

Reference Numbers:

City of Minneapolis:

tbd

Hennepin County:

tbd

**PROJECT: PENN AVENUE COMMUNITY WORKS
CORRIDOR VISION AND IMPLEMENTATION
FRAMEWORK**

**NAME: Cooperative Funding Agreement –Corridor Vision and
Implementation Framework (Penn)**

PARTIES:

- **City of Minneapolis**
- **Hennepin County**

This Cooperative Agreement (“Agreement”) is entered into by and between the City of Minneapolis (“City”) and Hennepin County (“County”) (collectively, the “Parties”).

WHEREAS, the Parties have been separately involved in various activities regarding planning, community development, and planning and development of roadway and transit improvements on County State Aid Highway 2 and the broader Penn Avenue North corridor located between the planned METRO Green Line Extension Penn Station south of Interstate 394 and extending to the Minneapolis border at 49th Avenue and Osseo Road (“Penn Corridor”) in Minneapolis; and

WHEREAS, the City, through the Bottineau Light Rail Transit Locally Preferred Alternative resolution, committed to work with Hennepin County and the Metropolitan Council to pursue enhanced transit service, economic development and livability in North Minneapolis including a Community Works project on Penn Avenue North; and

WHEREAS, the County is involved in a comprehensive study and planning process known as the Penn Avenue Community Works Corridor Vision and Implementation Framework (“Penn Corridor Framework”) for community development, roadway and transit improvements; and

WHEREAS, the City benefits from the Penn Corridor Framework; and

WHEREAS, this Agreement is entered into between the Parties to provide a mechanism for the transfer of funds from the City to the County for the Penn Corridor Framework, which study will benefit all Parties.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I. FUNDING

- 1.01 Purpose.** The purpose of this Agreement is to provide a mechanism for the transfer of City funds (the “Funds”) to the County to pay a portion of the cost of the Penn Corridor Framework.
- 1.02 Maximum Amount of Authorized Funding for this Agreement.** The City will contribute \$50,000.00 for its share of the cost of the Penn Corridor Framework.
- 1.03 General Purpose for Funds.** The Funds will be used to reimburse the County for consultant costs of the Penn Corridor Framework to be delivered through a competitively procured consultant contract to be completed prior to December 31, 2015.
- 1.04 Transfer of Funds to the County.** Funds committed by the City to the County under this Agreement shall be distributed to the County as follows:
- a. Payment to the County for costs under this Agreement shall be on a reimbursement basis based upon the submittal of invoices or notifications as described below, after review and approval of each invoice.
 - b. City Payment: Invoices shall be sent to the following address:

James Voll
City of Minneapolis
Department of Community Planning and Economic Development
105 - 5th Avenue South, #200
Minneapolis, MN 55401
Phone: 612-673-3887
Email: james.voll@minneapolismn.gov

or to such other address or person as City may from time to time designate for itself by notice to the County.

City shall remit to the County the approved invoice amount within 45 days of receipt.

- 1.05 Asset Ownership.** The County will own the Penn Corridor Framework product and will publish the final study and related material to a project website within the County’s website. In addition, the County will provide 3 hard copies and 3 electronic copies of final project deliverable to the City.

ARTICLE II. GENERAL PROVISIONS

- 2.01 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 any other Party.

- 2.02 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.
- 2.03 Liability.** The County agrees to defend and indemnify the City, its officials, employees, agents and volunteers from and against all claims, actions, damages, losses and expenses arising out of the County's performance or failure to perform its duties under this Agreement. The City will be responsible for its own acts and omissions and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts and omissions of the County and the results thereof. The Parties each warrant that they are able to comply with the aforementioned liability requirements through an insurance or self-insurance program and have minimum coverage consistent with the liability limits contained in Minn. Stat. Chapter 3 or Chapter 466.
- 2.04 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.
- 2.05 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.
- 2.06 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.
- 2.07 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.
- 2.08 Assignment Prohibited.** Neither party shall assign their obligations under this Agreement without receiving the express written consent of the other Party.
- 2.09 Time.** The Parties agree that all obligations undertaken under this Agreement 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.

2.10 Notices. Any notices or demand, which may or must be given or made by a Party to this Agreement, under the terms of this Agreement or any law or regulation, shall be in writing and shall be sent to the other party as follows:

James Voll
City of Minneapolis
Department of Community Planning and Economic Development
105 - 5th Avenue South, #200
Minneapolis, MN 55401
Phone: 612-673-3887
Email: james.voll@minneapolismn.gov

Kelly Hoffman
Hennepin County Housing, Community Works and Transit
701 Fourth Avenue South
Suite 400
Minneapolis, MN 55415
Phone: 612-348-8276
Email: Kelly.hoffman@hennepin.us

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 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.

2.11 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 breach thereof, shall be in the state or federal court with competent jurisdiction in Hennepin County, Minnesota.

2.12 Effective Date and Termination. This Agreement shall be effective upon execution by the Parties. This Agreement shall terminate upon the earliest of:

- a. completion of the Penn Corridor Framework and reimbursement of all costs provided for in this Agreement, or
- b. abandonment of the plan by the local funding partners, or
- c. a determination by the City that sufficient funds do not exist, or are not reasonably projected to exist, in order to complete the land use plan.

The City and the County agree that project closeout or termination of this Agreement does not invalidate continuing obligations reasonably imposed on City and County by this Agreement. 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.

2.13 Dispute Resolution. Except as expressly provided herein, the Parties will use their best efforts to informally resolve any and all disputes that may arise between the Parties under this Agreement in a timely and expeditious manner. The Parties shall first endeavor to resolve any dispute or controversy between them by having staff discuss the dispute. If staff cannot resolve the dispute, their respective senior management shall discuss the dispute. Senior management for purposes of this Section are the CPED Director, and County's Housing, Community Works and Transit Director, or such other senior managers as the respective Parties shall designate.

As a condition precedent to filing or pursuing any legal or equitable remedy, the Parties agree to participate in good faith in non-binding mediation through the use of a mutually acceptable neutral mediator. The Parties shall share equally in the cost of the mediator. Any Party shall be responsible for its own costs related to such mediation. If the Parties have not resolved their dispute within 30 calendar days after the request for mediation, any Party may resort to any available legal remedies.

Nothing in this Section prohibits any party from initiating any legal remedies without the dispute resolution efforts otherwise required in the first and second paragraphs above if such dispute resolution efforts cannot be accomplished within the time limits applicable for pursuing the legal remedy.

2.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the dates indicated below.

CITY OF MINNEAPOLIS

By _____
Its Finance Officer/
Enterprise Contract Administrator/
City Purchasing Agent

Date: _____

Approved as to form:

Assistant City Attorney

Department Head Responsible
For Monitoring Contracting:

Deputy Director, CPED

HENNEPIN COUNTY

By: _____

Its: Chair of its County Board

Date: _____

By: _____

Its: Deputy/Assistant/County Administrator

Date: _____

By: _____

Its: Director, Housing, Community Works & Transit

Date: _____

ATTEST:

Its: Deputy/Clerk of County Board

Date: _____

Reviewed by County Attorney's Office

Date: _____