

**JOINT POWERS AND CONSTRUCTION COOPERATION AGREEMENT FOR
CONSTRUCTION OF GOLD LINE BRT PROJECT AND
CONCURRENT NON-PROJECT ACTIVITIES
REQUESTED BY CITY OF SAINT. PAUL**

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 body politic and corporate under the laws of the State of Minnesota (“City”).

BACKGROUND RECITALS

1. The Council plans to construct the METRO Gold Line Bus Rapid Transit Project, which will directly serve five cities: Saint Paul, Maplewood, Landfall, Oakdale, and Woodbury, all within Ramsey and Washington Counties (“the Council Project”).

2. The City desires to construct a sewer separation project adjacent to Conway Street, additional pedestrian-scale lighting, twin sanitary sewer replacement, signal conduit, and private sewer services adjacent to roadway reconstruction, to be funded by the City and delivered by the Council (“the City Project”).

3. Both Council and City desire that the City Project be constructed in conjunction with the Council Project to minimize cost to both projects, minimize community impacts and disruption, and delivery a high-quality project.

4. Therefore, the City desires to have the Council construct the City Project contemporaneously with the Council Project (“the Combined Project”).

5. Pursuant to Minn. Stat. § 471.59, the City and the Council agree to exercise certain powers on behalf of the other as more fully set forth herein, with the Council conducting activities relating to acquisition of the necessary property interests for the Combined Project through direct negotiation and condemnation, if necessary.

6. Pursuant to Minn. Stat. § 117.016, Subd. 1, the Council and the City may enter into an agreement for the joint acquisition of land by eminent domain proceedings.

7. In carrying out this Agreement, the Council will use the statutory powers in Minn. Stat. § 471.59 and Minn. Stat. § 117.016 singly or in combination as appropriate to the acquisitions provided for herein.

8. Pursuant to Minn. Stat. § 117.016, Subd. 2, the purpose of the land acquisitions for the City Project and the Council Project are stated in this Agreement.

9. Pursuant to Minnesota statutory law and administrative rule, including Minn. Stat. § 237.163 and Minn. R. 7819.0050, et seq., the City has rights-of-way management authority and has adopted a right-of-way management ordinance, City of Saint Paul Code of Ordinances, Title

XII: Streets, Sidewalks, Bridges, Other Public Ways, Chapter 116: Right-of-Way Administration.

10. In furtherance of the Combined Project, the City will exercise its rights-of-way management powers and permit authority.

11. The City and Council are currently negotiating and intend to enter into a Subordinate Funding Agreement for funding of the City Project.

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

AGREEMENT

I.

Purpose of Agreement

1. This Agreement describes the responsibilities of each of the parties for design and construction of the Combined Project, as generally described in the Recitals.

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

3. The scope of the City Project is:

- Sewer separation project adjacent to Conway Street
- Additional pedestrian-scale lighting adjacent to roadway reconstruction
- Twin sanitary sewer replacement along Hudson Road
- Signal conduit along TH 61/Etna Street
- Private sewer services adjacent to roadway reconstruction

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

5. A list of parcels subject to this Agreement is included in Exhibit B to this Agreement. Minor revisions to this list may be required upon completion of the design process. After design is completed, the Council will prepare a revised Exhibit B including a final list of necessary parcels and provide it to the City. The parties will substitute the revised Exhibit B, as agreed by the Council and the City, for the Exhibit B attached to this Agreement without any amendment to this Agreement.

6. The Recitals, and any referenced exhibits or attachments, are incorporated into this Agreement.

II.
Construction Documents

1. The Council or its agents will have a Registered Professional Engineer licensed in the State of Minnesota prepare and certify the necessary detailed construction documents for the Council and the City Projects (“Combined Project Construction Documents”). The approved Combined Project Construction Documents will be incorporated into the bidding documents for the Council and City Project. The Combined Project Construction Documents will contain plans and specifications and a schedule for construction of the City Project suitable for use by proposed contractors in the preparation of their bids. The Combined Project Construction Documents will use the most current industry standards and practices and be in compliance with all laws governing both the City Project and Council Project.

2. The Council retains ownership of all original Project Construction Documents and will provide an electronic copy to the City at no cost.

III.
Easements, Permits, and Rights-of-Way

1. The City gives the Council, at no cost to the Council, the right to enter onto any City easements or rights-of-way, for construction of the Combined Project and for the purpose of the Council fulfilling this Agreement. The City and Council will enter separate agreements for the temporary easements on City Property which shall govern the rights and obligations of the parties with respect to City Property.

2. Subject to the provisions of this Section, the Council will acquire (i) all property interests it needs for the construction of the Council Project (“Council Project Acquisitions”), except those property interests identified in Section III, Paragraph 1 above; (ii) all property interests needed for the City Project (“City Project Acquisitions”); and (iii) all property interests where one or more parcels include overlapping City and Council acquisitions (“Combined Parcels Acquisitions”). All City Project Acquisitions and the City part of any Combined Parcels Acquisitions shall be made in the name of the City or transferred to the City by appropriate conveyance.

