

Reference Numbers:

GBRT Project:

61402

Metropolitan Council:

19I069

PROJECT: GOLD LINE BUS RAPID TRANSIT PROJECT

AGREEMENT NAME: Master Funding Agreement – St. Paul Regional Water Services

PARTIES:

- **Metropolitan Council**
- **St. Paul Regional Water Services, State of Minnesota**

This Master Funding Agreement (“Agreement”) is entered into by and between the Metropolitan Council (“Council”), a public corporation and political subdivision of the State of Minnesota, and the Board of Water Commissioners of the City of St. Paul (“Board”), a municipal corporation under the laws of the State of Minnesota doing business as Saint Paul Regional Water Services (“SPRWS”), herein collectively referred to as the “Parties” and individually as a “Party.” This Agreement pertains to the Council’s proposed METRO Gold Line Bus Rapid Transit (“GBRT”) Project (the “Project”).

WHEREAS:

The Council, metropolitan-area cities, public agencies, and transit funders are engaged in activities to develop the Project. The proposed GBRT will directly serve five cities: St. Paul, Maplewood, Landfall, Oakdale, and Woodbury, all within Ramsey and Washington Counties (“Cities and Counties”). The GBRT will connect with the METRO Green Line Light Rail Transit at Union Depot and Central Station, both in St. Paul. As Project Development, Engineering and Construction progress, various agreements with the Cities, Counties, and other entities will be required.

1. The Council anticipates receiving grants from the Federal Transit Administration (“FTA”) for engineering and construction of the Project under a Full Funding Grant Agreement (“FFGA”) with the FTA.
2. The Council is a party to a Cooperative Funding Agreement for the Project Development phase (“PDP”) with Washington County, Ramsey County, and the Ramsey County Regional Railroad Authority for the Project.
3. The Council has received grants from the Counties Transit Improvement Board (“CTIB”) for Project activity in the PDP of the Project.
4. The Council has entered into a Capital Grant Agreement for Pre-engineering, Engineering, and Right of Way Acquisition (“Grant Agreement”) with the Gold Line Joint Powers Board, a joint powers board established by agreement among Ramsey County, Ramsey County Regional Railroad Authority, Washington County, and Washington County Regional Railroad Authority (“Joint Powers Board”).
5. SPRWS may be involved in certain activities or possibly provide materials in connection with and in support of the Project, and the Council may desire to pass through federal, CTIB, or local funds to SPRWS for costs associated with such Project activities or

materials.

6. SPRWS may provide funding for certain FFGA and non-FFGA components which may be designed or constructed as part of, or during, the PDP, Engineering and Construction phases. The details of these future actions will be captured in Subordinate Funding Agreements to this Agreement.
7. This Agreement is entered into between the Parties to provide a mechanism for the transfer of Project funds from the Council to SPRWS for activities undertaken by SPRWS for the Project (Part One), and for the transfer of SPRWS funds to the Council for components related to, but not currently part of, the Project (Part Two). In addition, this Agreement establishes general provisions applicable to transfers from either Party to the other (Part Three).

NOW, THEREFORE, the Parties agree as follows:

PART ONE

ARTICLE 1. PURPOSE

The purpose of Part One of this Agreement is to provide:

- a. A method for the transfer of funds from the Council to SPRWS for activities performed or materials supplied by SPRWS in connection with and in support of the Project; and
- b. Contractual provisions that address compliance with federal and state laws and regulations as well as Council procedures including, without limitation, federal requirements for the monitoring of SPRWS' Project activities using federal grant funds.

ARTICLE 2. SUBORDINATE FUNDING AGREEMENTS TRANSFERRING FUNDS FROM COUNCIL TO SPRWS

2.01 Transfer of Funds from Council to SPRWS. The Council will transfer Project funds to SPRWS for the Project activities performed by SPRWS. The transfer of funds from the Council to SPRWS shall be in accordance with Subordinate Funding Agreements executed in accordance with this Article 2, each of which shall state the specific purpose for the funds, SPRWS's responsibility with respect to those funds, and establish who will own any assets constructed or assets remaining upon completion of Project activities. Each such Subordinate Funding Agreement shall constitute a subrecipient or contractor agreement with the Council for the purposes of any federal grant funds transferred to SPRWS. The Council shall bear no responsibility for any costs incurred by SPRWS for the Project that exceed the amounts committed by Subordinate Funding Agreements as such agreements may from time to time be amended.

2.02 Subordinate Funding Agreements. In accordance with Section 2.01, the Parties shall enter into Subordinate Funding Agreements to facilitate the funding by the Council of Project activities to be performed by SPRWS. The Parties anticipate there may be multiple Subordinate Funding Agreements between them in connection with the Project. For purposes of

transferring funds from Council to SPRWS, each Subordinate Funding Agreement shall be in a form substantially similar to that attached as Exhibit A2 and shall follow and be subject to the terms of Part One and Part Three of this Agreement, unless expressly otherwise agreed to in writing. This Agreement does not create a specific financial obligation for either Party or require either Party to enter into any specific Subordinate Funding Agreements. No liability shall attach to either Party under this Agreement for refusing to enter into a Subordinate Funding Agreement.

