

PROJECT: SOUTHWEST LIGHT RAIL TRANSIT PROJECT

AGREEMENT NAME: Master Funding Agreement – City of Minneapolis

PARTIES:

- **Metropolitan Council**
- **City of Minneapolis, 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 City of Minneapolis (“City”), a Minnesota municipal corporation, herein collectively referred to as the “Parties” and individually as a “Party”. This Agreement pertains to the Council’s proposed Southwest Light Rail Transit (“SWLRT”) Project, referred to hereafter as the “Project”.

WHEREAS:

1. The Council, metropolitan area cities, public agencies, and transit funders are engaged in activities to develop the Project, an approximately 16 mile proposed extension of the METRO Green Line which will operate from downtown Minneapolis through the cities of St. Louis Park, Hopkins, Minnetonka, and Eden Prairie.
2. The Council has received appropriations from the State of Minnesota for the purpose of conducting environmental studies, completing project development, and designing the Project. The Council also expects to receive future appropriations from the State of Minnesota for engineering and construction of the Project.
3. 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.
4. The Council has received a grant from the Counties Transit Improvement Board (“CTIB”) for project development for the Project. The Council also expects to receive future grants from the CTIB for engineering and construction of the Project.
5. The Council is a party to a Cooperative Funding Agreement for project development with the Hennepin County Regional Railroad Authority (“HCRRA”) for the Project. The Council expects to enter into future Cooperative Funding Agreement(s) with HCRRA for engineering and construction of the Project.
6. The City may be involved in certain activities or possibly provide materials in connection with and in support of the Project, and the Council desires to pass through federal, state, CTIB or other local funds to the City for costs associated with such Project activities and/or materials.

7. The City may provide funding for certain Project components or non-FFGA components, including Locally Requested Capital Investments, through the transfer of City funds to the Council.
8. This Agreement is entered into between the Parties to provide a mechanism for the transfer of Project funds from the Council to the City for activities undertaken by the City for the Project (Part One), and for the transfer of City funds to the Council for features 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 hereby 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 the City for activities performed or materials supplied by the City 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 the City's Project activities using federal grant funds.

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

2.01 Transfer of Funds from Council to City. The Council will transfer Project funds to the City for the Project activities performed by the City. The transfer of funds from the Council to the City shall be in accordance with Subordinate Funding Agreements executed pursuant to this Article 2, each of which shall state the specific purpose for the funds, the City's responsibility with respect to those funds, and establish who will own any assets constructed or remaining upon completion of the work. Each such Subordinate Funding Agreement, in conjunction with this Agreement, shall be determined by the Council to constitute a subrecipient or vendor agreement with the Council for the purposes of any federal grant funds transferred to the City. The Council shall bear no responsibility for any costs incurred by the City for the Project that exceeds 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 in order to facilitate the funding by the Council of Project activities to be performed by the City. The Parties anticipate there may be multiple such Subordinate Funding Agreements between them in connection with the Project. Each Subordinate Funding Agreement shall be in a form substantially similar to that attached as Exhibit A and shall follow and be subject to the terms of Part One and Part Three of this Agreement, unless expressly agreed to in writing otherwise. Notwithstanding any other

provisions of this Agreement, this Agreement itself is not intended to 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.

2.03 Implementation of Subordinate Funding Agreements. The Council will only reimburse the City for Project activities that are the subject of a Subordinate Funding Agreement. Prior to entering into a contract with any third party (including for the acquisition of property rights) to accomplish the City's reimbursable activities, or prior to authorizing any City employees to proceed with any reimbursable activities, the City 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.

2.04 Council Determination of Vendor or Subrecipient Relationship. The Council shall determine whether each Subordinate Funding Agreement is a subrecipient or vendor agreement. The Council shall state its determination in the Subordinate Funding Agreement. For subrecipient agreements, the City will be responsible to FTA for compliance with applicable federal laws, regulations, and deliverables. For vendor agreements, the Council will be responsible for compliance with applicable federal laws, regulations, and deliverables.

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

- a. Rebudgeting 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 Director.
- c. Any other modifications to a Subordinate Funding Agreement shall require a written amendment of the Subordinate Funding Agreement executed by the Parties.
- d. Modification requests should be sent to the Project Director.