In the event the City Project Acquisitions or the City part of any Combined Parcels Acquisitions requires the use of condemnation, the City agrees to and authorizes the Council to include such acquisitions in a condemnation petition.

All Council Project Acquisitions shall comply with all applicable federal law and procedures, including 42 U.S.C. Chapter 61, the Uniform Relocation Act, and the Federal Transit Administration (FTA) Award Management Requirements Circular (FTA Circular 5010).

The City Project Acquisitions, Council Project Acquisitions and Combined Parcels Acquisitions are set forth on Exhibit B.

Except as otherwise stated in this Agreement, the Council will be responsible for performance of all administrative and legal tasks and costs associated with the City Project Acquisitions and the Combined Parcels Acquisitions whether through direct purchase or condemnation, necessary for the construction and completion of the Combined Project.

3. The Council or its contractor will apply for and obtain all permits required by the Council for construction of the Combined Project.

4. The Council is responsible for getting all other permits associated with construction of the Combined Project.

5. The City will exercise its permit authority over any City permits as necessary for the construction of the Combined Project.

6. The City will exercise its right-of-way management authority over all City rights-of-way as necessary for the construction of the Combined Project, including but not limited to those powers pertaining to the relocation of utilities within the City rights-of-way.

IV. Procedure for Acceptance of Bids

1. **Bidding Procedure.** The Council will advertise for bids for the work and construction of the Combined Project, receive and open bids and may enter into one or more construction contract(s) with the successful bidder(s) in accordance with applicable law. The bidding documents shall be in a format acceptable to the City and shall clearly define the City's participating share of construction costs. After opening the bids, the Council will give the City a written tabulation of the bids with the Council's recommendation for selection of the lowest responsible bidder. In the event that the Council does not award the Combined Project due to higher than expected bids, the Council will consult with the City on the possibility of rebidding the Combined Project. The City and Council are currently negotiating and intend to enter into a Subordinate Funding Agreement in which the City and Council shall further define the bidding procedure and costs for the City Project and the Combined Project.

2. **Council decision not to award Combined Project.** If the Council decides not to award the Combined Project, this contract terminates without further liability between the parties.

V. Construction and Contract Administration

1. The Council will require that the contractor to construct the City Project according to the Combined Project Construction Documents. At least 14 days before the contractor begins

work on the Combined Project, the Council will give written notice to the City that the contractor will begin construction by sending notice to:

City of Saint Paul Contact

Reuben Collins, PE
25 West 4th Street
1500 City Hall Annex
Saint Paul, MN 55102
651-266-6059
reuben.collins@ci.stpaul.mn.us

2. The Council or its agents will perform and direct all construction supervision, contract administration, and inspections required to complete the Combined Project.

3. The City's authorized representative, or their designee identified to the Council in writing, may observe the work during the construction of the City Project, but the City's authorized representative is not responsible for supervising the City Project. When observing the work, the City's authorized representative will cooperate with the Council's Engineer or designated representative. The City's authorized representative will be available to the Council at all times during construction of the City Project. The City will designate an authorized representative with the authority and experience to make decisions concerning the construction of the City Project so as not to delay construction of the Council Project or the Combined Project.

4. If after installation, the City determines that any portion of the City Project was not constructed substantially in accordance with the City Project Construction Documents, the City's authorized representative will inform the Council of the deficiency within 7 days. The City's notice to the Council will also explain why the portion of the City Project does not conform to the City Project Construction Documents and the actions the City believes the contractor must take to correct the deficiency. The Council will require the contractor to make the corrections to meet the requirements of the City Project Construction Documents.

5. The City's authorized representative will participate in the inspection of the City Project for substantial completion. Within 7 days of any substantial completion inspection, the City will provide the Council the punch list items that need to be addressed before final completion of the City Project. If the City does not provide punch list items within 7 days, the contractor's work will be deemed accepted.

6. The Council will inform the City in writing of final completion of construction (including the punch list items) of the City Project. Within 7 days of receiving the Council's written notice, the City will inform the Council in writing whether the City Project conforms to the City Project Construction Documents. The City makes the final decision on whether the contractor's City Project work conforms to the City Construction Documents. In order to accept the work on the City Project, the City must provide the Council a letter from the **City Engineer**. Notwithstanding the foregoing, if the City does not respond to the Council's written notice within

7 days, the City Project construction is deemed to have conformed to the City Project Construction Documents.

7. The City will participate in the claims process on the Combined Project for the following types of contractor claims:

- (a) Project delays relating in any way to site conditions;
- (b) City requests for changes or modifications to any construction documents (City Project, Council Project, or Combined Project); and
- (c) Project delays caused by untimely response to the inspection requirements in Section V.

The City will pay the portion of any claim that relates to the acts of the City.

VI. Modifications to Construction Documents

1. The Council may make minor changes in the City Project Construction Documents and the Combined Project Construction Documents if the changes are necessary to complete construction. The Council may also enter into any change orders or supplemental agreements with the contractor on the Combined Project to incorporate these changes in the City Project or Combined Project Construction documents. These changes may result in a change to the City's cost participation described in Section VII.