2.03 Implementation of Subordinate Funding Agreements. The Council will only reimburse SPRWS for Project activities that are the subject of a Subordinate Funding Agreement. Prior to entering a contract with any third party (including for the acquisition of property rights) to accomplish SPRWS's reimbursable activities, or prior to authorizing any SPRWS employees to proceed with any reimbursable activities, SPRWS shall present a work scope (including a work schedule), staffing plan, and detailed budget for such services or expenditures to the Council for review and approval (the "Scope and Schedule"). This Scope and Schedule will form the basis of the Subordinate Funding Agreement.

2.04 Council Determination of Contractor or Subrecipient Relationship. The Council shall determine whether each Subordinate Funding Agreement is a subrecipient or contractor agreement. The Council shall state its determination in the Subordinate Funding Agreement. For subrecipient agreements, SPRWS will be responsible for compliance with applicable FTA laws, regulations, and deliverables, as well as all Grant Agreement requirements. For contractor agreements, the Council will be responsible for compliance with applicable FTA laws, regulations, and deliverables, as well as all Grant Agreement requirements.

2.05 Modifications of Subordinate Funding Agreements. The following provisions apply to modifications of any Subordinate Funding Agreement:

- a. Re-budgeting within an approved budget is allowable, as long as the budget is within the maximum amount of authorized funding.
- b. Modifications in work scope, if within the approved budget, are authorized when approved in writing by the Project Managers.
- c. Any other modifications to a Subordinate Funding Agreement shall require a written amendment of the Subordinate Funding Agreement executed by the Parties' duly authorized representatives.
- d. Modification requests should be sent to the Project Managers.

2.06 Transfer of Project Funds to SPRWS Under Subordinate Funding Agreements. The Council shall pay SPRWS under Subordinate Funding Agreements as follows:

- a. Unless specifically agreed to by the Parties under a particular Subordinate Funding Agreement, payment to SPRWS for Project costs under each Subordinate Funding Agreement shall be on a reimbursement basis based upon the submittal of invoices satisfactorily evidencing the expenditure of funds by SPRWS for the Project.
- b. Unless specifically agreed to otherwise by the Parties under a particular Subordinate Funding Agreement, SPRWS shall submit separate monthly invoices for each outstanding Subordinate Funding Agreement to the following address:

Attn: Accounts Payable

Gold Line Bus Rapid Transit Project Office
Metro Square Building
121 7th Place East, Suite 102
St. Paul MN 55101

- or to such other address or person as the Council may designate by notice in writing.
- c. Each invoice shall reference the sequential number of the Subordinate Funding Agreement under which the invoice is to be paid.
 - d. Each invoice shall include the following if the corresponding Subordinate Funding Agreement was determined by the Council to create a subrecipient relationship:
 - i. Subrecipient Payment Request Form (Form C-22A-GBRT) as shown in Exhibit B,
 - ii. Subrecipient Monthly Progress Report (Form GBRT P1) as shown in Exhibit B, and
 - iii. Itemization of the expenditures for which payment is requested using the Subrecipient Invoice Detail (Form GBRT F1) as shown in Exhibit B, along with supporting documentation.
 - e. Each invoice shall include the following if the corresponding Subordinate Funding Agreement was determined by the Council to create a contractor relationship:
 - i. GBRT Payment Request Form (either Engineering-Consultant or Construction)
 - 1) Engineering-Consultant Payment Request Form (Form C22A) as shown in Exhibit B for engineering related expenses, or
 - 2) Construction Payment Request Form (Form C21A) as shown in Exhibit B for construction related expenses,
 - ii. A description of activities undertaken in accordance with the Subordinate Funding Agreement, and
 - iii. An itemized list of the expenditures for which payment is requested, along with supporting documentation.
 - f. If a Disadvantaged Business Enterprise (“DBE”) goal applies to the Project activities performed under a Subordinate Funding Agreement, invoices shall include a DBE Reporting Form as shown in Exhibit B, or such other format as may be prescribed by the Council and shall include the information required by Section 4.06 “e.” of this Agreement.
 - g. After receipt of an invoice, the Council may request additional information from SPRWS regarding the invoice in order to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested or as required by the FTA for reporting purposes.
 - h. Upon receipt of an invoice and supporting documentation, the Council will make prompt payment of undisputed amounts as required by Minnesota Statutes, Section 471.425. Under either 2 C.F.R. § 200.305 or Minnesota Statutes, Section 471.425, the Council may dispute or deny part or all of any invoice payment request if it reasonably believes that the requested payment does not conform to the terms of this Agreement and the applicable Subordinate Funding Agreement. The Parties will promptly meet to review and discuss any disputed or denied payment requests and the

dispute resolution process outlined in Section 6.11 of this Agreement will ensue if the Parties cannot agree. If the Council does not pay the invoiced amount within 35 days of its receipt, the Council shall pay interest on the non-disputed amount at the rate of 1-1/2 percent per month.

- i. No invoice payment shall be made by the Council without prior amendment to the applicable Subordinate Funding Agreement, which would cause distribution of Project funds to exceed, cumulatively through such payment, the maximum amount of authorized funding under the applicable Subordinate Funding Agreement.
- j. Distribution of any funds to SPRWS pursuant to an invoice, or approval of any report, shall not be construed as a Council waiver of any SPRWS noncompliance with this Agreement or the applicable Subordinate Funding Agreement.