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

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

Attn: Accounts Payable
Southwest LRT Project Office
6465 Wayzata Blvd, Suite 500
St. Louis Park, MN 55426

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-SPO) as shown in Exhibit B,
 - ii. Subrecipient Monthly Progress Report (Form SPO P1) as shown in Exhibit B, and
 - iii. Itemization of the expenditures for which payment is requested using the Subrecipient Invoice Detail (Form SPO 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 vendor relationship:
 - i. SPO 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 any supporting documentation.
- f. If a Disadvantaged Business Enterprise (“DBE”) goal applies to the work 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 the City 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, the Council will make prompt payment of undisputed amounts as required by Minnesota Statutes, Section 471.425. Under either 49 C.F.R. § 18.22 or Minnesota State 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 the City pursuant to an invoice, or approval of any report, shall not be construed as a Council waiver of any City 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 the City 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 the City agrees, the City shall promptly repay such amounts to the Council. If the City 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 473.142(f), if the City subcontracts any portion of the work under this Agreement or Subordinate Funding Agreements, the City shall pay such subcontractor within 10 Days of City's receipt of payment from the Council for undisputed services provided by the subcontractor. The City shall not, by reason of said payments, be relieved from responsibility for work done by the subcontractor and shall be responsible for the entire work under this Agreement or Subordinate Funding Agreement until the same is finally accepted by Council.

ARTICLE 3. REQUIREMENTS FOR PROJECT FUNDED WORK

3.01 Allowable Costs; Unspent Funds. The City is authorized to use funds provided by the Council under this Agreement only for allowable costs directly incurred for the Project. 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 the City 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 the City 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 FTA and determined by the Council in a Subordinate Funding Agreement, are procured by or provided to the City 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. The City agrees to establish and maintain accurate, detailed, complete, and separate books, accounts, financial records, documentation, and inspection and quality assurance reports produced by City staff and/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 the City until the latest of:

- a. complete performance of this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;
- b. six years following the term of this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;
- 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 City engages any contractors to perform any part of the Project activities, the City agrees that the contract for such services shall include provisions requiring the contractor 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 the City in 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 the City relating to the reimbursable costs for the Project shall be audited in the same manner as all other accounts and records of the City are audited. During the time of maintenance of information under section 3.04, authorized representatives of the Council, 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 City.

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

3.06 Contract Information. The City 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; and
- c. Upon request, promptly provide the Council with copies of correspondence between the City and the contractor related to such contract.

ARTICLE 4. FEDERAL REQUIREMENTS

4.01 Federal Requirements. Monies that may be provided to the City 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 and is irreconcilable with such provision, the requirement in this Article 4 shall prevail.

4.02 Incorporation of Federal Grant. As the Council receives federal grants, including a potential Full Funding Grant Agreement, with respect to the Project, the Council will provide the City 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 Grants.” When performing work or expending funds for Project activities, the City agrees to comply with all applicable terms and conditions of the Federal Grants received by the Council with respect to the Project.

4.03 Incorporation of Specific Federal Requirements. Specifically, and without limitation, the City 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. The City 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*. The City 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 this Agreement. During the term of this Agreement, the Council shall provide to the City the annual Federal Certifications and Assurances document, which the City shall execute and return to the Council.

4.05 Compliance with Federal Requirements; Incorporation of Specific Documents by Reference. The City agrees to comply with all federal statutes, rules, FTA Circulars, Executive Orders, guidance, and other requirements which may be applicable to the Federal Grants. In particular, and without limitation, the City agrees to comply with the terms and conditions of the current version of the following documents when performing work or expending funds for Project activities under this Agreement or any Subordinate Funding Agreement:

- a. *FTA Master Agreement*
- b. *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, 49 C.F.R. Part 18
- c. *Grant Management Requirements*, FTA Circular 5010.1D
- d. *Full-Funding Grant Agreements Guidance*, FTA Circular 5200.1A
- e. *Third Party Contracting Requirements*, FTA Circular 4220.1F

- f. *Cost Principles for State, Local and Indian Tribal Governments*, OMB Circular A-87
- g. *Audits of States, Local Governments, and Non-Profit Organizations*, OMB Circular A-133

as such statutes, rules, circulars, executive orders, guidance and other requirements 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 or, upon request by the City, from the Council.

