

AGREEMENT
BETWEEN THE CITY OF MINNEAPOLIS, THE MINNEAPOLIS PARK AND RECREATION BOARD, AND THE METROPOLITAN COUNCIL FOR ROADWAY IMPROVEMENTS ON VICTORY MEMORIAL PARKWAY BETWEEN 42ND AVENUE NORTH AND LAKE DRIVE

THIS AGREEMENT (“Agreement”), effective upon the date of execution by all parties, is made and entered into by and between the City of Minneapolis, a Minnesota home rule charter city, (the “City”), the Minneapolis Park and Recreation Board acting by and through the City of Minneapolis, (the “MPRB”), and the Metropolitan Council, a public corporation and political subdivision of the state of Minnesota (the “Council”) (hereinafter collectively referred to as the “Parties”) as it pertains to Victory Memorial Parkway between 42nd Avenue North and Lake Drive (the “Parkway Segment”).

WHEREAS:

1. The Council provides regular route bus service within the city of Minneapolis.
2. On October 3, 2007, “Joint Board Permission To Use A Segment of Memorial Parkway in Minneapolis for Metro Transit Regular Route Service (Memorial Parkway Between 42nd Avenue North and Lake Drive)” (Joint Agreement) was given pursuant to Minnesota Statutes 473.411, Subd. 5 (See **Exhibit A**).
3. In furtherance of the above, the City, through its Public Works department, is about to perform mill and overlay work (“Improvements”) upon, along and adjacent to the Parkway Segment in accordance with the City’s plans and specifications.
4. Minnesota Statutes Section 471.59, subdivision 1 authorizes governmental units to enter into interagency agreements.
5. The purpose of this Agreement is to set forth the responsibilities of each party with respect to the construction of the Improvements and use of the Parkway Segment.

NOW THEREFORE, the Council, the MPRB, and the City agree as follows:

ARTICLE 1 CONSTRUCTION OF IMPROVEMENTS

1. Plans and Specifications. The City shall prepare the Project Scope of Work which will include the applicable Minnesota Department of Transportation (MnDOT) specifications for the Improvements and shall submit the Project Scope of Work to the Council for its review and approval. The Project Scope of Work is attached to this Agreement as **Exhibit B**. The City shall also prepare a schedule for the construction of the Improvements and shall submit the final schedule to the Council for the completion of the work, as the necessary approvals and documentation are completed.

2. Construction. The City shall be responsible for the construction of the Improvements. The City shall either perform the work itself or contract for all or a portion of the work. The City shall direct and supervise all construction activities performed under this Agreement, and shall perform all construction engineering and inspection functions in connection with the Improvements. The construction of the

Improvements shall be performed in compliance with the Project Scope of Work. The City shall perform all other acts and functions necessary to cause the construction of the Improvements to be completed in a satisfactory manner. Construction of the Improvements shall be completed within 3 months of this agreement being executed.

3. Permits. The City shall obtain all construction permits and/or any other approvals that may be required in connection with the construction of the Improvements.

4. Notice of Construction. Not less than seven (7) days prior to commencement of the construction by the City, the City shall give written notice to the Council and the MPRB of its intention to commence construction. Notice will be forwarded to:

Metro Transit
Heywood Office
560 6th Avenue North
Minneapolis, MN 55411-4398
Attn: Leah Hiniker

MPRB Headquarters
2117 West River Road North
Minneapolis, MN 55411-2227
Attn: Michael Schmidt

5. Inspection by the Council and the MPRB. The construction of the Improvements shall be open to inspection by the Council and MPRB. If the Council or the MPRB believes that the construction has not been properly performed or that the construction is defective, the Council or the MPRB shall inform City's authorized representative in writing of those defects and what steps in the opinion of the Council and the MPRB must be taken by City to make the construction acceptable.