2.07 Repayment of Unauthorized Use of Project Funds. Upon a finding by the Council that SPRWS has made an unauthorized or undocumented use of Project funds, and upon a demand for repayment issued by the Council and supported by the reason for the finding, if SPRWS agrees, SPRWS shall promptly repay such amounts to the Council. If SPRWS disagrees, the Parties will promptly meet to review and discuss any challenged use of funds already paid and the dispute resolution process outlined in Section 6.11 will ensue if the Parties cannot agree. Neither Party shall be deemed to have waived any rights or remedies available under state law, federal law, common law, or otherwise.

2.08 Prompt Payment to Subcontractors. Consistent with Minnesota Statutes, Section 471.425, subdivision 4a, if SPRWS subcontracts any portion of the Project activity under this Agreement or Subordinate Funding Agreements, SPRWS shall pay such subcontractor within 10 days of SPRWS's receipt of payment from the Council for undisputed services provided by the subcontractor(s). SPRWS shall not, by reason of said payments, be relieved from responsibility for Project activity done by the subcontractor(s) and shall be responsible for all Project activity under this Agreement or Subordinate Funding Agreement which must be accepted by Council.

ARTICLE 3. REQUIREMENTS FOR PROJECT FUNDED ACTIVITY

3.01 Allowable Costs; Unspent Funds. SPRWS is authorized to use funds provided by the Council under this Agreement and per the terms of the Subordinate Funding Agreements only for allowable costs directly incurred for the Project. Allowable costs will be determined in accordance with the documents referenced in Section 4.05. Funds provided by the Council in Subordinate Funding Agreements may only be used for costs directly incurred:

- a. within the authorized work scope,
- b. during the project activity period, and
- c. in accordance with the approved budget for the funds.

Any funds provided to SPRWS under this Agreement and applicable Subordinate Funding Agreements which remain unspent after completion of the relevant Project activity shall be promptly repaid to the Council.

3.02 Documentation of Project Costs. All costs charged to the Project by SPRWS must be supported by proper documentation, including properly executed payrolls, time records,

invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges per the requirements of Section 4.02 of this Agreement.

3.03 Establishment of Capital Assets. If Capital Assets, as defined by the FTA and determined by the Council in a Subordinate Funding Agreement, are procured by or provided to SPRWS under a Subordinate Funding Agreement, invoices shall include an Asset Tracking Log as shown in Exhibit B, or such other format as may be prescribed by the Council.

3.04 Establishment and Maintenance of Project Information. SPRWS agrees to establish and maintain accurate, detailed, complete, and separate books, accounts, financial records, documentation, and inspection and quality assurance reports produced by SPRWS staff or contractors, and other evidence relating to the receipt and expenditure of all Project funds. All such Project information shall be established and maintained in accordance with generally accepted government accounting principles and practices and shall be retained intact by SPRWS until the latest of:

- a. complete performance of this Agreement and all Subordinate Funding Agreements;
- b. six years following the term of this Agreement and all Subordinate Funding Agreements;
- c. six years following the close out of the Project by the Council and the FTA; or
- d. if any litigation, claim, or audit is commenced during any such periods, when all such litigation, claims or audits have been resolved.

If SPRWS engages any contractors to perform any part of the Project activities, SPRWS shall include contract provisions requiring the contractor(s) to establish and maintain Project information in accordance with the provisions of this article and to allow audit of such information in the same manner provided with respect to SPRWS in this Section and Section 3.05.

The provisions of this Section 3.04 shall survive termination of this Agreement.

3.05 Reimbursed Costs Audit. The accounts and records of SPRWS relating to the reimbursable costs for the Project shall be audited in the same manner as all other accounts and records of SPRWS are audited. During the time of maintenance of information under Section 3.04, authorized representatives of the Council, and either the Legislative Auditor or State Auditor in accordance with Minnesota Statutes, Section 16C.05, subdivision 5, the United States Secretary of Transportation, the FTA Administrator, and the United States Comptroller General in accordance with 49 U.S.C. Section 5325(g) will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. Proper facilities for such access and inspection shall be provided by SPRWS.

The provisions of this Section 3.05 shall survive termination of this Agreement.

3.06 Use of Contractors. If SPRWS engages any contractors to perform any activities reimbursable by the Council under Part One of this Agreement, SPRWS agrees that the contract for such services shall include all of the following provisions. These requirements are in addition to other requirements for such contracts set forth in this Agreement.

- a. The contractor must maintain all records and provide all reporting as required by this Agreement.
- b. The contractor must defend, indemnify, and save harmless the Council from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted Project activity, caused in whole or in part by any negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable.
- c. The contractor must provide and maintain insurance in amounts and types of coverage appropriate to the contracted Project activity and naming the Council as an additional insured and provide to SPRWS a certificate of insurance evidencing such insurance coverage.
- d. The contractor must be an independent contractor for the purposes of completing the contracted Project activity.
- e. The contractor shall perform and complete the contracted Project activity in full compliance with this Agreement and all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the contracted Project activity.

3.07 Contract Information. SPRWS shall, in connection with any contract entered into for the Project:

- a. Keep the Council informed as to the progress of such contract;
- b. allow authorized representatives of the Council access to all meetings and documentation related to such contract;
- c. upon request promptly provide the Council with copies of correspondence between SPRWS and the contractor related to such contract; and
- d. in addition to terms specified in this Agreement, contract documents entered into with the contractor will include appropriate insurance, indemnification, and liability provisions as negotiated and accepted by SPRWS and the contractor. The Council expects the contract documents will include the following:
 - i. the contractor's insurance will list the Council as an additional insured under the contractor's policy with a minimum 30-day cancellation period;
 - ii. the contractor will defend and indemnify the Council;
 - iii. the Council will be a beneficiary of the performance and payment bonds;
 - iv. all warranties will extend to the Council; and
 - v. the Council will be a third-party beneficiary to the contract with the contractor which will give the Council the authority to enforce the provisions of the contract.

