

**COOPERATIVE CONSTRUCTION AGREEMENT BETWEEN
THE CITY OF SAINT PAUL AND THE METROPOLITAN COUNCIL
FOR REIMBURSEMENT FOR INSTALLATION AND PROGRAMMING OF TSP
EQUIPMENT AT SIGNALIZED INTERSECTIONS ON ROUTE 63 AND FORD
PARKWAY**

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 operates bus transit service on Cretin Avenue, Grand Avenue, Smith Avenue, 3rd Street, White Bear Avenue, and Ford Parkway in Saint Paul and wants to improve travel time and reliability for local service bus routes traveling on those corridors by adding transit signal priority (TSP). The improvements to the traffic signals and the addition to the TSP will be referenced throughout this agreement as the “Project.”
2. The City operates and maintains traffic signals on those roadways in Saint Paul.
3. The Council and City have identified improvements to implement TSP on those corridors.
4. The City, as traffic signal operator, can construct the project more efficiently and better ensure signal operations and City traffic standards than the Council can.

The parties agree as follows:

AGREEMENT

**I.
Purpose of Agreement**

1. This agreement describes the responsibilities of each of the parties for construction of the Project.
2. The Council appoints the City as its agent to construct, and supervise the work performed on the Project for compliance with the Project Documents, City standards, and this agreement.
3. The scope of the Project is:

Install transit signal priority (TSP) equipment at up to 11 intersections along the Route 63 and 3 intersections on Ford Parkway along the A Line to provide faster, more reliable bus service. This work also includes replacing older traffic signal controllers to newer models needed to properly operate TSP.

4. The locations of the Project are shown on Exhibit A to this agreement.

II. Project Documents

1. Council or its agents, at no cost to the City, will prepare the necessary detailed TSP parameter documents for the Project (“Project Documents”). The Project Documents will contain typical TSP installation details and traffic signal timing parameters related to TSP requests suitable for use by City staff in inputting parameters into the signal controller. The Council will develop the Project Documents using the most current industry standards and practices for TSP and review them with the City. Traffic signal controllers and signal infrastructure will be installed according to City specifications and are not covered in Project Documents. The Council or its agents have prepared a construction cost estimate for the Project, attached as Exhibit B.

2. The Council will have a Registered Professional Engineer licensed in the State of Minnesota prepare and certify the Project Documents that will be provided to the City to for review and construction.

3. The Council retains ownership of all original Project Documents.

4. The City’s Engineer or designated representative will provide the Project Documents to City staff to implement.

III. Easements and Permits

1. The City will acquire all permanent and temporary permits necessary in the City’s name for the Project. The City will permit the Council to have its TSP equipment in City traffic signal equipment within any existing easements that the City has existing traffic signal equipment in the Project limits.

2. As of the date of this agreement, no additional property acquisition is required for construction and installation of the Project.

3. The City is responsible for getting all other permits associated with construction of the Project.

**IV.
Procedure for Acceptance of Bids**

1. The City will self-perform the construction work in the Project. No bidding of contracts will be performed for this project.

**V.
Construction**

1. The City will perform all construction activities required to complete the Project.
2. The Council's authorized representative (Paul Lamb, Project Manager, Engineering and Facilities, or his designed representative identified to the City in writing) may observe the work during the construction of the Project, but the Council's authorized representative is not responsible for supervising the Project. When observing the work, the Council's authorized representative will cooperate with the City's Engineer or designated representative.
3. The City shall provide written notice to the Council when the City deems the Project to be complete.
4. Following receipt of this notice, the Council will have thirty days to inform the City in writing of any aspects of the performed work deemed deficient by the Council in the form of a Punch List. If the Council does not identify any deficient work within thirty days, the City's work will be deemed accepted and the project will be considered complete.
5. The City and Council shall develop a mutually agreed upon plan and schedule to resolve the items identified in the Punch List.
6. The City will inform the Council in writing following completion of the mutually agreed upon plan to resolve the items identified in the Punch List. Within seven days of receiving the City's written notice, the Council will inform the City in writing of its acceptance of the work or of any items from the Punch List it deems incomplete. If incomplete items are identified, the process identified in items 5 & 6 of this section will be reinitiated.

**VI.
Modifications to Project Documents**

1. The City will give the Council's authorized representative all proposed amendments or material changes to the Project. The Council will review the documents and communicate in writing the acceptance or rejection to the City within fourteen calendar days.

The Council will not unreasonably withhold acceptance of any amendments or material changes to the Project. The City will not amend the Project until it receives the Council's written acceptance.

VII. Cost Participation and Payment

1. The Council will reimburse the City for the costs shown in Exhibit B as specified in this Section VII. The Council will reimburse the City for the actual cost of construction for the Project.
2. The parties further agree that the Project costs are an estimate. The final Project construction costs will be based on the actual material, equipment, and labor costs as documented by the City .
3. During construction of the Project, the City will submit monthly invoices to the Council. The City's monthly invoices will include a progress report. The Council will pay the City within 30 days after it receives the invoice. If the Council disputes any portion of an invoice, it will give the City notice of the dispute within 14 days after the Council receives the invoice. If the Council disputes any portion of an invoice, the Council will pay the undisputed portion of the invoice within 30 days after receipt of the invoice, and it will pay the remainder of any amount due within 30 days after the dispute is resolved.

