

**METROPOLITAN COUNCIL CONTRACT NO. 18I017**

**ANOKA COUNTY CONTRACT NO. \_\_\_\_\_**

**HENNEPIN COUNTY CONTRACT NO. \_\_\_\_\_**

**RAMSEY COUNTY CONTRACT NO. \_\_\_\_\_**

**MASTER OPERATIONS  
FUNDING AGREEMENT  
FOR  
TRANSITWAY SERVICE**

---

**MASTER OPERATIONS  
FUNDING AGREEMENT  
FOR  
TRANSITWAY SERVICE**

**THIS AGREEMENT** is entered into between the Counties of Anoka, Hennepin and Ramsey ("Counties"), and the Metropolitan Council ("Council"), a public corporation and political subdivision of the State of Minnesota, on this \_\_\_\_ day of \_\_\_\_\_, 2018.

**RECITALS**

1. The Metropolitan Council, a political subdivision of the State of Minnesota, is , eligible to receive Grant Awards from the Counties.
2. The Council has requested or expects to request grants for operation of Transitway Services which are eligible for a Grant.
3. This Agreement is intended to be a Master Operations Funding Agreement setting forth a uniform approach for any Grant Award from the Counties to the Council for Transitway Service. This Agreement shall not obligate the Counties to grant awards in subsequent grant years, but instead shall create a system of accountability for use of County funds.
4. The Parties intend to enter into Annual Operating Grant Agreements for specific Transitway Services and intend that the terms of this Master Operations Funding Agreement shall apply to each Annual Operating Grant Agreement, except as otherwise expressly provided in the Annual Operating Grant Agreement.
5. This Agreement is intended to describe the provisions related to payment of the Net Operating Costs of currently operating transitways and to provide the basis for establishing the counties' share for future lines when operations commence.

**IN CONSIDERATION** of the foregoing and the other provisions in this Agreement, the Parties agree as follows:

**Article I  
DEFINITIONS**

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (such meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the contents hereof specifically indicate otherwise:

Agreement means this Master Operations Funding Agreement.

## Master Operations Funding Agreement

Annual Operating Grant Agreement means an annual operating grant agreement for specific Transitway Service entered into by the Counties and the Council for an annual grant.

Annual Operating Grant Application means an annual operating grant application for specific Transitway Service submitted by the Council to the Counties.

Board's Designee means a Board's Chair, or such other person or entity designated from time to time by a Board to act on the Chair's behalf to administer an Annual Operating Grant Agreement.

Effective Date means January 1, 2018.

Grant means the money provided by the Counties to the Council pursuant to an Annual Operating Grant Agreement.

Grant Award means the amount of funds granted in an Annual Operating Grant Agreement.

Council or Grantee means the Metropolitan Council, and its successors and assigns.

Council's Designee means the individual designated in an Annual Operating Grant Agreement to act on its behalf to administer the Annual Operating Grant Agreement for the Council.

County means one or more of the following Parties: Anoka County, Hennepin County and Ramsey County, and may include two or more Counties acting pursuant to a cooperative or joint powers agreement.

Counties means two or more of Anoka County, Hennepin County and Ramsey County; provided that where this Agreement uses "Counties" but the context of the provision requires that the provision could apply to either a single County or to multiple Counties, the provision shall be interpreted to mean "one or more of the Counties".

County Share means, for any particular Annual Operating Grant Agreement, the sum of the Base Share and the Non-Annual Share as further defined in Article V.

Grantor means the Board of Commissioners of a County.

Grant Period means the time period identified in an Annual Operating Grant Agreement.

Material Service Change shall be defined as a 10 per cent or more change in the daily in-service hours of a Transitway Service during the term of the Annual Operating Grant Agreement.

Metro Transit means the division of the Metropolitan Council through which the Council provides regional transit services.

## Master Operations Funding Agreement

Net Operating Cost or Net Operating Costs shall be defined as the Operating Costs attributable by the Council to a Grant Period less Operating Revenues. Net Operating Costs, defined herein and applicable to this Agreement, shall be derived in a manner consistent with the system of accountability agreed to by the Parties in this Agreement.

Operating Costs means the costs of operating a Transitway Service. This includes direct costs attributable to Transitway Service operations and indirect costs attributable to Transitway Service as follows:

- a. Federal Support Service Allocation: The Federal Transit Administration (“FTA”) has established federal guidelines that allow support services that cannot be charged directly to be allocated between operating and capital operations per Office of Management and Budget (OMB) 2 CFR 200.
- b. Modal Allocation: The Metro Transit Modal Allocation is for joint operating expenses of Metro Transit that support both bus and rail operations, but not capital expenditures. These joint operating expenses are not included in the Federal Support Service Allocation per federal guidelines, as they only support operational needs.
- c. Metropolitan Council Allocation: The Council provides support services for all operations within the Council. These support services are allocated to each Council Operating Unit.

Operating Costs shall not include life cycle capital replacement needs, including rolling stock.

Operating Revenues means revenues reasonably attributable or allocable to a Transitway Service for a Grant Period, including but not limited to:

- a. Revenues attributable by the Council, in consultation with the Counties, to operation of Transitway Service, including but not limited to passenger fares, auxiliary revenue such as advertising, Metropolitan Airports Commission Service Revenue, and other miscellaneous revenues such as interest income;
- b. Any and all federal funds or other applicable funding sources or revenues available to the Council that are specifically designated for operation of Transitway Service;
- c. Any and all federal funds or other applicable funding sources or revenues allocated by the Council, in consultation with the Counties, for operation of Transitway Service.