6. Conditional Use of the Parkway Segment –In accordance with Section 11 paragraph (c) of the Joint Agreement, use of the Parkway Segment by the Council is conditioned upon "baseline improvements to meet the weight requirement of buses." To abide by this conditional requirement, the City shall perform improvements to the Parkway Segment to ensure the baseline improvements (See Project Scope of Work – Exhibit B). The Parties agree that the following standards and conditions shall govern the maintenance, improvement, and use of the Parkway Segment. During each roadway construction season following the completion of the Improvement, the Parkway Segment will have a new Pavement Condition Index (as determined by MicroPAVER Version 6) rating determined by the City of Minneapolis Department of Public Works. If the Parkway Segment reaches a Pavement Condition Index (PCI) rating that is equal to 7 points (allowing for historical normal deterioration of the Segment without Metro Transit buses) less than the initial PCI rating done prior to the Improvement, the Parkway Segment will be considered to be deteriorated to a point that does not meet the baseline requirements of the Joint Agreement.

If the PCI rating becomes equal to 7 points less than the initial PCI rating, Metropolitan Council agrees to do one of the following:

- a) Cease all use of this section of parkway by Metro Transit buses.

- b) If continued use of the Parkway Segment by the Council is to occur, the Council shall provide a complete funding package for the next calendar year and construct in that year the baseline pavement improvement of the Parkway Segment to a design standard that will accommodate the projected Metro Transit bus traffic. If a funding package is not approved within one year of the PCI rating becoming equal to 7 points less than the original PCI, Metro Transit shall cease all use of this section of parkway. These planned improvements need the approvals of both the City of Minneapolis and Minneapolis Park and Recreation Board prior to construction. The construction work will be provided and/or overseen by the City of Minneapolis Department of Public Works.

ARTICLE 2 PAYMENT

A preliminary cost estimate for the construction of the Improvements is attached hereto as **Exhibit C**. The cost estimate includes all anticipated design and construction items, and is based upon estimated unit prices. Upon completion of the Improvements, the City shall prepare a final cost inventory based on final unit prices, and shall submit a copy to the Council. The Council shall pay the City upon submission of the final cost inventory; however, the Council's total obligation under this Agreement shall not exceed \$70,000.

ARTICLE 3 GENERAL PROVISIONS

1. **Examination of Books, Records, Etc.** As provided by Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the City and the Council relevant to this Agreement are subject to examination by the City and the Council, and either the legislative auditor or the state auditor as appropriate, for a minimum of six years from final payment.
2. **Workers Compensation Claims.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
3. **Liability Claims.** Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other party and the results thereof. The Council's and the City's liability is covered by the provisions of Minn. Stat. Chapter 466. The Council and the City each warrant that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program and have minimum coverage consistent with the liability limits contained in Minn. Stat. Chapter 466.
4. **Authorized Agent.** City's Authorized Agent for the purpose of the administration of this Agreement is Mike Kennedy, Director of Transportation Maintenance and Repair, or his successor. His current address and telephone number is 350 South Fifth Street, Room 203, Minneapolis, MN 55415-1380, (612) 673-3759

The Council's Authorized Agent for the purpose of the administration of this Agreement is Leah Hiniker, Engineer, or her successor. Her current address and telephone number are Metro Transit, 560 6th Avenue North, Minneapolis, Minnesota 55411, (612) 349-7768.

The MPRB's Authorized Agent for the purpose of the administration of this Agreement is Michael Schmidt, General Manager, or his successor. His current address and telephone number are MPRB, 2117 West River

Road North, Minneapolis, MN 55411-2227, (612) 230-6400

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in their respective names as of the date first written above.

CITY OF MINNEAPOLIS

MINNEAPOLIS PARK AND RECREATION BOARD

Approved: _____
Department Head responsible for
Contract Monitoring of this contract

By: _____
Its President

Date: _____

Date: 6-18-08

Countersigned: _____
Finance Officer Designee

By: Don Sigelen
Its Secretary

Date: _____

Date: 7/9/08

Approved as to form:

Approved as to form:

By: _____
Assistant City Attorney

By: Michael Salchert
MPRB Attorney, Michael Salchert
Rice, Michels, & Walther, LLP

Date: _____

METROPOLITAN COUNCIL

By _____
Regional Administrator

Date: _____

Approved as to form:

Associate General Counsel

Date: _____

Exhibit A

JOINT BOARD PERMISSION TO USE A SEGMENT OF MEMORIAL PARKWAY IN MINNEAPOLIS FOR METRO TRANSIT REGULAR ROUTE SERVICE

Memorial Parkway Between 42nd Avenue North and Lake Drive*

BACKGROUND

1. The Minneapolis Park and Recreation Board (“MPRB”) controls, governs and administers a park system in and adjacent to the City of Minneapolis. Parkways, boulevards and park roads in the City of Minneapolis are under the jurisdiction of the MPRB. To preserve the nature of the Minneapolis parkways, the MPRB adopts ordinances to regulate parkway traffic and parkway uses.