VIII. Warranties and Maintenance

1. After acceptance of the Project by the Council, the Council owns and is responsible for operation and maintenance of the TSP System Components installed as part of the Project, as defined in the Agreement for Operation and Maintenance for Bus Transit Signal Priority (Council Contract Number 20I072). The City owns and is responsible for operations and maintenance of the traffic signal controllers and fiber optic connections in the Project.

IX. Liability

1. To the extent authorized by law each party is responsible only for its own acts and the results of its acts. The Council's and City's liability is governed by the provisions of Minnesota Statutes, Chapter 466.
2. The Council and City 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 Council or City.

X. General Provisions

1. All records kept by the Council and City with respect to the Project are subject to examination by representatives of each party. All data collected, created, received, maintained or disseminated for any purpose by the Council and City under this agreement are governed by 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 Affirmative Action Policy statement of the Council 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 claim 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 Combined Project site, the City is responsible for any response or remedial action, monitoring or reporting under the law. The City will apply for and have the Council named as a beneficiary in any no association letters, no action/no further action letters and other environmental regulatory assurances for the site. The City will give the Council copies of any Phase I and Phase II environmental investigations, approved Response Action Plans, and environmental assurance letters naming the Council as a beneficiary. This paragraph survives the termination of this agreement.

5. 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, except as described in X.6 below.

6. Federal Transit Administration Clauses. This Agreement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in Exhibit C are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Agreement. If any

requirement of Exhibit C is inconsistent with a provision found elsewhere in this Agreement and is irreconcilable with such provision, the requirement in Exhibit C shall prevail.

7. 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.

8. Any modifications to this agreement will be in writing as a formal amendment.

9. 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.

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

11. 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.

12. 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.

13. All notices or demands under this agreement will be sent to the authorized representative listed under this section 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:

Council's Authorized Representative
Paul Lamb
Metropolitan Council
Metro Transit
560 Sixth Avenue North
Minneapolis, MN 55411

City's Authorized Representative
Joe Spah, P.E. or his successor
City of Saint Paul
899 Dale Street North
Saint Paul, MN 55103

14. 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	Metropolitan Council Representative
Level 1	City Traffic Engineer & Traffic Operations Manager	Derek Berube Lead Project Manager
Level 2	Operations Manager & City Engineer	Marilyn Porter Director Engineering & Facilities
Level 3	Director of Public Works	General Manager, Metro Transit

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

15. The Council and the City are each authorized to enter into this agreement.

16. 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).

17. Counterparts: The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

18. Electronic Signatures: The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an

electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

Each party is signing this agreement on the date stated below that party's signature.

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

By: _____
Name, Title

Date: _____

CITY OF SAINT PAUL
A municipal corporation of the State of Minnesota

By: _____
Mayor

Date: _____

and _____
Director of Public Works

Date: _____

and _____
Director of Financial Services

Date: _____

and _____
City Attorney

Date: _____

LIST OF EXHIBITS

Exhibit A - City Project and Metropolitan Project Locations

Exhibit B - Metropolitan Project Construction Costs Estimates

Exhibit C - Federal Transit Administration Clauses

Exhibit A
City Project and Metropolitan Project Locations

	Location	Traffic Signal Controller Upgrade	Fiber Connection	Transit Signal Priority
1	White Bear Avenue at 3 rd Street			X
2	White Bear Avenue at Old Hudson	X		X
3	Cretin Avenue at Summit Avenue	X		X
4	3 rd Street & Earl Street	X		X
5	3 rd Street & Johnson Parkway			X
6	3 rd Street & Etna Street	X		X
7	3 rd Street & Maria Avenue	X		X
8	Grand Avenue & Pleasant Avenue	X	X	X
9	Grand Avenue & Thompson Avenue	X	X	X
10	Grand Avenue & Smith Avenue	X	X	X
11	Smith Avenue & Chestnut Street	X		X
12	Ford Parkway & Mount Curve Boulevard			X
13	Ford Parkway & Cretin Avenue			X
14	Ford Parkway & Cleveland Avenue			X

Exhibit B**Project Construction Costs Estimates**

Item	Qu	Unit	Procured by	Unit Cost	Install Labor Cost	Estimated Total Cost	
						City	City (to be reimbursed by Council)
TSP Kits	14	EA	Metro Transit	\$6,000	\$1,800.00	\$84,000.00	\$25,200
Signal controllers	9	EA	City	\$7,000.00	\$150.00		\$64,350
Ethernet switches	5	EA	City	\$5,000.00	\$ 600.00		\$28,000
Other Ethernet Equipment (Fiber Patch Panels/Polymods, etc.)	5	EA	City	\$700.00			\$3,500
Fiber	2000	LF	City	\$2.50	\$12.50		\$30,000
Fiber Terminations (Pigtails)	6	EA	City	\$1,000.00	\$1,500.00		\$15,000
TSP Parameters	1	LS	Metro Transit	\$45,000	\$ -	\$45,000.00	\$0
Subtotal						\$129,000.00	\$166,050.00
Contingency - 5%							\$8,302.00
TOTAL						\$129,000.00	\$174,325.00