ARTICLE 4. FEDERAL AND GRANT AGREEMENT REQUIREMENTS

4.01 Federal and Grant Agreement Requirements. Monies that may be provided to SPRWS by the Council pursuant to this Agreement may be funded in whole or in part by the FTA. The requirements in this Article 4 are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Agreement. If any requirement in this article is inconsistent with a provision found elsewhere in this Agreement or any Subordinate Funding Agreement and is irreconcilable with such provision, the requirement in this Article 4 shall prevail.

4.02 Incorporation of Federal Grant and the Grant Agreement. As the Council receives federal grants and Joint Powers Board grants, including a potential Full Funding Grant Agreement for the Project, the Council will provide SPRWS with a copy of each grant. The terms of each grant and any amendments shall be automatically incorporated by reference into this Agreement without further action by the Parties. These grants are collectively referred to in this Agreement as the "Federal and Local Grants." When performing Project activity or expending funds for Project activities, SPRWS agrees to comply with all applicable terms and conditions of the Federal and Local Grants received by the Council with respect to the Project.

4.03 Incorporation of Specific Federal Requirements. Specifically, and without limitation, SPRWS agrees to comply with the federal requirements set forth in Exhibit C and agrees to require, unless specifically exempted, third party contractors at every tier to comply with the same.

4.04 Federal Certifications and Assurances; Execution and Incorporation. SPRWS agrees to comply with and to certify compliance with the most recent version of the federal *Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements* if the Council determines SPRWS is a subrecipient under a Subordinate Funding Agreement. SPRWS must certify compliance with the applicable provisions by signing the appropriate certification(s) and returning the signed certification(s) as part of the execution of the applicable Subordinate Funding Agreement. During the term of the applicable Subordinate Funding Agreement, the Council shall provide to SPRWS the annual Federal Certifications and Assurances document, which SPRWS shall execute and return to the Council.

4.05 Compliance with Federal Requirements; Incorporation of Specific Documents by Reference. SPRWS agrees to comply with all federal statutes, rules, FTA Circulars, and Executive Orders which may be applicable to the Federal Grants. In particular, SPRWS agrees to comply with the terms and conditions of the current version of the following documents when performing Project activity or expending funds for Project activities under this Agreement or any Subordinate Funding Agreement:

- a. *FTA Master Agreement*;
- b. *2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, as amended;
- c. *FTA Circular 5010.1E, Grant Management Requirements*, as amended;
- d. *FTA Circular 5200.1A Full-Funding Grant Agreements Guidance*, as amended;
- e. *FTA Circular 4220.1F Third Party Contracting Requirements*, as amended;

as such statutes, rules, circulars, and executive orders may hereafter be amended or modified. The listed documents are incorporated by reference into this Agreement. Copies of these documents are available on the FTA website (<https://www.transit.dot.gov/>) or, upon request by SPRWS, from the Council.

4.06 Third Party Contracts. If SPRWS decides to fulfill any of its obligations or duties under a Subordinate Funding Agreement through a third-party contract to be paid for by funds received under this Agreement, SPRWS agrees to the following provisions. These requirements are in addition to other requirements for such contracts set forth in this Agreement.

- a. **Compliance with Federal Procurement Requirements.** SPRWS will comply with all applicable federal law, rules, and guidance relating to such procurement including, without limitation, the provisions of the most current version of the *Third-Party Contracting Requirements*, FTA Circular 4220.1F, which document is incorporated by reference into this Agreement.
- b. **Certification of SPRWS's Procurement System.** SPRWS certifies that its procurement system complies with the standards described in the previous paragraph.
- c. **Council Approval of Contracts.** SPRWS shall not execute any third-party contract or otherwise enter into a binding agreement until it has first received written approval from the Council. The Council's approval of any such third-party contract is solely for the benefit of the Council and shall not relieve SPRWS of the responsibility to ensure that such contracts are in the proper form and include all state and federal requirements. Additionally, a Subrecipient Contract Initiation Memo, as shown in Exhibit B, is required to be executed prior to any procurement over \$50,000. Requests to enter into agreements should be sent to the Project Manager.
- d. **Inclusion of Provisions in Lower Tier Contracts.** SPRWS agrees to include adequate provisions to ensure compliance with applicable federal requirements in each lower tier subcontract financed in whole or in part with monies from the Project provided under this Agreement including all applicable provisions of this Agreement. Exhibit C provides the provisions to be included in such subcontracts.
- e. **Disadvantaged Business Enterprise (DBE) Requirements.** For all Project activity performed under Part One of this Agreement, SPRWS will comply with the Council's DBE Program. In particular, SPRWS agrees to comply with the requirements of the Council's "Disadvantaged Business Enterprise Pass Through Agreement and Program" document which is attached to and made a part of this Agreement as Exhibit D. For the purpose of Exhibit D, the following provisions apply:
 - i. The Metropolitan Council DBE Liaison Officer, or designated staff, shall act as SPRWS DBE Liaison Officer for the purposes of Project activity under Part One of this funding Agreement.
 - ii. SPRWS agrees to submit to the Council for review, approval, and establishment of the appropriate DBE goal a Subrecipient Contract Initiation Memo, as shown in Exhibit B, for all procurements in excess of \$50,000. Noncompliance with DBE requirements may result in sanctions, including ineligibility for reimbursement pursuant to 2 C.F.R. § 200.305.