If significant specially designated revenues for operations of Transitway Service are received from the Minnesota Legislature, the Parties agree to meet and determine the impacts on Operating Revenues and Net Operating Costs, as provided in Section 9.17.

## Master Operations Funding Agreement

Party or Parties means the Counties or the Council, individually or together, as the context of the Agreement requires.

Proportionate Share of Shared Use Facility Costs means the allocation of Operating Costs of major shared use transitway station facilities, including park and ride facilities that serve express bus routes, according to the following methodologies:

- a. For Rail/Bus Shared Use Facilities: Operating Costs shall be allocated to each respective mode using a weighted formula, with a 50% weight given to ridership for each route using the facility, and a 50% weight given to the number of scheduled trips for each route using the facility.
- b. For Bus Rapid Transit (BRT)/Bus Shared Use Facilities: Operating Costs shall be allocated to each respective mode based on the number of scheduled trips for each route using the facility.

The Proportionate Share of Shared Use Facility Costs will be calculated for the 2018 Base Share amount, and then recalculated every three years on the facilities agreed to for each individual corridor.

Transitway Service means the operation of a county-sponsored transitway, including but not limited to light rail transit, commuter rail transit, or bus rapid transit line, currently including the METRO Blue Line, the METRO Green Line, and Northstar Commuter Rail Transitways. Transitway Service does not include the operating of Arterial Bus Rapid Transit, regular route bus, express bus, Metro Mobility or any other transit services.

### **Article II PURPOSE**

The purpose of this Agreement is to establish a system of accountability for use of County funds for operating Transitway Services, to establish policies for communications among the Parties, allocation of costs, revenues and liability, the terms and conditions under which each County will make annual Grant Awards, and to provide the basis for establishing the County Share of Net Operating Costs when future lines commence operations.

### **Article III TERM**

Section 3.01 **Term.** This Agreement, as may be amended from time to time, shall be effective commencing January 1, 2018 and shall terminate on December 31, 2022 ("Term"). The Agreement will automatically renew for consecutive five-year periods, unless otherwise agreed to by the parties, or as provided for under Section 9.16, Termination and Withdrawal, herein.

**Article IV**  
**OPERATING FUNDING COMMITMENTS**

**Section 4.01 Counties' Commitments.** During the Term of this Agreement, each County agrees to pay the sum of the Base Share and the Non-Annual Share (the County Share), to the extent provided in Article V, for a maximum Grant Award set forth in the Annual Operating Grant Agreement, subject to the following allocation of the County Share and conditions set forth below:

	Anoka	Hennepin	Ramsey
Blue Line LRT	--	100%	--
Green Line LRT	--	60%	40%
Northstar Commuter Rail	81.4%	18.6%	--

a. Grants provided under this Agreement or any Annual Operating Grant Agreement or Agreements must supplement, and not supplant, state, federal or other sources of operating assistance available, and such sources may not be diverted to maximize County contributions. Grants from an Annual Operating Grant Agreement may only be used by the Council to pay Operating Costs of Transitway Service, and may not be used to pay the cost of any non-Transitway Service directly or indirectly.

b. Grant Awards shall be subject to the availability and provision of funding from proceeds of taxes authorized by Minn. Stat. § 297A.993 (unless otherwise determined at the sole discretion of each County). Payment by a County in any year is subject to annual appropriation by that County.

c. A County's commitment to provide the County Share of the Net Operating Costs of a Transitway Service shall be subject to an annual operating Grant Award, the execution of an Annual Operating Grant Agreement and compliance with the terms of this Agreement and the Annual Operating Grant Agreement.

d. With respect to Transitway Services extending outside the boundaries of a County, that County's commitment to provide the County Share shall be limited to the percentage agreed upon by the Parties and as set forth herein.

e. A County is not obligated to pay its County Share for a Transitway Service in any year in which the Legislature provides funding for 100% of the Net Operating Costs of such Transitway Service.

**Section 4.02 Council Commitment.** During the Term of this Agreement, the Council commits to pay for or obtain from other non-County sources at least 50% (or such greater percentage as may be applicable to a Transitway Service) of the Net Operating Costs for each of the Transitway Services.

**Article V**  
**THE COUNTY SHARE OF NET OPERATING COSTS**

**Section 5.01 County Share.** The County Share of Net Operating Costs in any year will be the sum of the Base Share and the Non-Annual Share as defined below.

**Section 5.02 Base Share.**

1. **Definition.** The Base Share of annual Net Operating Costs includes those costs incurred for the normal day-to-day operations of Transitway Service. Such costs include:
  - a. Labor and benefits
  - b. Contracted services including professional and technical services
  - c. Materials, parts and supplies, fuel, repair parts and repair services
  - d. Other expenses including utilities, insurance, leases and rentals, advertising and training
  - e. Allocated expenses including Modal Allocations, Federal Support Service Allocations, Metropolitan Council Allocations, and Contracted Services Allocations.
2. **Initial Amounts of the Base Share.** The initial amounts of the Base Shares, which shall apply for 2018, shall be as follows:
  - a. METRO Blue Line/Green Line Base Share will be \$25,026,223. For the purpose of allocating costs in accordance with Section 4.01, the Council will separately report the expenses and revenues associated with the Blue Line and the Green Line.
  - b. Northstar Commuter Rail Base Share will be \$7,127,181. Note that the County Share of Northstar Commuter Rail Net Operating Costs is 41.95 percent.
3. **Escalation Factor.** For years after 2018, the Base Share shall be increased by 3.15% annually, unless adjusted from time to time as agreed to by the Parties.

