enter into this Agreement pursuant to Council Business Item No. _____ approved on _____, and City Resolution No. _____, approved on _____.

10. This Agreement will be governed by the laws of the State of Minnesota. Any disputes resulting or arising from this Agreement will be venued in the courts located in Ramsey County Minnesota.

11. This Agreement may be executed in any number of counterparts, each of which is to be deemed to be an original and the counterparts together constitute one and the same Agreement. A physical copy or electronic copy of this Agreement, including its signature pages, will be binding, and deemed to be an original.

12. The parties agree that the electronic signature of a party to this Agreement be 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 writing 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.

13. This Agreement will be effective when both Parties' authorized signatories have signed it. The effective date of this Agreement will be the date this Agreement is signed by the last Party to sign it (as indicated by the date associated with that Party's signature).

Each Party is signing this Agreement on the date stated below that Party's signature.

DRAFT

METROPOLITAN COUNCIL

By: _____
Mary Bogie, Regional Administrator

Date: _____

CITY OF ST. PAUL

By: _____
Jaime Tincher, Deputy Mayor

Date: _____

By: _____
Sean Kershaw, Director of Public Works

Date: _____

By: _____
John McCarthy, Finance Director

Date: _____

Approved as to Form:

By: _____
Assistant City Attorney

Date: _____