- iii. SPRWS will provide reports to the Council reflecting all invoices paid on procurements for which a DBE goal has been established and identifying all DBE activity on such procurements.
 - iv. SPRWS will report DBE activity, on the Disadvantage Business Enterprise Reporting Form, to the Council on other purchase orders and invoices not included above with each Request for Payment.
 - v. DBE eligibility will be based on the most recent DBE Directory from the Minnesota Unified Certification Program (<https://mnucp.metc.state.mn.us/>).
- f. **Federal Procurement Basics.** SPRWS remains responsible for conforming its procurement processes to all applicable federal requirements for funds received from the Council under this Agreement and any Subordinate Funding Agreement.

4.07 Provisions Subject to Change. SPRWS acknowledges that federal requirements in this Article 4 are subject to change and agrees that the most recent of these requirements shall govern this Agreement at any particular time.

4.08 No Federal Obligation. Monies provided under this Agreement may be financed in whole or in part by federal funds. However, payments to SPRWS will be made by the Council. Pursuant to the Federal Transit Administration Master Agreement Section 2(f), the United States is not a party to this Agreement and no reference in this Agreement to the United States, the United States Department of Transportation, the FTA, or any representatives of the federal government makes the United States a party to this Agreement. SPRWS shall include this clause in any contracts or agreements entered into pursuant to this Agreement.

4.09 Special Reporting Requirements. The Council is required to report to the FTA and the Joint Powers Board regarding the Project activities. Accordingly, SPRWS agrees to provide the Council with any additional or follow-up information reasonably requested by the Council, in order to meet the Council's FTA reporting requirements.

PART TWO

ARTICLE 5. SUBORDINATE FUNDING AGREEMENT TRANSFERRING FUNDS FROM SPRWS TO COUNCIL

5.01 Purpose. The purpose of this Part Two is to provide a method for transferring SPRWS funds to the Council for components related to but currently not part of the Project, should any such payment be authorized by SPRWS.

5.02 Transfer of Funds Requires Subordinate Funding Agreement. SPRWS may provide funding for components related to but not part of the Project through the transfer of funds to the Council. Each such transfer of funds to the Council from SPRWS shall be in accordance with one or more duly executed Subordinate Funding Agreements, each of which shall define the amount of funds committed by SPRWS to the Council, specify the purpose for the funds, and establish which Party will own the asset constructed or remaining upon completion of the Project activity.

5.03 Subordinate Funding Agreements. To facilitate funding by SPRWS in accordance with Section 5.01, the Parties shall enter into Subordinate Funding Agreements. Subordinate Funding Agreements shall be in a form similar to Exhibit A1 and shall follow and be subject to the terms of Parts Two and Three of this Agreement, unless expressly otherwise agreed to in writing. In spite of any other provisions of this Agreement, this Agreement does not create a specific financial obligation for either Party or to require either Party to enter into any specific Subordinate Funding Agreements, and no liability shall attach to either Party under this Agreement for refusing to enter into one or more subsequent Subordinate Funding Agreements.

5.04 Implementation of Subordinate Funding Agreements. SPRWS will only reimburse the Council for components related to the Project that are the subject of a Subordinate Funding Agreement. Prior to entering into a contractual obligation with any third party (including for the acquisition of property rights) to accomplish the Council's obligations reimbursable by SPRWS, or prior to authorizing any Council employees to proceed with any reimbursable actions, the Council shall present a work scope (including a work schedule), staffing plan, and detailed budget for such services or expenditures to SPRWS for review and approval.

5.05 Modifications of Subordinate Funding Agreements. The following provisions apply to any modifications in a particular Subordinate Funding Agreement:

- a. Re-budgeting within an approved budget is allowable, as long as the budget is within the maximum amount of authorized funding.
- b. Modifications in work scope, if within the approved budget, are authorized when approved in writing by SPRWS's Assistant Engineer, or such other person as SPRWS may designate by notice to the Council.
- c. Any other modifications in a particular Subordinate Funding Agreement, including any increase in the maximum amount of authorized funding or changes in the applicable activity period, shall require a formal amendment of the Subordinate Funding Agreement executed by the Parties.

5.06 Transfer of Funds to the Council Under Subordinate Funding Agreements. SPRWS shall pay the Council under Subordinate Funding Agreements as follows:

- a. Unless specifically agreed to otherwise by the Parties under a particular Subordinate Funding Agreement, payment to the Council for costs under each Subordinate Funding Agreement shall be on a reimbursement basis after the submittal of invoices evidencing the expenditure of funds by the Council.
- b. The Council shall submit separate monthly invoices for each outstanding Subordinate Funding Agreement to the following address:

St. Paul Regional Water Resources
Accounts Payable
Attn: Brent Marsolek
1900 Rice Street
St. Paul MN 55113

or to such other address or person as SPRWS may designate in writing.

