

TRAFFIC CONTROL AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Milwaukee, "City" a municipal corporation, and Boulder Venture LLC ("Boulder Venture"), a private corporation, relating to the design, installation, construction, operation, and maintenance of the traffic control signals and related traffic control facilities at the intersection of West Fond du Lac Avenue and West Ely Place ("Intersection").

NOW, THEREFORE, in consideration of the mutual promises of each entity made to the other the fulfillment of the terms and conditions, agreements, and understanding hereinafter set forth,

IT IS MUTUALLY AGREED by and between the parties that:

The traffic control signals are to be designed, constructed, operated, and maintained at the Intersection.

CONDITIONS OF THIS AGREEMENT ARE TO BE AS FOLLOWS:

- I. The City of Milwaukee hereby agrees:
 - (a) That it will, through its Public Works Department and other appropriate and necessary agents of the City, design and construct traffic control signals and related traffic control facilities at the Intersection with all costs paid by Boulder Venture.
 - (b) That the City, as subscriber for electrical service with WE Energies, will bill Boulder Venture for the total cost of energy for the traffic control signals at the Intersection.
 - (c) That it will provide routine maintenance responsibility (lamp removal, cleaning, lens replacement, controller service, detector service, etc.) for the entire traffic control signal installation and that it will bill Boulder Venture for the cost of said maintenance.
 - (d) That it will provide all necessary repairs and replacements to equipment that fails to function properly as a result of normal wear and deterioration and that it will bill Boulder Venture for the cost of said necessary repairs and replacements.
 - (e) That it will provide all necessary repairs and replacements to equipment damaged by accident, vandalism, or acts of God, and that it will bill Boulder Venture for the cost of said repairs and replacements.

- (f) That it will make any necessary equipment additions or revisions deemed necessary by changed laws, changed traffic conditions, or changed intersection geometry, and will bill Boulder Venture for the cost of said additions and revisions.
- (g) That it will operate and adjust the traffic signal timing and equipment in such manner as to best meet prevailing traffic conditions as determined by the City.
- (h) That it will bill Boulder Venture once yearly for the cost of routine and emergency maintenance based on City of Milwaukee signal shop records, (said costs per maintenance visit to be calculated on an average per intersection basis using the entire City signal system as a database), electrical energy and any necessary equipment additions or revisions.
- (i) In the event that the total design and construction costs are less than the \$47,000 deposit, it will refund the difference to Boulder Venture following construction.

II. Boulder Venture hereby agrees:

- (a) That it will pay for the total cost of the design and construction of traffic control signals and related facilities at the Intersection. The estimated cost of design and construction of \$47,000 is to be deposited with the City in advance of the design and construction of the signal. In the event that the total design and construction costs exceed the \$47,000 estimated cost on deposit, it will pay the difference after billing by the City.
- (b) That it will pay the City, the subscriber of electrical service with WE Energies, for the total cost of electrical energy for the traffic control signals at the intersection.
- (c) That the City is to perform routine maintenance for the entire traffic control signal installation as indicated in Section I. (c), necessary repairs and replacements to all traffic control signal equipment which fails to function as indicated in Section I. (d), necessary repairs and replacements to all traffic control signal equipment which is damaged as indicated in Section I. (e) and any necessary equipment additions or revisions as indicated in Section I. (f). and it will pay the cost of any such repairs and replacements upon billing by the City.

- (d) That the City is to perform all work related to the operation of the traffic control signals at the Intersection, including engineering.
- (e) That it agrees to promptly notify the City through its Public Works Department (at the phone numbers listed below), of any damage, lamp outage, lens breakage, or seeming malfunction of the traffic control signal equipment or related traffic control facilities.

Canal Street Shop – 286-3682
Engineering Office – 286-3232

- (f) That the City shall operate and adjust the traffic signal controller in such a manner as to best meet prevailing traffic conditions determined by the City of Milwaukee through its Public Works Department.
- (g) That the City has full authority to discontinue on either a temporary or permanent basis any traffic control facilities, including traffic signals, and to remove said facilities, in the event the operation of the retail operations at Midtown Center ceases or the traffic signal becomes unwarranted, after notification is made to Boulder Venture when the City deems such action necessary or advisable in the public interest.
- (h) That it will pay the annual cost of the traffic signal maintenance and operation as described in Section I. (h).
- (i) That the City shall request layouts of Boulder Venture underground structure and facilities before performing work of such a nature that existing underground facilities must be avoided. The City shall be required to take precautionary measures to avoid damage to such underground facilities. Boulder Venture shall supply the City with a complete record of the existing underground material structure at the intersection and any change or revision thereto as may take place in the future.

III. Ownership and Responsibility

After the design and construction work outlined in this agreement is completed, all of the materials installed shall become the property of the City.

IV. Payments

All payments due under this agreement shall be paid within thirty (30) days after receipt of an invoice of same.

V. Liability

Each party agrees to indemnify, defend and save harmless the other, as well as their officers, directors, employees and agents, from, and against any and all liability for injuries or damages to persons or property arising out of their own performance or failure to perform the provisions of this Agreement.

VI. Duration

This Agreement shall continue and be in force indefinitely unless terminated on six (6) months written notice by either agency to the other. If this agreement is terminated by the City, the City shall not discontinue the traffic signals nor remove any traffic control facilities except as permitted by Section II (g) which shall survive.

This agreement supersedes, rescinds, and replaces any and all previous agreements which may have been entered into by the City and Boulder Venture regarding the design, construction, operation and maintenance of traffic control signals and related traffic control facilities at the Intersection.

IN WITNESS WHEREOF, the undersigned on behalf of the City of Milwaukee affix their hands and seals this ____ day of _____, 2004.

CITY OF MILWAUKEE

COMMISSIONER OF PUBLIC WORKS

IN WITNESS WHEREOF, the undersigned on behalf of Boulder Venture affix their hands and seals this ____ day of _____, 2004.

BOULDER VENTURE, LLC

By: _____

Its: _____

KAW:lja