2. The Metropolitan Council (“Council”) is authorized by state law to operate a regional transit system within the seven-county metropolitan area comprising Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington counties. Through its Metro Transit Division (“Metro Transit”), the Council provides regular route bus service within the City of Minneapolis.

3. Minnesota Statutes section 473.411, subdivision 5 authorizes the Council to operate its Metro Transit buses on any state highway or other public roadway, parkway, or lane, or any bridge or tunnel or other appurtenance of a roadway without obtaining the consent of the public agency in charge of such state highway or other public highway or roadway or appurtenance. However, subdivision 5 also states:

[I]f the council seeks to use a designated parkway for regular route service in the city of Minneapolis, it must obtain permission from and is subject to reasonable limitations imposed by a joint board consisting of two representatives from the council, two members of the board of park commissioners, and a fifth member jointly selected by the representatives of the council and the park board.

4. The Council seeks to use the segment of Memorial Parkway (commonly called Victory Memorial Parkway) located between 42nd Avenue and Lake Drive (the “Parkway Segment”) for operation of its regular route bus service. Council and MPRB representatives have met and discussed the Council’s proposed use of the Parkway Segment and agree it is reasonable for the Council to use the Parkway Segment for its regular route service subject to certain limitations.

5. On August 2007 the MPRB and the Council entered into an agreement (the “Joint Board Agreement”) under which the Council indicated its intention to request from a joint board permission to use the Parkway Segment, and the MRPR indicated its intention to request reasonable limitations on the Council’s use of the Parkway Segment. A copy of the Joint Board Agreement (with its Attachment A) is an Exhibit to this document.

* Lake Drive also is know as County State Aid Highway 9.

JOINT BOARD MEMBERS

7. Pursuant to the Joint Board Agreement and Minnesota Statutes section 473.411, subdivision 5, the MPRB and the Council designated the following persons to sit on this Joint Board as their respective representatives:

For the MPRB: **Jon Olson**, Minneapolis Park & Recreation Board President
Carol Kummer, Minneapolis Park & Recreation Board Commissioner

For the Council: **Mary Hill Smith**, Metropolitan Council Member
Annette Meeks, Metropolitan Council Member

8. Pursuant to Minnesota Statutes section 473.411, subdivision 5, the representatives of the Council and the MPRB jointly selected Minneapolis City Council Member **Barbara Johnson** as the fifth member of this Joint Board.

9. On September 25, 2007 this Joint Board convened at MPRB's Minneapolis offices to consider: the Council's request for permission to use the Parkway Segment for regular route service; and the MPRB's request for reasonable limitations on the use of the Parkway Segment.

PERMISSION

10. Subject to the conditions stated in Minnesota Statutes section 473.411, subdivision 5 and the reasonable limitations imposed by this Joint Board in Paragraph 11, the Council's request to use the Parkway Segment for regular route service is granted.

REASONABLE LIMITATIONS

11. The Council's use of the Parkway Segment for regular route service is subject to the following reasonable limitations:

(a) **Regular Route Service within the Parkway Segment.** The regular route service that will operate within the Parkway Segment currently is identified as Metro Transit Route 19. The Council must operate regular route bus service within the Parkway Segment substantially as described in Attachment A to the Joint Board Agreement between the MPRB and the Council. However, the Council may change the span of service and frequencies ("Service") on the Parkway Segment if necessary to provide efficient and effective public transit services. The Council must give the MPRB at least sixty (60) days advance notice if there are any substantial changes in Service on the Parkway Segment. If requested, Metro Transit staff should meet with MPRB staff to discuss any Service issues.

(b) **Existing Layover.** When the Council initiates regular route service on the Parkway Segment, the Council should eliminate the existing bus layover at 42nd Avenue North and Memorial Parkway.