4.06 Third Party Contracts. If the City 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, the City 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.** The City 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. A copy of this document is available on the FTA website or, upon request by the City, from the Council.
- b. **Certification of City's Procurement System.** The City certifies that its procurement system complies with the standards described in the previous paragraph.
- c. **Council Approval of Contracts.** The City 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 the City 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 Director.
- d. **Inclusion of Provisions in Lower Tier Contracts.** The City 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. Provisions to be included in such subcontracts include, at a minimum, the provisions in Exhibit C.
- e. **Disadvantaged Business Enterprise Requirements.** For all work performed under Part One of this Agreement, the City will comply with the Council's DBE Program. In particular, the City 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 E, the following provisions apply:
 - i. The Metropolitan Council DBE Liaison Officer, or designated staff, shall act as the City DBE Liaison Officer for the purposes of work under Part One of this funding Agreement.

- ii. The City 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 49 C.F.R. § 18.22.
 - iii. The City 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. The City 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.
- f. **Federal Procurement Basics.** The City 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. The City 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 the City 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. The City 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 regarding the Project activities. Accordingly, the City 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 CITY TO COUNCIL

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

5.02 Transfer of Funds Requires Subordinate Funding Agreement. The City may provide funding for features 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 the City shall be in accordance

with one or more duly executed Subordinate Funding Agreements, each of which shall define the amount of funds committed by the City to the Council, specify the purpose for the funds, and establish who will own the asset constructed or remaining upon completion of the work.

5.03 Subordinate Funding Agreements. To facilitate funding by the City 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 A and shall follow and be subject to the terms of Parts Two and Three of this Agreement, unless expressly agreed to in writing otherwise. Notwithstanding any other provisions of this Agreement, this Agreement itself is not intended to 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. The City will only reimburse the Council for features 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 the City, 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 the City 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. Rebudgeting 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 City Engineer, or such other person as the City 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. The City shall pay the Council under Subordinate Funding Agreements as follows:

- a. Unless specifically agreed to otherwise by the Parties in and for 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:

Paul Miller, Project Manager
309 2nd Ave. S., Room 300

Minneapolis, MN 55401

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

- c. Unless the Parties otherwise agree, the Council shall submit each invoice to the City 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. Any supporting documentation.
- e. The Council shall add an administrative fee to each invoice to be paid by the City. The administrative fee will be applied to the total amount charged for each type of professional service requested by the City and performed by the Council. The Council reserves the right to adjust the percentages on an annual basis. The administrative fee for the professional services performed will be specified in each Subordinate Funding Agreement. The administrative fee rates are as follows:
 - i. Design, Engineering, and/or Environmental Subordinate Funding Agreements 3%
 - ii. Construction Subordinate Funding Agreements (to include applicable percentages below)
 - 1) Contract Administration 3%
 - 2) Construction Inspection 2%
 - 3) Surveys and Staking 2%
 - 4) Materials Inspection 1%
- f. After receipt of an invoice, the City may request additional information from the Council regarding the invoice in order to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested.
- g. The City shall pay the Council the approved invoice amount within 30 days of its receipt. The City 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 the City has disputed the payment of an invoice, if the City does not pay the invoiced amount within 30 days of its receipt, the Council shall charge and the City shall pay interest on the non-disputed amount at the rate of 1-1/2 percent per month.
- h. No invoice payment shall be made by the City 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. The City'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 the City that the Council has made an unauthorized or undocumented use of City funds, and upon a demand for repayment issued by the City and supported by the reason for the finding, if the Council agrees, the Council shall promptly repay such amounts to the City. 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 the City under this Agreement only for costs directly incurred under a specific Subordinate Funding Agreement. Funds provided by the City 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 the City 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 the City. 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 entered into pursuant thereto;
- b. Six years following the term of this Agreement and all Subordinate Funding Agreements entered into pursuant thereto;
- 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 the City, 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 the City 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 the City; 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 Contract Information. The Council shall, in connection with any contract entered into for reimbursable work under Part Two of this Agreement:

- a. keep the City informed as to the progress of such contract;
- b. allow authorized representatives of the City access to all meetings and documentation related to such contract; and
- c. upon request, promptly provide the City with copies of correspondence between the Council and the contractor related to any such contract.