- c. Unless the Parties otherwise agree, the Council shall submit each invoice to SPRWS in the standard Council format and shall reference the sequential number of the Subordinate Funding Agreement under which the invoice is to be funded.
- d. Each invoice must include:
 - i. A description of activities undertaken in accordance with the Subordinate Funding Agreement;
 - ii. An itemized list of the expenditures for which payment is requested; and
 - iii. Supporting documentation.
- e. The Council shall add a 3% administrative fee to each invoice to be paid by SPRWS. The Council reserves the right to adjust the fee percentages on an annual basis as amended in a Subordinate Funding Agreement. If this Agreement or the Subordinate Funding Agreement is terminated, SPRWS shall be entitled to reimbursement of any unused portions of the above fee.
- f. After receipt of an invoice, SPRWS may request additional information from the Council regarding the invoice to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested.
- g. SPRWS shall pay the Council the approved invoice amount within 35 days of its receipt. SPRWS may dispute all of or any part of an invoice if it reasonably believes that the requested payment does not conform to the terms of this Agreement or the applicable Subordinate Funding Agreement. If disputed, the Parties will promptly meet to review and discuss the disputed or denied payment requests and the dispute resolution process outlined in Section 6.11 of this Agreement will ensue if the Parties cannot agree. Unless SPRWS has disputed the payment of an invoice, if SPRWS does not pay the invoiced amount within 35 days of its receipt, the Council shall charge, and SPRWS shall pay interest on the non-disputed amount at the rate of 1-1/2 percent per month. SPRWS shall not withhold the payment of any amount that is not in dispute.
- h. No invoice payment shall be made by SPRWS without prior amendment to the applicable Subordinate Funding Agreement, which would cause the distribution of funds to exceed, cumulatively through such payment, the maximum amount of authorized funding under the applicable Subordinate Funding Agreement.
- i. SPRWS's payment of any invoices or approval of any reports shall not constitute a waiver of any Council noncompliance with this Agreement or the applicable Subordinate Funding Agreement.

5.07 Repayment of Unauthorized Use of Funds. Upon a finding by SPRWS that the Council has made an unauthorized or undocumented use of SPRWS funds, and upon a demand for repayment issued by SPRWS and supported by the reason for the finding, if the Council agrees, the Council shall promptly repay such amounts to SPRWS. If the Council disagrees, the Parties will promptly meet to review and discuss any challenged use of funds already paid and dispute resolution pursuant to Section 6.11 will ensue if the Parties cannot agree. Neither Party shall be deemed to have waived any rights or remedies available under state law, federal law, common law or otherwise.

5.08 Use of Funds; Allowable Costs. The Council is authorized to use funds provided by SPRWS under this Agreement only for costs directly incurred under a specific Subordinate Funding Agreement. Funds provided by SPRWS under Subordinate Funding Agreements may only be used for costs directly incurred:

- a. Within the authorized work scope;
- b. During the specified activity period; and
- c. In accordance with the approved budget for the funds.

5.09 Documentation of Costs. All reimbursable costs charged to SPRWS by the Council must be supported by proper documentation, including properly executed payrolls, time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges.

5.10 Establishment and Maintenance of Information. The Council agrees to establish and maintain accurate, detailed, complete, and separate books, accounts, financial records, documentation, and other evidence relating to the receipt and expenditure of all funds from SPRWS. All such information shall be established and maintained in accordance with generally accepted government accounting principles and practices and shall be retained intact by the Council until the latest of:

- a. Complete performance of this Agreement and all Subordinate Funding Agreements;
- b. Six years following the term of this Agreement and all Subordinate Funding Agreements;
- c. Six years following the close out of the Project by the Council and the FTA; or
- d. If any litigation, claim, or audit is commenced during any such periods, when all such litigation, claims or audits have been resolved.

If the Council engages any contractors to perform any part of the activities reimbursable by SPRWS, the Council agrees that the contract for such services shall include provisions requiring the contractor to establish and maintain information in accordance with the provisions of this Article and to allow audit of such information in the same manner provided with respect to the Council in this Section 5.10.

The provisions of this Section 5.10 shall survive termination of this Agreement.

5.11 Audit. The accounts and records of the Council relating to costs reimbursable by SPRWS shall be audited in the same manner as all other accounts and records of the Council are audited. During the time of maintenance of information under Section 5.10, authorized representatives of SPRWS; the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, Section 16C.05, subdivision 5; the United States Secretary of Transportation; the FTA Administrator, and the United States Comptroller General in accordance with 49 U.S.C. Section 5325(g); will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. Proper facilities for such access and inspection shall be provided by the Council.

The provisions of this Section 5.11 shall survive termination of this Agreement.

5.12 Use of Contractors. If the Council engages any contractors to perform any activities reimbursable by SPRWS under Part Two of this Agreement, the Council agrees that the contract for such services shall include all of the following provisions. These requirements are in addition to other requirements for such contracts set forth in this Agreement.

- a. The contractor must maintain all records and provide all reporting as required by this Agreement.
- b. The contractor must defend, indemnify, and save harmless SPRWS from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted Project activity, caused in whole or in part by any negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable.
- c. The contractor must provide and maintain insurance in amounts and types of coverage appropriate to the contracted Project activity and naming SPRWS as an additional insured and provide to the Council a certificate of insurance evidencing such insurance coverage.
- d. The contractor must be an independent contractor for the purposes of completing the contracted Project activity.
- e. The contractor shall perform and complete the contracted Project activity in full compliance with this Agreement and all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the contracted Project activity.