(c) ***Parkway Segment Pavement.*** Metro Transit will work with Minneapolis Public Works and other appropriate agencies to ensure baseline pavement improvements are made to Memorial Parkway between 42nd Avenue and Lake Drive to meet the weight requirements of the buses.

(d) ***MPRB Special Events.*** MPRB special events shall have first priority for the use of the Parkway Segment. The Council must identify detour routes for bus service when the Parkway Segment is closed for MPRB special events. The MPRB should give the Council reasonable advance notice of MPRB special events so the Council can advise its employees and inform its riders of detour routes. The MPRB should allow the Council to post detour route notices and related information on the Parkway Segment and other parkways, boulevards and park roads if detour notices are appropriate and necessary when MPRB special events are scheduled.

(e) ***Temporary Route Detours.*** As required by Minnesota Statutes section 473.411, subdivision 5, the Council must immediately notify the MPRB of any temporary route detours that direct regular route service from the Parkway Segment onto or through other parkways, boulevards or park roads under the jurisdiction of the MPRB. The MPRB should allow the Council to post detour route notices and related information on the Parkway Segment and other parkways, boulevards and park roads if detour notices are appropriate and necessary when temporary route detours occur.

(f) ***Environmentally Friendly Buses.*** To help protect the character of the Parkway Segment, the Council must make reasonable efforts to fulfill its long-term goal of operating hybrid buses or other types of environmentally friendly buses on the Parkway Segment.

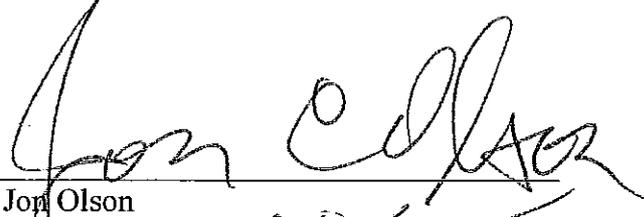
(g) ***Bus Stops on Parkway Segment.*** The regular route bus service operated by the Council on the Parkway Segment must not have any bus stops between 42nd Avenue North and 45th Avenue North.

DISSOLUTION OF JOINT BOARD

12. It is this Joint Board's understanding that: Council requests to use Minneapolis parkways for regular route service likely will occur on an infrequent and as-needed basis; maintaining and administering this Joint Board on a continuing basis will consume scarce public resources; and Minnesota Statutes section 473.411, subdivision 5 does not expressly state that a joint board must continue to exist after it has convened to consider a particular Council request. Accordingly, upon execution of this document this Joint Board is dissolved with the expectation and understanding that the MPRB and the Council will designate representatives to a new joint board pursuant to Minnesota Statutes section 473.411, subdivision 5 if, in the future, the Council requests to use designated parkways in the City of Minneapolis (other than the Parkway Segment and Minneapolis parkways, boulevards and park roads currently being used by the Council for regular route bus service) for additional routes or trips.

EXECUTION

13. This Joint Board's decision granting the Council's request for permission to use the Parkway Segment for regular route service and the reasonable limitations imposed by this Joint Board are effective on the date this document has been signed by all members of this Joint Board.



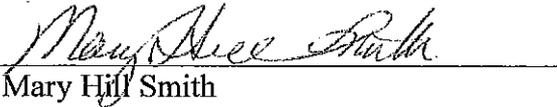
Jon Olson

Date: 10-3-07



Carol Kummer

Date: 10/3/07



Mary Hill Smith

Date: 9-26-07



Annette Meeks

Date: 9.27.07



Barbara Johnson

Date: 10/17/07

One of Two Originals

EXHIBIT

JOINT BOARD AGREEMENT

THIS AGREEMENT is made and entered into between the Minneapolis Park and Recreation Board (“MPRB”) and the Metropolitan Council through its Metro Transit Division (“Council”). This Agreement is made to facilitate the forming of a Joint Board to consider the Council’s request to use a designated parkway for its regular route service as described in Attachment A.

BACKGROUND

1. The Minneapolis Park and Recreation Board is an elected body that controls, governs, and administers a park system in and adjacent to the City of Minneapolis.

2. Parkway, boulevards and park roads in the City of Minneapolis are an important part of the Minneapolis park system and are under the jurisdiction of the MPRB.