PART THREE

ARTICLE 6. GENERAL PROVISIONS

6.01 Purpose. The purpose of Part Three of this Agreement 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 work 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 work 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 work 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, Section 3.736, or 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 may be changed only by mutual agreement of the Parties. Such changes shall be effective only upon the execution of written amendments signed by authorized officers of the Parties to this Agreement.

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 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 without receiving the express written consent of the other Party.

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:

Project Director
Southwest LRT Project Office
6465 Wayzata Blvd, Suite 500
St. Louis Park, MN 55426
Phone: 612-373-3820

For the City:

Paul Miller, Project Manager
309 2nd Ave. S., Room 300
Minneapolis, MN 55401

6.11 Dispute Resolution.

- a. City Claims; Appeal. Claims by the City disputing the meaning and intent of this Agreement or arising from performance of this Agreement shall be referred in writing to the Project Director for a written decision. The Project Director shall respond to the City in writing with a decision within ten (10) calendar days following receipt of the City's claim by the Project Director. The Project Director may, at his or her discretion, extend the time period for response to the City specified in this section.
- b. Appeal of Project Director Decision. If the City disagrees with any determination or decision of the Project Director, the City shall, within 15 calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Metro Transit General Manager. Such written appeal shall include all documents and other information necessary to substantiate the dispute or claim. The Metro Transit General Manager will review the dispute or claim and transmit a decision in writing to the City within 30 calendar days from the receipt of the dispute or claim. If the City disagrees with any determination or decision of the Metro Transit General Manager, the City shall, within 15 calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Council's Regional Administrator. Failure of the City to appeal the decision or determination of the Metro Transit General Manager within the 15 calendar day period will constitute a waiver of the City's right to assert thereafter any claim resulting from such determination or decision. Submission of a dispute or claim to the Council's Regional Administrator shall be a condition precedent to any litigation under this Agreement. The Council's Regional Administrator may extend the time period for response to the City specified in this section.

Proceed with Performance; Failure to Comply with Deadlines. Pending final decision of a dispute under this Section 6.11, the City and the Council shall proceed diligently with the performance of the Agreement and the question or claim shall be temporarily resolved in accordance with the decision of the Council's Regional Administrator, until final resolution of the question or claim. Failure by the City to comply precisely with the time deadlines under this section as to any claim shall operate as a release of that claim and a presumption of prejudice to the Council.

6.12 Project Director. The Council's Project Director 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 6.11, or such other person designated in writing by the Council's Regional Administrator. The City's Project Director 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 City. The City's Project Director shall:

- a. Coordinate the carrying out of the City's obligations under this Agreement;
- b. Coordinate Subordinate Funding Agreement work scope activities with the Council's Project Director;
- c. Attend meetings called by the Council's Project Director for Southwest Light Rail 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.

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 Hennepin County, Minnesota.

6.14 Effective Date and Termination. This Agreement shall be effective upon execution by, and delivery to, both Parties. 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 entered into pursuant thereto;
- b. A determination by the Council that the Project or Subordinate Funding Agreement cannot proceed;
- c. A determination by the City that a Subordinate Funding Agreement transferring City funds to the Council cannot proceed; or
- 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.

The City agrees that Project closeout or termination of this Agreement or any particular Subordinate Funding Agreement does not invalidate continuing obligations imposed on the City by this Agreement or such Subordinate Funding Agreements. 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 the City'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. Project closeout or termination of this Agreement does not alter the City'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 the City.

6.15 Exhibits. All attached exhibits are deemed to be incorporated into 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.

CITY OF MINNEAPOLIS

METROPOLITAN COUNCIL

Approved as to Form

By:

By:

Its: _____

Assistant City Attorney

Date: _____

Approved

By:

Department Head Responsible for
Monitoring this Contract

Approved

By:

Finance Officer or Designee

LIST OF EXHIBITS

Exhibit	Description
A	Form of Subordinate Funding Agreement
B	Sample Forms
C	Specific Federal Clauses
D	Disadvantaged Business Enterprise Pass Through Agreement and Program