



Request for Proposals (RFP),  
Eden Prairie Garage Vehicle Positioning System

For

SouthWest Transit

**Issue Date: September 21, 2018**

**Proposals Due: Noon, Friday, October 12, 2018**

**Proposals that are late, for any reason, will not be accepted.**

## INSTRUCTIONS FOR PREPARATION OF PROPOSALS

### 1. REQUEST FOR PROPOSALS

SouthWest Transit (SWT) is requesting proposals from qualified proposers to provide:

#### **Eden Prairie Garage Vehicle Positioning System**

Copies of the Request for Proposals (RFP) will be available on the SWT website at <https://swtransit.org>. Addenda will also be posted at this website. All parties interested in submitting a proposal must register their name, address, phone number and email address with the RFP administrator in order to receive any addenda and/or answers to submitted questions. Please send an email to Mr. Jason Kirsch at [jkirsch@swtransit.org](mailto:jkirsch@swtransit.org) with this information.

Any questions regarding this RFP must be made by email and sent to Mr. Jason Kirsch at [jkirsch@swtransit.org](mailto:jkirsch@swtransit.org). All questions not submitted by email will be disregarded. Emailed questions must be received by Mr. Kirsch no later than 4:00 p.m. on Monday, October 1, 2018. All registered RFP recipients will be provided with an addendum containing the responses to the written inquiries by 12:00 p.m. on Wednesday, October 3, 2018.

To be considered, a sealed proposal consisting of one original and three (3) copies must be received by SWT by 12:00 p.m. (noon) on Friday, October 12, 2018. All proposals must be sealed and marked ***“Proposal for Eden Prairie Garage Vehicle Positioning System”***. SWT reserves the right to reject any or all proposals submitted. Oral, facsimile, electronic-mail, telephone or telegraphic proposals are invalid and will not receive consideration. The Price Proposal form is attached to this RFP as Exhibit B.

All proposals must be addressed as follows:

SouthWest Transit  
Attention: Mr. Jason Kirsch  
Proposal for Eden Prairie Garage Vehicle Positioning System  
13500 Technology Drive  
Eden Prairie, Mn 55344

### 2. SOUTHWEST TRANSIT'S RIGHTS

SWT reserves the right to cancel this RFP in writing or postpone the date and time for submitting proposals at any time prior to the proposal due date. SWT shall have the right to accept or reject any or all proposals. SWT is not obligated to accept the lowest priced proposal. SWT may select the proposal which provides the best value to SWT. SWT specifically reserves the right to reject any or all proposals; to waive any or all informalities or irregularities in the proposals received; to investigate the qualifications and experience of any Proposer; to reject any provisions in any proposal; to modify RFP contents; to obtain new proposals; to negotiate the requested services and contract terms with any Proposer; and/or to proceed to do the work otherwise.

### 3. PROJECT TIME FRAME

| Project Milestones                              | Tentative Date                    |
|---|-----------------------------------|
| Issue RFP                                       | <b>Friday, September 21, 2018</b> |
| Final questions due from proposers by 4:00 p.m. | Monday, October 1, 2018           |
| Final SWT responses to questions                | Wednesday, October 3, 2018        |
| Proposals due to SWT by noon                    | Friday October 12, 2018           |
| Interviews (if necessary)                       | Prior to October 17, 2018         |
| Notice of award                                 | Friday, October 26, 2018          |
| Contract begins                                 | Monday, October 29, 2018          |
| Work Completion Date                            | Friday, December 28, 2018         |
| Final Invoice Submission                        | Monday, December 31, 2018         |

Completion dates for the project milestones in this section are tentative only and are subject to modification by SouthWest Transit.

#### 4. BACKGROUND

SWT was created in 1986 under a Joint Powers Agreement between the Cities of Chanhassen, Chaska and Eden Prairie to provide the three (3) cities with public transit service. SWT is governed by a seven (7) person commission (“Commission”). Each of the three cities has an appointed member as well as an elected official and the seventh member is a rider representative. SWT offers service to and from downtown Minneapolis, the University of Minnesota, Normandale Community College, Best Buy headquarters, and local malls, as well as service between Chanhassen, Chaska and Eden Prairie. SWT also provides an on-demand ride service in Chanhassen, Chaska, Eden Prairie, and Carver, called “SW Prime.” SWT currently operates four major park-and-ride lots, including its main hub, SouthWest Station in Eden Prairie, Minnesota.