**Section 5.03 Non-Annual Share.**

1. **Definition.** The Non-Annual Share of Net Operating costs includes those costs for scheduled programs that do not occur annually but that are periodically necessary to maintain the normal operation of the Transitway Service. Such costs include:
  - a. Labor training costs for rail overhaul programs
  - b. Rail grinding program
  - c. Station rehabilitation programs (BRT and Rail)
  - d. Tile grouting
2. **Initial Amounts of the Non-Annual Share.** The initial amounts of the Non-Annual Shares, which shall apply for 2018, shall be as follows:
  - a. METRO Blue Line/Green Line Non-Annual Share will be \$750,000. For the purpose of allocating costs in accordance with Section 4.01, the Council will separately report the expenses and revenues associated with the Blue Line and the Green Line.

- b. Northstar Commuter Rail Non-Annual Share will be \$150,000.
3. Escalation Factor. For years after 2018, the Non-Annual Share shall be increased by 3.15% annually, unless adjusted from time to time as agreed to the Parties.
4. Review, Reconciliation and Adjustments. Expenditure of amounts on deposit in the account for the Non-Annual Share will be subject to review and reconciliation by the contributing Counties and specifically budgeted as such by the Council prior to the expenditure. In the event amounts on deposit in the account for the Non-Annual Share accumulate to an amount in excess of twice the annual contribution amount at the end of any given year, the amount of such excess will be distributed back to the County, or proportionally to the Counties, that provided funding for the year just ended. In the event that there is a scheduled, Non-Annual Operating Cost planned for a Transitway Service that exceeds the yearly contribution amount for the Non-Annual Share, the Parties agree to discuss a potential adjustment to the Non-Annual Share.

Section 5.04. **Separate Accounts.** Payments received as Base Share and Non-Annual Share shall be accounted for separately detailing payments received and expenses charged.

## **Article VI**

### **TRANSITWAY SERVICES BUDGET AND ANNUAL RECONCILIATION**

Section 6.01 **Annual Budget Process.** In accordance with the schedule set forth below, the Council shall submit to the Counties both a preliminary and a final budget for operation of each Transitway Service for each calendar year.

a. By June 1st of each calendar year, the Council will present to each County or its designee its preliminary, planned methodology and draft allocations budget plan for the subsequent calendar year operations. The revenue and expense allocation methodology submitted will include methodologies justification for the allocation of federal revenues, advertising and other revenues, passenger revenues, Federal Support Service Allocations, Modal Allocations, and Metropolitan Council Allocations. In addition, the allocation methodology will include all federal revenues generated by operations of the Transitway Service and will identify how the Council plans to allocate these federal revenues between the operations and capital budgets and will identify the capital projects to which the Council plans to allocate the federal funds for the operation of each Transitway Service and any significant changes in the proposed plan. The draft allocations budget plan will identify any significant changes in the proposed plan from the prior year. The Parties agree to meet prior to June 15th and discuss the planned allocation and draft budget for the subsequent calendar year operations prior to the preliminary annual budget adoption by the Council in August of each year.

b. By August 15th of each calendar year, the Council will present to each County, for its review and discussion, the Council's preliminary annual operations budget for the subsequent calendar year operations for operations of each Transitway Service funded by



such County. This preliminary annual operations budget shall include detail on Operating Costs including the Base Share and the Non-Annual Share, Operating Revenues, other sources of funding including State of Minnesota appropriations and other regional, state and federal funding, ridership projections, hours of annual service, staffing levels, and detail of allocations including: Federal Support Services Allocations, Modal Allocations and Metropolitan Council Allocations. The Council shall respond to the Counties' comments on the preliminary annual operations budget within a reasonable time but prior to the Council adoption of the annual operations budget in December of each year.

c. The Counties' Grant Awards will be based upon the annual operating grant application prepared in accordance with Article V of this agreement and submitted in accordance with Article VII of this agreement.

d. The Council is required to provide each affected County at least a 60-day prior notice for any Material Service Changes that are different from the County-approved Annual Operating Grant Agreement for a Transitway Service. The Council may not implement any Material Service Changes without due regard for, and the timely involvement of, the County or Counties paying for such Transitway Service.

e. The Council shall submit a final annual operations and capital budget to each County after adoption by the Council in December of each year.

**Section 6.02. Quarterly Financial Reports and Monthly Operations Reports.** On a quarterly basis for all Annual Operating Grant Agreements, the Council will present to the Counties a Year to Date (YTD) Quarterly Financial Report for the operations of each Transitway Service. This quarterly financial report will be submitted to the Counties within 45 days of the quarter end and will include variances for actual versus budget revenue and expense financial results and ridership. In addition, the Quarterly Financial Reports for the second and third quarter shall include an end-of-year forecast of financial operations including variances for actual versus budget revenue and expense financial results and ridership.

By the last day of each month, the Council shall provide a monthly briefing report for the prior month that includes:

- Ridership data including Monthly and YTD Ridership versus Budget, Ridership Trends, and detail of weekday and weekend ridership estimated by station, if available;
- Operational highlights including service changes, impacts on service, new initiatives, major repairs and maintenance, and any potential items that may positively or negatively impact the annual budget financial results; and
- Other information as may be reasonably requested by the Counties.

**Section 6.03 Year-End Operations And Financial Report.** On or about July 15 of each year, the Council shall present to the Counties for review and comment an audited year-end operations and financial report ("Year-End Operations and Financial Report") for the prior calendar year. This prior year audited Year-End Operations and Financial Report will be

presented by July 15th of each subsequent calendar year and will include variances for actual versus budget revenue and expense financial results.