5.13 Contract Information. The Council shall, in connection with any contract entered into for reimbursable Project activity under Part Two of this Agreement:

- a. Keep SPRWS informed as to the progress of such contract;
- b. allow authorized representatives of SPRWS access to all meetings and documentation related to such contract;
- c. upon request, promptly provide SPRWS with copies of correspondence between the Council and the contractor related to any such contract; and
- d. in addition to terms specified in this Agreement, contract documents enter into with the contractor will include appropriate insurance, indemnification, and liability provisions as negotiated and accepted by the Council and the contractor. SPRWS expects the contract documents will include the following:
 - i. the contractor's insurance will list SPRWS as an additional insured under the contractor's policy with a minimum 30-day cancellation period;
 - ii. the contractor will defend and indemnify SPRWS;
 - iii. SPRWS will be a beneficiary of the performance and payment bonds;
 - iv. all warranties will extend to SPRWS; and
 - v. SPRWS will be a third-party beneficiary to the contract with the contractor which will give SPRWS the authority to enforce the provisions of the contract.

PART THREE

ARTICLE 6. GENERAL PROVISIONS

6.01 Purpose. The purpose of this Part Three is to establish the general provisions that apply to this Agreement and each Subordinate Funding Agreement executed by the Parties hereafter.

6.02 Independent Contractors. The Parties agree that any and all persons employed by or on behalf of a Party to perform any Project activity or duties as an agent of a Party under this Agreement shall not be considered employees of the other Party. Any and all claims that may or might arise under the Workers' Compensation Act of Minnesota on behalf of said employees or persons while so engaged, and any and all claims made by any third person as a consequence of any act or omission on the part of said employees or persons while so engaged in any of the Project activity contemplated in this Agreement, shall not be the obligation or responsibility of the other Party. This Agreement is not intended to constitute an interchange of government employees within the meaning of Minnesota Statutes, Section 15.51, *et seq.*

6.03 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all oral agreements and negotiations between the Parties relating to the subject matter of this Agreement. As stated herein, this Agreement depends upon one or more Subordinate Funding Agreements for the actual authorization of Project activity or transfer of any reimbursements and the terms of any subsequent Subordinate Funding Agreements shall be considered together with this Agreement.

6.04 Non-Waiver of Immunity and Limits. Nothing in this Agreement shall be construed to waive the immunities or liability limits provided in Minnesota Statutes, Chapter 466, or other applicable state or federal law. The provisions of Minnesota Statutes, Section 471.59, subdivision 1a, specifically apply to this Agreement.

6.05 Amendments. The terms of this Agreement and any Subordinate Funding Agreement may be changed only by mutual agreement of the Parties. Such changes shall be effective only upon the execution of written amendments signed by the Parties' duly authorized representatives.

6.06 Non-Waiver. The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement or any Subordinate Funding Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.

6.07 Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either Party.

6.08 Assignment Prohibited. Neither Party shall assign their obligations under this Agreement.

6.09 Time. The Parties agree that all obligations undertaken under this Agreement, and with respect to any subsequent Subordinate Funding Agreements entered into by the Parties, will be diligently performed in a manner consistent with the proper exercise of professional care and with due consideration to Project timelines and constraints.

6.10 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be:

- a. Delivered in person;
- b. Deposited postage prepaid in the certified mails of the United States, return receipt requested;
- c. Delivered by a nationally recognized overnight or same-day courier service that obtains receipts; or
- d. Delivered via email attachment.

Such communications shall be directed to the individuals specified below or to such other persons and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance with this section. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

For the Council:

Christine Beckwith, Sr. Project Manager (or her successor)
Metro Gold Line Bus Rapid Transit Project Office
Metro Square Building
121 7th Place East, Suite 102
St. Paul MN 55101
Phone: 651-602-1994
E-mail address: christine.beckwith@metrotransit.org

For SPRWS:

Brent Marsolek, Agreements Unit Supervisor
St. Paul Regional Water Resources
1900 Rice Street
St. Paul MN 55113
Phone: 651-266-6810
E-mail address: brent.marsolek@ci.stpaul.mn.us

6.11 Dispute Resolution. A dispute resolution process shall be used for any unresolved issue, dispute or controversy between the Parties before any legal remedies are exercised. The dispute resolution process contains a three-level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. SPRWS is represented from Level 1 to 3 in the following order: SPRWS Project Engineer, SPRWS Engineering Division Manager, and SPRWS General Manager. The Council is represented from Level 1 to 3 in the following order: Deputy General Manager, General Manager, and Regional Administrator. At each level, representatives of the Parties shall meet and continue to explore resolution until either Party determines, in good faith, that effective

resolution is not possible at the current level and notifies the other Party that the process is elevated to the next level. If either or both Parties make such a determination at any point during issue resolution at Level 3, then the dispute resolution process has been exhausted.

6.12 Project Manager. The Council's Project Manager for purposes of administration of this Agreement, and any Subordinate Funding Agreements entered into pursuant to this Agreement, is the person whose title is listed in Section 6.10, or such other person designated in writing by the Council's Regional Administrator. SPRWS's Project Manager for purposes of administration of this Agreement and any Subordinate Funding Agreements entered into pursuant to this Agreement is the person whose title is listed in Section 6.10, or such other person designated in writing by SPRWS. SPRWS's Project Manager shall:

- a. Coordinate the carrying out of SPRWS's obligations under this Agreement;
- b. Coordinate Subordinate Funding Agreement work scope activities with the Council's Project Manager;
- c. Attend meetings called by the Council's Project Manager for Project staff; and
- d. Complete training to be provided by the Council with respect to Council and federal requirements under this Agreement and any Subordinate Funding Agreements entered into pursuant to this Agreement.