3. The Minneapolis parkways and boulevards were not originally designed or constructed for bus traffic or commercial transportation routes. To preserve the nature of the Minneapolis parkways, the MPRB adopts ordinances to regulate parkway traffic and parkway uses.

4. The Metropolitan Council is authorized by state law to operate a regional transit system within the seven-county metropolitan area comprising Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington counties. Through its Metro Transit Division (“Metro Transit”), the Council provides regional transit service within the City of Minneapolis.

5. The Legislature recognized the need for transportation services that efficiently and effectively meet public needs and passed legislation to ensure efficient and effective public transportation services can occur. Minnesota Statutes section 473.411, subdivision 5 states in part:

The council may use for the purposes of [operating its regional transit system] upon the conditions stated in this subdivision any state highway or other public roadway, parkway, or lane, or any bridge or tunnel or other appurtenance of a roadway, without payment of any compensation, provided the use does not interfere unreasonably with the public use or maintenance of the roadway or appurtenance or entail any substantial additional costs for maintenance. *** The consent of the public agency in charge of such state highway or other public highway or roadway or appurtenance is not required; *** .

Minnesota Statutes section 473.411, subdivision 5 also states:

[I]f the council seeks to use a designated parkway for regular route service in the city of Minneapolis, it must obtain permission from and is subject to

reasonable limitations imposed by a joint board consisting of two representatives from the council, two members of the board of park commissioners, and a fifth member jointly selected by the representatives of the council and the park board.

6. The Council requests a Joint Board pursuant to the above referenced Minnesota Statute to approve its use of a designated parkway for its regular route service substantially as described in Attachment A of this Agreement.

7. The Council and MPRB requests that the Joint Board ensure that Metro Transit works with Minneapolis Public Works to ensure baseline pavement improvements are made to Victory Memorial Parkway between 42nd Avenue and 45th Avenue to meet the weight requirements of the buses and consider the following guiding principles.

- (a) MPRB special events will have first priority for the use of parkways, boulevards and park roads. Metro Transit will identify detour routes for bus service when a parkway, boulevard or park road is closed for MPRB special events. The MPRB will give Metro Transit reasonable advance notice of MPRB special events so Metro Transit can advise its employees and inform its riders of detour routes. The MPRB will allow Metro Transit to post detour route notices and related information on parkways, boulevards and park roads if detour notices are appropriate and necessary when MPRB special events are scheduled.
- (b) As required by Minnesota Statutes section 473.411, subdivision 5, Metro Transit will immediately notify the MPRB of any temporary route detours that direct fixed-routes onto or through parkways, boulevards or park roads. The MPRB will allow Metro Transit to post detour route notices and related information on parkways, boulevards and park roads if detour notices are appropriate and necessary when temporary route detours occur.
- (c) As a long-term goal, the Council plans to operate hybrid vehicles on routes that use parkways, boulevards and park roads.
- (d) Metro Transit will give at least sixty (60) days advance notice to the MPRB if there are any substantial changes in the number of trips operated on the parkway. -. If requested, Metro Transit staff will meet with designated MPRB staff to discuss trip number issues.

JOINT BOARD

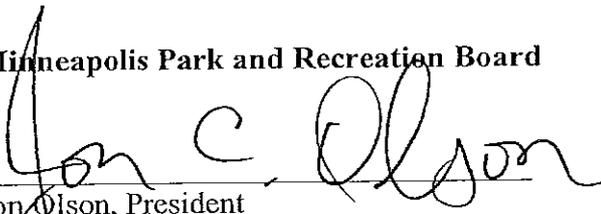
8. Upon execution of this Agreement, the MPRB will designate two park commissioners and the Council will designate two representatives who will serve as their respective representatives to sit on the Joint Board and select a fifth member of the Joint

Board, so the Joint Board can consider, in a timely manner, the Council's request to use a segment of a parkway for regular route service, currently identified as Route 19. The MPRB and the Council acknowledge that the Joint Board is convening solely for this purpose and shall disband upon the completion of the Joint Board's action regarding the Council's request to use a designated parkway for its regular route service.

