

**DRAFT 7-27-06**

**Agreement between the  
City of Minneapolis and Transit for Livable Communities  
for the Non-motorized Transportation Pilot Project**

SP 141-090-28, NMTP MN06(100)

Mn/DOT Agreement #89757

City Contract # \_\_\_\_\_

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2006, by and between Transit for Livable Communities, a not for profit group, hereinafter called the "Contractor" and the City of Minneapolis, a municipal corporation, in the County of Hennepin, State of Minnesota, hereinafter called the "City".

WHEREAS, The City will receive federal funds from Mn/DOT for the Non-motorized Transportation Pilot Project as outlined in Section 1807 of the Federal Transportation legislation, commonly known as SAFETEA-LU.

WHEREAS, The City desires to serve as fiscal agent for the Non-motorized Transportation Pilot Project and desires to pass-through funds to the Contractor for the implementation of the Non-motorized Transportation Pilot Project,

WHEREAS, this Agreement is intended to memorialize the terms upon which the Contractor is to receive the funds provided to the City by Mn/DOT.

WITNESSETH: That the said Contractor, in consideration of the covenants and agreements of the said City, hereinafter set forth, hereby agrees to: furnish all necessary labor, services, materials, and other incidentals to perform specific work hereinafter called the "Project", for the City in accordance with the attached State of Minnesota Department of Transportation ("Mn/DOT") Agreement No. 89757, as follows:

1. The Contractor shall assist, prepare, implement, and evaluate the Non-motorized Transportation Pilot Project plans and programs, hereinafter called "Preliminary Engineering".
2. The work of the Contractor shall be directed by and be consistent with the Project Memorandum(s) approved by the Contractor, City and MnDOT on \_\_\_\_\_, 2006 and as attached hereto as Exhibit 1 and incorporated by reference. The Project Memorandum(s) shall include a detailed work plan, which includes:
  - ◆ program goals;
  - ◆ a description of program management and objectives;
  - ◆ a description of work tasks to achieve the goals and objectives;
  - ◆ work products;
  - ◆ a timetable for completion of work tasks;
  - ◆ a budget; and
  - ◆ other key program components necessary to fulfill the federal legislation.

3. The Contractor shall submit monthly grant reimbursement requests to the City. The City shall review and approve the grant reimbursement expenditures, and shall pay the full invoiced amount within      days after the Contractor presents the City with a detailed invoice. The City shall forward to Mn/DOT the monthly grant reimbursement request for reimbursement to the City

Deleted: 30

4. The Contractor shall meet all federal and state requirements, as set forth in Mn/DOT Agreement #89757 (attached hereto as Exhibit 2 and incorporated herein by reference), including but not limited to eligible costs, staffing, subletting, contract administration, DBE goals, payments, limitations, audit, duties, and liabilities.

5. Contractor shall attach to this Contract as Exhibit 3, a commitment letter and budget/financial report(s) that indicates the Contractor has the means and methods to meet any and all Project costs until such time as said costs are processed for reimbursement pursuant to this Agreement.

6. Contractor will have a responsibility to the City to generate their own funds from non-City revenue sources to meet any and all costs that are not eligible for federal participation. Should the Contractor's revenue sources (cash reserves and/or projected future non-City revenue sources) indicate a significant funding change, the Contractor will immediately notify the City.

7. The Contractor must maintain all records and provide all reporting as required by this Agreement and Mn/DOT Agreement #89757.

8. Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section     , governs the City's liability.

Deleted: <#>The Contractor must defend, indemnify, and save harmless the City from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted work, caused in whole or in part by any negligent act or omission of the contractor, including negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable; ¶

9. The Contractor must provide and maintain insurance in amounts and types of coverage as required in Exhibit 4 and must name the City as an additional insured. The Contractor must provide to the City prior to commencement of the contracted work a certificate of insurance evidencing such insurance coverage. This Contract shall be effective only upon approval by the City of acceptable evidence of compliance with the workers' compensation insurance coverage requirements of Minnesota Statutes Section 176.181, Subd. 2, as amended.

10. The relationship of the Contractor and any Subcontractors to the City is that of an independent contractor. Nothing in this Agreement shall be construed as creating the relationship of co-partners, joint ventures, or an association, nor shall the Contractor, its employees, representatives or subcontractors be considered employees, agents, or representatives of the City.

12. This Contract will be effective upon execution and will remain in effect for five (5) years from the effective date or until all obligations set forth in this Contract have been satisfactorily fulfilled, whichever occurs first.

Deleted: 11. The Contractor acknowledges that this Contract between the City and the Contractor does not create any contractual relationship between the Mn/DOT and the Contractor.¶

13. Notwithstanding any provision to the contrary, the total amounts payable to the Contractor for Preliminary Engineering and expenses under this Agreement shall not exceed Nine Hundred Ninety Six Thousand Dollars and No/100ths

(\$996,000.00) for services provided through December 31, 2006. Said amount is fully reimbursed by federal grant funds with no matching requirement. The parties contemplate that this Agreement will be amended annually to incorporate the work plan and budget for each subsequent year of this Agreement. Both the City and TLC will have the fiscal responsibility to ensure that the all state and federal funding requirements are met.