Unless specifically and duly authorized by the Parties' respective governing bodies or adopted administrative procedures, the Parties' Project Managers are not authorized to execute amendments to this Agreement or amendments to any Subordinate Funding Agreement.

6.13 Applicable Law and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Minnesota. Venue for all legal proceedings arising out of or relating to this Agreement or any associated Subordinate Funding Agreements, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

6.14 Effective Date and Termination. This Agreement shall be effective on the date when both Parties' duly authorized representatives have signed this Agreement. This Agreement or a Subordinate Funding Agreement shall terminate upon the earliest of:

- a. Completion of construction of the Project and reimbursement of all costs provided for in this Agreement and all Subordinate Funding Agreements;
- b. A determination by the Council that the Project or Project activities funded under a Subordinate Funding Agreement cannot proceed;
- c. A determination by SPRWS that a Subordinate Funding Agreement transferring SPRWS funds to the Council cannot proceed, however this Agreement may not be terminated if a Subordinate Funding Agreement is outstanding;
- d. A determination by the Council that sufficient funds do not exist, or are not reasonably projected to exist, in order to complete the Project or a Subordinate Funding Agreement; or
- e. The Council providing 90 days advance written notice to SPRWS that it is terminating this Agreement or any Subordinate Funding Agreement.

SPRWS agrees that Project closeout or termination of this Agreement or any particular Subordinate Funding Agreement does not invalidate continuing obligations imposed on SPRWS by this Agreement or such Subordinate Funding Agreements or any agreements entered into pursuant to this Agreement or a Subordinate Funding Agreement. Project closeout or termination of this Agreement does not alter the Council's authority to disallow costs and recover funds on the basis of a later audit or other review and does not alter SPRWS's obligation to return any funds determined to be due to the Council.

The Council agrees that Project closeout or termination of this Agreement or any particular Subordinate Funding Agreement does not invalidate continuing obligations imposed on the Council by this Agreement or such Subordinate Funding Agreements or any agreements entered into pursuant to this Agreement or a Subordinate Funding Agreement. Project closeout or termination of this Agreement does not alter SPRWS's authority to disallow costs and recover funds on the basis of a later audit or other review and does not alter the Council's obligation to return any funds determined to be due to SPRWS.

6.15 Exhibits. All attached exhibits are incorporated into and made a part of this Agreement.

6.16 Breach by SPRWS. If SPRWS materially breaches the terms, covenants, or conditions which this Agreement requires SPRWS to perform, the Council will notify SPRWS of the breach within a reasonable time after the Council becomes aware of the breach. SPRWS will then be given a reasonable time period to cure the breach. If the breach is not cured within 90 days, then senior management from SPRWS and the Council will meet in good faith to discuss the breach and the measures necessary to remedy it. If the meeting between senior management from the Council and SPRWS does not result in a cure or a plan to effect a cure that is satisfactory to the Council, then the Council may terminate this Agreement upon 90 days' written notice to SPRWS. If circumstances dictate that the breach must be cured immediately, and the Council is forced to cure the breach, SPRWS will reimburse the Council for the reasonable costs of effecting the remedy. The Council retains the right to collect any damages from SPRWS that occurred as a result of SPRWS's breach.

6.17 Breach by Council. If the Council materially breaches any of the terms, covenants, or conditions which this Agreement requires the Council to perform, SPRWS will immediately notify the Council of the breach. The Council will then be given a reasonable time period to cure the breach. If the breach is not cured within 90 days, then senior management from SPRWS and the Council will meet in good faith to discuss the breach and the measures necessary to remedy it. If the meeting between senior management from the Council and SPRWS does not result in a cure or a plan to effect a cure that is satisfactory to SPRWS, then SPRWS may terminate this Agreement upon 90 days' written notice to the Council. If circumstances dictate that the breach must be cured immediately, and SPRWS is forced to cure the breach, the Council will reimburse SPRWS for the reasonable costs of effecting the remedy.

6.18 Data Practices. The Parties will comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data created, collected, received, stored, used, maintained, or disseminated under this Agreement.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW.]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates indicated below. Furthermore, this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

METROPOLITAN COUNCIL

By: _____

Its: _____

Date: _____

Approved as to form:

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

By: _____
Stephen P. Schneider, General Manager
Saint Paul Regional Water Services

By: _____
Matt Anfang, President

Date: _____

Date: _____

By: _____
Lisa Veith
Assistant City Attorney

By: _____
Mollie Gagnelius
Secretary

Date: _____

Date: _____

By: _____
John McCarthy
Interim Director, Office of Financial Services

Date: _____

LIST OF EXHIBITS

Exhibit	Description
A1	Form of Subordinate Funding Agreement (SPRWS to pay Council)
A2	Form of Subordinate Funding Agreement (Council to pay SPRWS)
B	Sample Forms
C	Specific Federal Requirement – “Federal Clauses”
D	Disadvantaged Business Enterprise Pass Through Agreement and Program
E	Capital Grant Agreement between Metropolitan Council and Gold Line Joint Powers Board