**Section 6.04 Reconciliation/Surplus Monies.** Within thirty (30) days of publication of the Council's Comprehensive Annual Financial Report, any surplus moneys provided to the Council by each County for Transitway Services and any interest earnings generated by each County's contribution of funds to the Council shall be returned to each County in proportion to its contribution upon completion of operations authorized by an Annual Operating Grant Agreement. If the Annual Operating Grant Agreement is terminated for any reason and any balance remains after all operating costs are paid, said balance will be owed to the Counties within thirty (30) days of publication of the Council's Comprehensive Annual Financial Report.

## **Article VII ANNUAL OPERATING GRANTS**

**Section 7.01 Annual Operating Grant Process.** Each County will establish its grant process requirements and timeline annually. If a County does not act to change such requirements and timeline, the requirements and timeline from the previous year shall carry forward.

**a. Grant Application Requirements.**

1) **Grant Timeline.** Each County will identify the timeline for submitting annual grant requests.

2) **Council Application.** The Council shall submit an Annual Operating Grant Application for each Transitway Service for which it seeks County funds.

3) **Form of Grant Application.** Grant applications must be submitted in a form prescribed by each County. The Council must provide, in addition to all other information required by a County, the estimated cost of the Transitway Service, the amount of the grant sought, sources of funding in addition to the grant sought, and a detailed budget for the Base Share and the Non-Annual Share.

**b. County Grant Awards.** A County may award grants to the Council for operation of Transitway Services, subject to such terms and conditions as the County may determine in its sole discretion and consistent with the terms of this Agreement and state statutes. Any Grant Award shall be at the sole discretion of the County and shall be subject to the availability of funds.

**Section 7.02 Annual Operating Grant Agreements.**

**a. Grant of Moneys.** The Counties may make funds available to the Council pursuant to Annual Operating Grant Agreements.

**b. Terms and Conditions.** The Annual Operating Grant Agreements shall incorporate the terms and conditions of this Agreement and the Annual Operating Grant Agreement terms and conditions, attached to and incorporated as part of this Agreement as Attachment A. The Annual Operating Grant Agreement may also incorporate specific

terms, conditions and exceptions applicable to a specific Transitway Service, as deemed necessary by a County.

c. **Termination.** Termination of this Agreement shall not result in the automatic termination of an Annual Operating Grant Agreement nor any terms of this Agreement incorporated therein.

d. **Conflict.** In the event of a conflict between the terms of this Agreement and the Annual Operating Grant Agreement, the terms of this Agreement shall prevail unless the Annual Operating Grant Agreement specifically modifies the terms of this Agreement through the inclusion of special terms, conditions or exceptions.

#### Section 7.03      **Use of Grant Proceeds.**

a. **Council Responsible for Operation.** The Council shall be solely responsible for the operating plans and operation of Transitway Services, which may include contracts with third party providers, for which the Council receives a Grant Award from a County pursuant to an Annual Operating Grant Agreement. A County shall have no control over nor any responsibility for any Transitway Service operating plans or operating any Transitway Services.

b. **Council as Fiscal Agent.** The Council shall serve as fiscal agent for the operations of the Transitway Services and shall provide proper accounting, investment, disbursement and financial reporting of any and all monies received and disbursed by the Council on behalf of all entities providing financial support for operation of the Transitway Services.

c. **Use of Grant Proceeds.** The Council shall use a Grant solely for the Transitway Service for which the Annual Operating Grant Agreement is made. To the extent practicable, the Council shall comply with all contractual and other requirements necessary to maximize federal and state funding for the Transitway Service for which the Annual Operating Grant Agreement is made. Grant proceeds may not be used to reimburse the Council for expenses incurred prior to the Commencement Date or after the Termination Date of the Annual Operating Grant Agreement.

#### Section 7.04      **Disbursement of Grant Moneys.**

a. Grant moneys will be disbursed in four equal quarterly payments in February, May, August, and November.

b. The Counties will distribute to the Council Grant funds upon receipt of a Grant Disbursement Request in a form acceptable to the Counties.

c. Following the receipt and review of the Quarterly Financial Reports for either the second or third quarters, as required in Section 6.02, a County or its designee may decrease the remaining quarterly disbursements if the forecasted expenditures for the upcoming quarter(s) are likely to be significantly less than the approved disbursement schedule.

Section 7.05 **Grant Not a Loan.** Grant Awards are not intended to be loans.

**Article VIII  
REPORTS AND COMMUNICATIONS**

Section 8.01 **Recordkeeping, Reporting and Access to Records.** The Council shall establish and maintain accurate, detailed, and complete books, accounts, records, documents and other evidence pertaining to the costs or expenses and receipts and expenditures associated with the operation of Transitway Services in accordance with generally accepted accounting principles and practices. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Council shall allow the Counties or other persons or agencies authorized by the Counties, the Legislative Auditor, or the State Auditor access to the Council's books, accounts, records, documents, accounting procedures and practices, and other information relevant to this Agreement, Transitway Services or Grants at reasonable hours and with reasonable notice for purposes of inspection, audit, and copying. The Council shall retain all of such books, accounts, records, documents, and other evidence until the later of:

- a. six (6) years following December 31, 2022 or six (6) years following a later termination date if this Agreement is renewed pursuant to Section 3.02 or six (6) years following the date of termination pursuant to Section 9.16; or
- b. if any litigation, claim, or audit is commenced during either such period, when all such litigation, claims or audits have been resolved.

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

Section 8.02 **Supplemental Reports.** The Council shall promptly provide additional information and make supplemental reports to the Counties as may be reasonably requested by the Counties.