2. The Council will give the City's authorized representative all proposed amendments and material changes to the City Project Construction Documents. The City will review the documents and communicate in writing its acceptance or rejection to the Council within 7 days. The Council will not amend or change the City Project Construction Documents until it receives the City's written acceptance.

3. The City may make changes to the City Project if all of the following occur:
- (a) The City gives the Council 7 days written notice;
 - (b) The City bears its proportionate share of the costs; and
 - (c) The change does not increase the cost or delay completion of the Council Project, as defined by Council's authorized representative.

VII.
Warranties/Maintenance

1. The City Project bonds and warranties will be issued in the name of the Council and the City. Once construction of the City Project is complete the Council and the City will jointly have the control of all bonds, warranties, and guarantees provided by sureties, construction contractors, and subcontractors.

2. The Council is not responsible for operation or maintenance of the City Project once constructed; the City is responsible for ownership, operation and maintenance. The Council is responsible for operation and maintenance and capital upgrades, repairs and replacement of the improvements constructed by the Council Project. The City, Council, and other Project partners intend to enter into further agreements regarding the details of ownership and maintenance responsibilities related to the Combined Project.

VIII.
Liability

1. To the extent authorized by law each party is responsible only for its own acts and the results of its acts. 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 Minn. Stat., § 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 Minn. Stat. section 466.04.

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

3. The Council will ensure that the Combined Project construction contract includes the insurance requirements specified in the attached Exhibit C .

IX.
General Provisions

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

2. The City agrees to comply with all laws applicable to the City relating to nondiscrimination, affirmative action, public purchases, contracting, employment, workers' compensation, and surety deposits required for construction contracts. Minnesota Statutes, Section

181.59 and any applicable local ordinance relating to civil rights and discrimination and the Employment Guidelines, Policies, and General Information of the City is considered a part of this Agreement.

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

4. If hazardous wastes, pollutants, or contaminants as those terms are defined in law exist on the City Project site, the City is responsible for any response or remedial action, monitoring or reporting under the law. Nothing in this paragraph requires that the City accept responsibility for any environmental conditions that are not the City's legal responsibility. This paragraph survives the termination of this Agreement.

5. The City's authorized representative will manage this Agreement for the City and act as a liaison between the City and Council.

6. The Council's Gold Line Project Manager will manage this Agreement for the Council and act as a liaison between the Council and the City.

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

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

9. Any modifications to this Agreement will be in writing as a formal amendment unless specifically noted above.

10. 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.

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

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

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

14. 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 by e-mail or otherwise in writing; or
- (c) delivered in person to the other party addressed to the following authorized representatives:

Christine Beckwith, P.E., MBA (or successor)
 Gold Line Project Director
 121 7th Pl. E, Suite 102
 St. Paul, MN 55101
 (651) 602-1994

Paul Kurtz
 City Engineer
 25 West 4th Street
 1500 City Hall Annex
 Saint Paul, MN 55102
 651-266-6100
paul.kurtz@ci.stpaul.mn.us

15. The parties will use a dispute resolution process for any unresolved dispute between the parties before exercising any legal remedies. The dispute resolution process is a three level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. At each level of the dispute resolution process, the parties' representatives will meet and explore resolution until either party determines that effective resolution is not possible at the current level, and notifies the other party that the process is elevated to the next level. The parties designate the following dispute resolution representatives:

| | City Representative | Council Representative |
|----------------|-----------------------------|---|
| Level 1 | Construction Coordinator | Christine Beckwith Assistant Director, BRT Projects |
| Level 2 | Project Manager | Charles Carlson Director, BRT Projects |
| Level 3 | Paul Kurtz City Engineer | Nick Thompson, Deputy General Manager - Capital Programs |

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

16. This Agreement may be executed in multiple counterparts, all of which when taken together shall comprise one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile transmission or electronic transmission (e.g., ‘pdf’ or ‘tif’) shall be effective as delivery of a manually executed counterpart of this Agreement.

17. Exhibit D – Supplemental Conditions for FTA Funded Projects is incorporated into this Agreement.

18. This Agreement will be effective when all parties have signed it. The 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.

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CITY OF SAINT PAUL

METROPOLITAN COUNCIL,
A public corporation and political subdivision
of the State of Minnesota

By: _____
Mayor

By: _____
Mary Bogie, Regional Administrator

Date: _____

Date: _____

By: _____
Director of Public Works/City
Engineer

Date: _____

By: _____
City Attorney's Office

Date: _____

LIST OF EXHIBITS

- Exhibit A - Council Project and City Project Locations

- Exhibit B - Acquisitions for City Project and Council Project

- Exhibit C - Insurance Requirements

- Exhibit D - Supplemental Conditions for FTA Funded Projects

Exhibit A
City Project and Council Project Locations

Exhibit B
Acquisitions for City Project and Council Project

Exhibit C
Insurance Requirements

Exhibit D
Supplemental Conditions for FTA Funded Projects