14. Contractor further agrees that it will pay as they become due all just claims for work and services, including all wages withheld and required by law to be remitted by said Contractor to federal, state or local governments. The Contractor will furnish the City with satisfactory evidence that all of said amounts have been fully paid. Upon default or delinquency of Contractor in making such payments, said unpaid amounts may, at the option of the City be first paid out of amounts due the Contractor, its agents or assigns, before any part thereof is paid to said Contractor, and deducted from any remaining balance due said Contractor. Contractor will take all precautions necessary to protect the public against injury. Contractor agrees to perform all acts and make all payments, the legal obligations for which arise as a result of its activities and performance in connection with this Contract, including obligations to third persons and government entities.
15. No attempted assignment by the Contractor of any of its rights or obligations under this Contract shall in any way be valid, effective, or binding upon the City unless and until the City gives its written consent thereto, such consent to be evidenced by proper action of the City Council of said City, specifically consenting to the particular assignment, and copies of the written record of such City Council action transmitted to the Contractor and the assignee.
16. Contractor agrees to comply with the provisions of all applicable federal, state and local statutes, ordinances and regulations pertaining to human rights and nondiscrimination, including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363, and Minneapolis Code of Ordinances, Section 139.50, incorporated herein by reference.
17. Each party's authorized representative will have responsibility to administer this Agreement and to ensure that all payments due to the other party are paid pursuant to the terms of this Agreement.

**Deleted:** All in strict conformity with the specifications and contract documents therefore on the MnDOT Agreement No.: 89757 and the Project Memorandum prepared by said Contractor based thereon, which said specifications, proposals and Contract documents are hereby expressly made a part of this Contract. Contractor's performance of obligations hereunder shall be in compliance and conformance with all laws governing or pertaining to any aspect of any operation of the Contractor in any way related to the performance of such obligations.¶

**Deleted:** ; and for all material and equipment or equipment hire incident to the complete performance of this Contract

**Deleted:** , and will defend, indemnify and save said City harmless from all damages and claims of damages that may arise by reason of any negligence on the part of the Contractor, its agents or employees or subcontractors, while engaged in the performance of this Contract, and against any and all claims, liens, and claims of liens for labor performed or material furnished or equipment furnished or hired as aforesaid, including claims for labor, services, materials or equipment furnished or subcontracted for by Contractor without authorization of the governing body of the City, and against all loss by reason of the failure of said Contractor, in any respect to fully perform all obligations under this Contract.¶

The City's Authorized Representative is Jon Wertjes, City of Minneapolis, Room 233 City Hall, 350 South 5<sup>th</sup> Street, Minneapolis, MN 55415, phone 612-673-2614, or his successor.

The Contractor's Authorized Representative is Lea Schuster, Transit for Livable Communities, 626 Selby Avenue, St. Paul, MN 55104, phone 651-767-0298 or her designee or successor.

Each party shall have the right to change its Authorized Representative(s) from time to time and shall inform the other party of any such change. The Contractor's Authorized Representative shall have the express authority to make all contacts with the City on behalf of the Contractor. The Contractor shall submit invoices pursuant to this Agreement to the City's Authorized Representative by mailing or delivering them to the address above.

18. This Agreement may be terminated by the City or the Contractor at any time, with or without cause, upon thirty (30) days written notice to the other party. Such termination will not remove any unfulfilled financial obligations of the City as set forth in this Agreement. In the event of such a termination, the Contractor will be entitled to reimbursement for work satisfactorily performed on the Project to the date of termination subject to the terms of this Agreement.
19. This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral agreements relating to the services to be provided hereunder. Any amendments, alterations, modifications or waivers of the provisions of this Agreement shall be valid only when they have been reduced to writing and duly signed by the parties.
20. Ownership of Documents. All documents, reports, recommendations, designs, and other work prepared or furnished by the Contractor (and/or any subcontractors) pursuant to this Agreement are work products of the Contractor, [City, State and Federal entities](#). Upon request, the Contractor shall furnish the City with all products upon completion; provided, however, that the Contractor shall be entitled to retain copies of all such work products and related documents.

IN WITNESS WHEREOF, said Transit for Livable Communities, a not for profit group, and said City of Minneapolis have caused these presents to be executed in their behalf respectively by their proper officers thereto duly authorized and their corporate seal to be hereto affixed, the day and year first above written.

**Deleted:** Said City hereby agrees to purchase said labor, materials, supervision, tools, equipment, and incidentals and to pay said Contractor subject to the provisions of this Contract, upon bills duly reviewed and approved by said City after delivery and acceptance by said City. Auditing requirements under the MnDOT Agreement No.: 89757 shall apply and may result in adjustments to approved bills and grant reimbursements.¶

**CONTRACTOR**

Federal ID# \_\_\_\_\_  
 APPROVED BY:

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Title

And

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Title

**CITY OF MINNEAPOLIS**

Approved

By: \_\_\_\_\_  
 Department Head Responsible for  
 Contract Monitoring for this Contract

Approved as to Form:

By: \_\_\_\_\_  
 Assistant City Attorney

Approved

By: \_\_\_\_\_  
 Finance Officer or Designee