Section 8.03 **Financial/Operations Working Group.** The Parties shall create a financial working group consisting of finance and operations representatives of each Party to coordinate their respective financial responsibilities and to provide ongoing oversight to all financial and reporting requirements. Each Party shall appoint appropriate personnel to serve on this working group which shall meet on a regular schedule or at the request of any Party.

Section 8.04 **Communications Between the Parties Regarding Financial Matters.** In order to facilitate the orderly and convenient exchange of financial information relating to this Agreement, the contact person for the Council shall be the Director of Finance for Metro Transit and the contact person for each of the Counties shall be as follows:

Dee Guthman, Deputy County Administrator, Anoka County  
David Lawless, Finance Director, Hennepin County  
Johanna Berg, Deputy County Manager, Ramsey County

or such other persons as the Council and Counties shall identify. The financial contact persons will be individuals with sufficient knowledge, authority and availability to be readily able to respond to inquiries regarding the Agreement.

Section 8.05 **Contract Administration.** Ed Petrie, or a successor noticed in accordance with the notice provisions of Section 9.04 ("Council Contract Administrator"), shall manage this Agreement on behalf of the Council and serve as liaison between the Council and the Counties. Each County shall identify a staff person who will manage this Agreement on behalf of such County and serve as liaison between the Council and such County. Each Annual Operating Grant Agreement shall identify specific contract administrators who will be responsible for contract management of the Annual Operating Grant Agreement on behalf of the Council and each Counties and who shall serve as liaisons between the Council and that County for each specific Transitway Service funded by the County.

## **Article IX MISCELLANEOUS**

Section 9.01 **Non-Discrimination.** The Council agrees to not engage in discriminatory employment practices in the operation of a Transitway Service and it shall, with respect to such activities, fully comply with all of the applicable provisions contained in Minn. Stat. Chap. 363A, as such may subsequently be amended, modified or replaced from time to time.

Section 9.02 **Indemnification by the Council.** To the fullest extent permitted by law, the Council shall defend, indemnify, and save harmless each of the Counties, its elected officials and officers, agents and employees from all claims, suits, demands, damages, judgments, costs, interest, and expenses, including negligent acts or omissions of the County, its elected officials and officers, agents or employees, arising out of the operation of a Transitway Service.

Neither the Counties nor the Council waives any immunities, defenses or limitations on liability available to the Parties at law or in equity and the Parties expressly agree that the terms of this Agreement shall not be construed to effect any such waiver.

During the term of this Agreement, the Council shall name Anoka and Hennepin Counties as additional insured on the railroad liability insurance coverage for the Northstar Transitway Service.

Section 9.03 **Relationship of the Parties.** Nothing contained in this Agreement or an Annual Operating Grant Agreement is intended or should be construed in any manner as creating or establishing the Council as an agent, representative, or employee of the Counties in the performance of this Agreement or an Annual Operating Grant Agreement, the operation of a Transitway Service, or the acquisition of an interest in, improvement on or use of real property. All personnel of the Council or other persons acting on behalf of the Council while engaging in the performance of this Agreement or an Annual Operating Grant Agreement, the operation of a Transitway Service, or the acquisition of an interest in, the improvement, or use of real property shall not have any contractual relationship with the Counties, and shall not be considered employees of the Counties. In addition, all claims that may or might arise on behalf of said

## Master Operations Funding Agreement

personnel or other persons while so engaged out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against Council, its officers, agents, contractors, or employees shall in no way be the responsibility of the Counties. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the Counties, including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

**Section 9.04 Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the Party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by any Party by written notice to the other Party or Parties:

To the Council at:

Regional Administrator  
Metropolitan Council  
390 Robert Street North  
St. Paul, MN 55101

With a copy to:

General Manager  
Metro Transit  
560 Sixth Avenue North  
Minneapolis, MN 55411-4398

To Anoka County at:

Deputy County Administrator  
Anoka County  
2100 Third Avenue, Suite 700  
Anoka, MN 55303

To Hennepin County at:

County Administrator  
Hennepin County  
A-2303 Government Center  
300 South 6th Street  
Minneapolis, MN 55487-0233

To Ramsey County at:

Deputy County Manager/Economic Growth and Community Investment  
Ramsey County  
214 East 4th Street  
Saint Paul, MN 55109

**Section 9.05 Binding Effect and Assignment or Modification.** This Agreement and any Annual Operating Grant Agreement shall be binding upon and inure to the benefit of the Council and the Counties and their respective successors and assigns, provided, however, that neither the Council nor any County, may assign any of its rights or obligations under this Agreement or an Annual Operating Grant Agreement without the prior written consent of the other Party. No change or modification of the terms or provisions of this Agreement or an Annual Operating Grant Agreement shall be binding on either the Council or the Counties, unless such change or modification is in writing and signed by an authorized official of the Party against which such change or modification is to be imposed.

**Section 9.06 Waiver.** Neither the failure by the Council or the Counties, in any one or more instances to insist upon the complete and total observance or performance of any term or provision of this Agreement or an Annual Operating Grant Agreement, nor the failure of the Council or the Counties to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Council or the Counties, in exercising any right or remedy under this Agreement or an Annual Operating Grant Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

**Section 9.07 Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or an Annual Operating Grant Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement or an Annual Operating Grant Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the County of Hennepin, State of Minnesota.

**Section 9.08 Severability.** If any provision of this Agreement or an Annual Operating Grant Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect, and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

**Section 9.09 Data Practices.** The Council and the Counties agree with respect to any data that they possess regarding a Grant to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes, as such may be amended, modified or replaced from time to time.