COOPERATION

9. Although this Agreement is for the limited purpose of forming a Joint Board to consider the Council's request to use a designated parkway for its regular route service, both the MPRB and the Council acknowledge and agree, to the extent reasonably possible, to cooperatively meet to resolve any issues in a mutually agreeable manner.

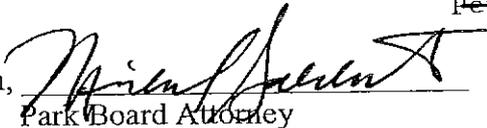
Minneapolis Park and Recreation Board


Jon Olson, President

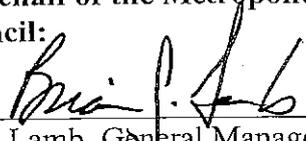
Date: 7-27-07


Don Siggelkow, Secretary

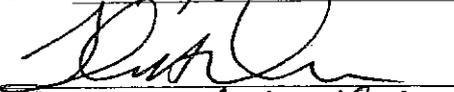
Date: 7-27-07

Approved as to form, 
Park Board Attorney

On behalf of the Metropolitan Council:


Brian Lamb, General Manager
Metro Transit

Date: 8/8/07


~~Tom Weaver, Regional Administrator~~
~~Peter Bell, Metropolitan Council~~
Chair

Date: 8-13-07

ATTACHMENT A
AGREEMENT BETWEEN
MINNEAPOLIS PARK AND RECREATION BOARD AND
METROPOLITAN COUNCIL

This Attachment A describes the segment of a Parkway used by the Council for its Route 19 regular route service.

ROUTE 19

Segment: Memorial Parkway between 42nd Ave and Lake Dr
** Metro Transit intends to eliminate the existing layover at 42nd Avenue North and Memorial Parkway*

Approximate Span of Service on Parkway: Weekday: 5:00 a.m.-11:00 p.m.
Saturday: 6:00 a.m.- 11:00 p.m.
Sunday: 8:15 a.m.-10:15 p.m.

Average Frequency on Parkway: Weekday: 30-60 minutes
Saturday: 60 minutes
Sunday: 60 minutes

EXHIBIT B

Victory Memorial Parkway Scope of Work

The City of Minneapolis Public Works proposes to perform under total closure for approximately 10 calendar days, a 2.0 inch mill and overlay on existing Victory Memorial Drive between Lake Drive and 42nd Avenue North. The purpose of this work is to provide additional pavement strength to support the use of Metro Transit bus traffic on this section of roadway.

. This design uses the proposed number of trips (20 Metro Transit buses daily each direction) and type of bus based on the information which has been provided by Metro Transit.

All work will meet the following specifications:

Standard Specifications for the Construction of Public Infrastructure in the City of Minneapolis, version 1.2

State of Minnesota Department of Transportation Specifications for Construction, 2005 Edition.

Temporary Traffic Control Zone Layouts, Field Manual January, 2007.

In addition to this the following requirements will apply:

MnDOT 2232 Mill Pavement Surface

This specification shall apply with the addition that the required depth is 2.0 inches across the entire pavement surface.

Standard Specifications for the Construction of Public Infrastructure in the City of Minneapolis, version 1.2 and MnDOT 2360 Plant Mixed Asphalt Pavement

These specifications shall apply with the additions and changes:

Specified asphalt mix shall be SPWEB540L

I hereby certify that these specifications were prepared by me or under my direct supervision, and that I am a duly Registered Professional Engineer under the laws of the State of Minnesota.

Lawrence Matsumoto

Date _____ Registration Number 17855

EXHIBIT C
Preliminary Cost Estimate

Victory Memorial Drive
42nd Ave N to 45 th Ave N (Lake Dr N)
(includes 42nd Ave intersection)
done on March 6, 2008
Estimated Quantities

Description	Units	Total	Unit	
			Price	Cost
MILL BITUMINOUS SURFACE (2.0")	SQ YARD	4857	\$ 5.18	\$25,159.26
TYPE SP 12.5 WEARING COURSE MIXTURE (2.0")	TON	547	\$ 74.85	\$40,942.95
TYPE SP 12.5 BASE COURSE MIXTURE (5.0")	TON	10	\$ 70.35	\$ 703.50
Traffic Control	Lump Sum	1	\$3,500.00	\$ 3,250.00
Total Amount				\$70,055.71