**Section 9.10 Survival of Obligations.** All representation, warranties and obligations of the Council hereunder shall survive the expiration or termination of this Agreement, and the Council, its successors and assigns shall be fully bound by such representations, warranties and obligations, unless waived by Counties. To the extent that the Counties have a specific quarterly payment obligation under an executed Annual Operating Grant Agreement, but the payment has not yet been made, that particular quarterly payment obligation shall survive the termination or expiration of these agreements.

**Section 9.11 Acknowledgment of Counties Funding for a Transitway Service.** The Council shall acknowledge the appropriate County as a funding partner in all promotional, branding and educational materials related to County-funded Transitway Services.

**Section 9.12 Alternative Dispute Resolution.** In the event of a dispute between the Parties arising under this Agreement or an Annual Operating Grant Agreement, the appropriate Parties agree to attempt to resolve their dispute by following the process described below:

a. A Party (the Initiating Party) may initiate this dispute resolution process by providing the other Party (or Parties) with a written notice describing the perceived conflict, the Initiating Party's position, and underlying reasons therefore.

b. The other Party or Parties (Responding Party or Parties) shall, within ten (10) business days of receipt of such notice, provide the Initiating Party with a written response describing its view of the perceived conflict, the Responding Party's or Parties' position, and underlying reasons therefor.

c. The Parties shall meet within fourteen (14) business days from the date the Initiating Party receives the Responding Party's response to resolve the dispute. If the Parties are unable to resolve the dispute, the Parties shall meet with a neutral facilitator to be agreed upon by the Parties within ten (10) business days from the date of the meeting. Costs of such facilitator shall be shared equally by the participating Parties.

d. At the first meeting the neutral facilitator will assist the Parties in identifying the appropriate parties and participants in the dispute resolution process, their concerns, and establish a meeting agenda for any subsequent meetings. The Parties shall agree on a process for resolving the problem which could involve additional negotiations, mediation, or arbitration.

e. In developing the process the Parties will be guided by the following principles:

- 1) The Parties will attempt in good faith to reach a negotiated settlement.
- 2) The Parties agree there will be fair representation of the Parties.
- 3) The Parties will use legal proceedings as a last resort.



- 4) In the event the Parties are unable to resolve the dispute, each Party shall retain all rights, remedies, and defenses it had prior to entering the process, except that each Party shall be responsible for their own attorney's fees and costs.

**Section 9.13 Compliance with Laws.** The Council shall provide Transitway Services in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Transitway Service.

**Section 9.14 Use of Contractors.** The Council may engage contractors to perform Transitway Service activities. However, the Council retains primary responsibility to the Counties for performance of Transitway Services and the use of such contractors does not relieve the Council from any of its obligations under this Agreement or an Annual Operating Grant Agreement.

**Section 9.15 No Third Party Beneficiary Rights.** Nothing in this Agreement or an Annual Operating Grant Agreement is intended or may be construed to create third party beneficiary rights or to give any person or entity, other than the Parties hereto, their permitted successors, and permitted assigns, any legal or equitable right, remedy, or claim under this Agreement.

**Section 9.16 Termination and Withdrawal.**

1. Termination. This Agreement shall terminate upon the occurrence of any one of the following events:
  - a. The Legislature eliminates the provisions of Minnesota Statutes Section 297A.993, restricts their use to preclude or limit payment under this Agreement or Annual Operating Grant Agreements, materially reduces the base to which the authorized grants apply, or redirects or changes the use of proceeds of the taxes.
  - b. When the Parties agree, by resolution adopted by the respective governing bodies, to terminate this Agreement.
  - c. When necessitated by operation of law or as a result of a final decision by a court of competent jurisdiction.
2. Withdrawal. A County may withdraw from this Agreement if the Transitway Service that it is obligated to fund hereunder ceases operations.
3. Partial Termination of Obligations. If a County has committed to fund more than one Transitway Service and if one of the Transitway Services for which it is obligated to fund ceases operation, the County's obligation to fund such Transitway Service hereunder is terminated.

Section 9.17 **Reopening Conditions.** The Parties acknowledge that there may be a need to make adjustments to the terms and conditions set forth in this Agreement to address potential and/or unforeseen circumstances. Any Party may request consideration of specific circumstances; however, the following conditions will be cause to equitably renegotiate the terms of this Agreement:

1. A significant change to Operating Revenues, including but not limited to a fare increase.
2. A proposed material service change that would result in 25% or more change in daily in-service hours of a Transitway Service.
3. A new Transitway Service commences operation, for purposes of establishing the Base Share and Non-Annual Share for the new Transitway Service, adding a party, if necessary, and adding a rail transitway service mode; provided, however, that direct or indirect costs associated with agreements with co-located freight railroad companies shall be addressed by separate agreement of the Parties hereto and such costs are not included in the obligations of this Agreement.
4. An extension to an existing Transitway Service or the addition of a new station on an existing Transitway Service.
5. The Minnesota Legislature modifies the Minnesota Statutes Section 297A.993 sales tax base.
6. An unforeseen circumstance occurs that results in significant on-going Operating Costs to the Transitway Service.

In the event that a Party requests the re-opening of this Agreement or one or more of the above listed conditions arises, the Parties agree to meet in good faith to discuss and propose an appropriate resolution.


(THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.)

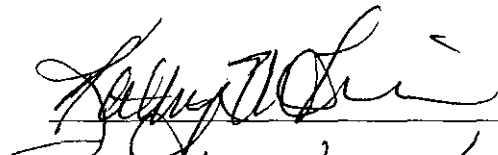
Master Operations Funding Agreement

IN TESTIMONY HEREOF, the Parties have executed this Master Operations Funding Agreement For Transitway Service on the day and date indicated immediately below their respective signatures intending to be bound thereby.

ANOKA COUNTY  
STATE OF MINNESOTA

Reviewed by the Board's Attorney

By:   
Its: Chair, Anoka County Board of Commissioners  
Date: 5-15-18

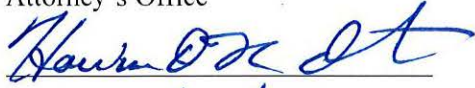
  
Date: May 18, 2018

(The remainder of this page intentionally left blank)

Master Operations Funding Agreement

HENNEPIN COUNTY  
STATE OF MINNESOTA

Reviewed by the County  
Attorney's Office



Date: 3/27/18

By:   
Chair of Its County Board

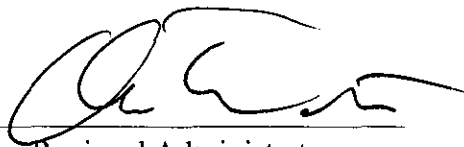
Date: 3-30-18

By:   
County Administrator

Date: 3/27/18

(The remainder of this page intentionally left blank)

**METROPOLITAN COUNCIL  
STATE OF MINNESOTA**

By:   
Its: Regional Administrator  
Date: 03/12/2013

**(The remainder of this page intentionally left blank)**

Master Operations Funding Agreement

RAMSEY COUNTY  
STATE OF MINNESOTA

Reviewed by the County  
Attorney's Office

Paul B. Julia

Date: 4/15/18

By:

Jim M...  
Chair of Its County Board

Date:

4/10/18

By:

Janet M. ...  
Chief Clerk - County Board

Date:

4/10/18

(The remainder of this page intentionally left blank)

ATTACHMENT A

---

**ANNUAL OPERATING  
GRANT AGREEMENT  
FOR THE**

---

**TRANSITWAY SERVICE**

---

**Grant Period:** \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_

**ANNUAL OPERATING  
GRANT AGREEMENT  
FOR THE**

---

**TRANSITWAY SERVICE**

**THIS AGREEMENT** is entered into between \_\_\_\_\_ County, Grantor, and the Metropolitan Council, Grantee, a public corporation and political subdivision of the State of Minnesota, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

**RECITALS**

1. Anoka County, Hennepin County, Ramsey County and the Council have entered into a four-party Master Operations Funding Agreement for Transitway Services, effective January 1, 2018, and denominated \_\_\_\_\_ ("Master Agreement"). The Parties provide in that agreement that funding for each Transitway Service will be determined in Annual Operating Grant Agreements.

2. Grantee, a political subdivision of the State of Minnesota, is eligible to receive a Grant Award from Grantor.

3. Grantee has submitted a grant application, attached as Exhibit A to this Agreement, for operations funding of the \_\_\_\_\_ Transitway Service.

4. *[FOR NORTHSTAR: The Parties contemplate that Grantee shall obtain 8.05% of the Net Operating Costs from the Sherburne County Regional Railroad Authority pursuant to the Northstar Corridor Commuter Rail Master Operations Funding Agreement that became effective on or about May 30, 2007. ]*

**IN CONSIDERATION** of the Grant and other provisions in this Agreement, the Parties to this Agreement agree as follows.

**Article I  
DEFINITIONS**

Section 1.01 **Defined Terms.** Unless the context otherwise requires, or as otherwise defined in this Section 1.01 of this Agreement, capitalized terms used herein shall, for all purposes of this Agreement, have the meanings specified in the Master Agreement.

Agreement means this Annual Operating Grant Agreement for the \_\_\_\_\_ Transitway Service.



Budget and Disbursement Schedule means the budget for Transitway Service operations as set forth in Exhibit B to this Agreement.

Commencement Date means the date on which the Grant Period begins as identified in Section 2.02.

Grant means the money provided by Grantor to Grantee pursuant to this Agreement.

Grant Award means the dollar amount identified in Section 2.01 of this Agreement.

Grant Period means the period identified in Section 2.02 of this Agreement.

Master Agreement means the Master Operations Funding Agreement for Transitway Service effective January 1, 2018, denominated [insert contract numbers] \_\_\_\_\_, setting forth a uniform approach for Grantor funding of Transitway Services.

Maximum Grant Amount means the dollar amount identified in Section 2.01 of this Agreement.

Termination Date means the date on which the Grant Period ends as identified in Section 2.02 of this Agreement.

Transitway Service means the operation of \_\_\_\_\_ transit service as described in the Grant application, which is attached as Exhibit A to this Agreement and incorporated herein by reference.

## **Article II OPERATING GRANT**

Section 2.01 **Grant of Funds.** Grantor agrees to provide Grantee funds in the amount of \$ \_\_\_\_\_ to pay the County Share of the Net Operating Cost of the Transitway Service during the Grant Period (the "Grant Award" or the "Maximum Grant Amount") to be disbursed in accordance with Section 2.03 of this Agreement and Exhibit B to this Agreement ("Budget and Disbursement Schedule").

Section 2.02 **Grant Period.** This Grant shall be effective for a period of \_\_\_\_\_ (the "Grant Period"), commencing \_\_\_\_\_ (the "Commencement Date") and ending \_\_\_\_\_ (the "Termination Date"). Grant proceeds may not be used to reimburse Grantee for expenses incurred prior to the Commencement Date or after the Termination Date.

Section 2.03 **Disbursement of Grant Funds.**

- a. Grantor will distribute to Grantee Grant funds for Operating Costs for the Transitway Service upon receipt of a grant disbursement request in a form

acceptable to Grantor and in accordance with the Budget and Disbursement Schedule attached as Exhibit B to this Agreement and incorporated herein.

b. Grant funds distributed pursuant to this Agreement shall be accounted for and included in the reconciliation for the Grant Period in accordance with Section 5.04 and Section 6.04 of the Master Agreement.

Section 2.04 **Grant Not a Loan.** The Grant is not intended to be a loan.

Section 2.05 **Contribution to Net Operating Costs for the Transitway Service.**

a. Grantee shall use the Grant to pay for the Net Operating Costs for the Transitway Service for the Grant Period.

c. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Grant exceed the Maximum Grant Amount.

### **Article III GRANTEE REPRESENTATIONS AND WARRANTIES**

Section 3.01 **Grantee Representations and Warranties.** With respect to this Agreement, Grantee covenants with and represents and warrants to Grantor as follows:

a. Grantee has legal authority to enter into, execute and deliver this Agreement, and it has taken all actions necessary to its execution and delivery of this Agreement and has the legal authority to operate or pay for operation of the Transitway Service.

b. This Agreement is a legal, valid and binding obligation of Grantee enforceable against Grantee in accordance with its terms.

c. Grantee will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties contained in this Agreement and the Master Agreement.

d. To the best of Grantee's knowledge after due search and inquiry, it has made no material false statement or misstatement of fact in connection with its receipt of the Grant, and all of the information it previously submitted to Grantor or which it will submit to Grantor in the future relating to the Grant or the disbursement of any of the Grant is and will be true and correct.

e. To the best of Grantee's knowledge after due search and inquiry, it is not in violation of any provisions of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, before any judicial body or governmental authority, against or affecting it relating to the operation of the Transitway Service, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement or to perform any of the acts required of it in this Agreement or the Master Agreement.

f. Neither the execution and delivery of this Agreement, nor compliance with any of the terms, conditions, requirements, or provisions contained herein or in the Master Agreement is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which Grantee is now a party or by which it is bound.

g. Grantee will use the Grant solely for Operating Costs of the Transitway Service.

h. The Grant and Transitway Service will be performed and operated in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Grant.

i. Grantee has complied or will comply with any matching funds representations contained in Grantee's application for Grantor funding for the Transitway Service.

j. Grantee shall be responsible for operations of the Transitway Service. Grantee has secured the funding sources needed, in addition to the Grant Award, to operate the Transitway Service for the Grant Period.

k. Grantee shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be reasonably required and requested in writing by Grantor.

#### **Article IV DEFAULT AND TERMINATION FOR CAUSE**

Section 4.01 **Termination For Cause.** In the event that the Parties are unable to resolve a dispute arising out of a material breach of this Agreement pursuant to Section 9.12 of the Master Agreement, Grantor may terminate this Agreement and its obligation to provide funds under this Agreement for cause by providing thirty (30) days' written notice to Grantee.

Section 4.02 **Remedies.** Upon the occurrence of any breach of this Agreement and at any time thereafter until such breach is cured to the satisfaction of Grantor, Grantor may enforce any or all of the following remedies.

a. Grantor may refrain from or delay disbursement of the Grant, or any part of it; provided, however, Grantor may make such a disbursement after the occurrence of a breach without thereby waiving its rights and remedies hereunder.

b. Grantor may demand that the portion of the Grant already disbursed to Grantee be returned to it, and upon such demand Grantee shall return such portion to Grantor.

c. Grantor may enforce any additional remedies it may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that Grantor would otherwise possess and shall survive termination of this Agreement.

**Article V  
CONTRACT ADMINISTRATION**

Section 5.01 **Contract Administration.** [INSERT NAME AND TITLE OF GRANTEE CONTRACT MANAGER], or successor noticed in accordance with the notice provisions of Section 6.01 of this Agreement ("Grantee Contract Administrator") shall manage this Agreement on behalf of Grantee and serve as liaison between Grantee and Grantor. [INSERT NAME AND TITLE OF GRANTOR CONTRACT MANAGER], or successor noticed in accordance with the notice provisions of Section 6.01 of this Agreement ("Grantor Contract Administrator") shall manage this Agreement on behalf of Grantor and serve as liaison between Grantee and Grantor.

**Article VI  
MISCELLANEOUS.**

Section 6.01 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the Party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either Party by written notice to the other:

To Grantee at:

To Grantor at:

\_\_\_\_\_,  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 6.02 **Integration of Master Operations Funding Agreement; Entire Agreement.** The terms, conditions and definitions of the Master Agreement are expressly incorporated into this Agreement except as expressly stated in this Agreement. This Agreement, the Master Agreement and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between Grantee and Grantor, and there are no other agreements,

either oral or written, between Grantee and Grantor on the subject matter hereof regarding the currently included Transitway Services.

Section 6.03 **Additional Requirements.** Grantee and Grantor agree to comply with the following additional requirements:

NONE

Section 6.04 **Survival of Obligations.** All representations, warranties and obligations of Grantee hereunder shall survive the expiration or termination of this Agreement, and Grantee, its successors and assigns shall be fully bound by such representations, warranties and obligations, unless waived in writing by Grantor. To the extent that the Counties have a specific quarterly payment obligation under an executed Annual Operating Grant Agreement, but the payment has not yet been made, that particular quarterly payment obligation shall survive the termination or expiration of these agreements.

(THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.)

**IN TESTIMONY HEREOF**, Grantee and Grantor have executed this Annual Operating Grant Agreement on the day and date indicated immediately below their respective signatures.

**GRANTOR**

\_\_\_\_\_-COUNTY

**ATTEST:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**GRANTEE  
METROPOLITAN COUNCIL**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**BUDGET BY REVENUE SOURCE**