SouthWest Transit is proposing to deploy an internal garage vehicle locator system at its Eden Prairie Garage location (80,000 square feet) located at 14405 W 62<sup>nd</sup> St, Eden Prairie, MN 55346. SouthWest Transit owns and operates approximately 110 vehicles. The vehicle locator system is intended to locate these vehicles while they are parked on the Eden Prairie Garage property.

More information about SWT can be found at [www.swtransit.org](http://www.swtransit.org).

#### 5. RFP ADMINISTRATOR; PROPOSAL QUESTIONS; ADDENDA

The RFP administrator for the Request for Proposals is:

Mr. Jason Kirsch  
[jkirsch@swtransit.org](mailto:jkirsch@swtransit.org)  
 952-974-3117

The RFP administrator shall serve as the contact person and will send and receive all communications regarding the RFP between Proposers and SWT for this procurement.

**Proposers may be disqualified if any unsolicited contact related to this RFP is made with an employee or representative of SWT during the proposal process except as provided in these instructions.**

If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the Scope of Work, or other RFP documents, or finds discrepancies in or omissions from the specifications, the person shall submit to the RFP administrator a written request for an interpretation or correction by the date indicated in Section 3 of this RFP. **Only emailed requests will be accepted.** The person submitting the request will be responsible for its prompt delivery. If the RFP administrator elects to answer any questions, all registered RFP recipients will receive a written response.

Any corrections or changes to this RFP will be made by written addendum only and will be distributed to all registered recipients of the RFP document at the address provided by the recipient. SWT shall not be bound by any oral representations.

## **6. PROPOSAL FORMAT**

Each proposal shall consist of the parts listed below. All parts must be placed in a sealed container and marked ***Proposal for Eden Prairie Garage Vehicle Positioning System***, along with the name of the Proposer.

- A. Proposal Information.** One original and three copies are required. The Proposal Information must be clearly marked *Proposal Information*. See Section 8 A of this RFP for the content requirements of the Proposal Information.
- B. Certifications.** One original of each certification is required. The Proposer Certifications must be clearly marked *Proposer Certifications*. See Section 8 B of this RFP for required certifications.
- C. Price Proposal.** One original and three copies of the Price Proposal are required. The Price Proposal must be sealed in a separate envelope marked *Price Proposal*. See Section 8 C of this RFP for the content requirements of the Price Proposal.

## **7. SUBMISSION OF PROPOSALS**

Proposals must be **physically delivered** to the offices of SouthWest Transit (SWT), at the address previously specified by the date and time indicated in Section 1 of this RFP. Proposals received after the specified time and date will not be considered. **If proposals are sent by U.S. mail or other delivery service, it is wholly the responsibility of the Proposer to ensure that the proposal package is properly addressed and physically delivered on time.**

The submission of a proposal shall constitute an acknowledgment upon which SWT may rely that the Proposer has thoroughly examined and is familiar with the RFP, price sheet and work sites as applicable, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions dealing with or related to the services to be provided. The failure or neglect of a Proposer to do so shall in no way relieve the Proposer from any obligations with respect to the proposal or the contract issued as a result of this RFP. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any aspect of the RFP, attachments or exhibits (including the Scope of Work), addenda, work sites, statutes, regulations, ordinances or resolutions.

## **8. ITEMS REQUIRED TO BE SUBMITTED WITH THE PROPOSAL**

Items listed in this section must accompany the proposal. If any required item is omitted, the proposal may be rejected and returned without further consideration. See the referenced sections for additional details on some requirements.

### **A. Proposal Information**

Information in this part of the proposal must be organized based on the following sections. Proposers who do not submit a proposal in this form may have the proposal deemed non-responsive and rejected, in particular, if SWT is unable to locate requested or required information. The information should provide concise and to-the-point details as appropriate, demonstrating Proposer qualifications related to the response items.

#### **1. Transmittal Letter**

The proposal shall be accompanied by a transmittal letter signed by an officer or managing principal who can bind the proposer to the offer presented and provide a personal commitment to the success of the project. The transmittal letter must acknowledge review, by number, of all addenda issued. The transmittal letter must state that the proposal will remain valid for a period of not less than sixty (60) days from the date of proposal opening.

#### **2. Intentionally omitted**

#### **3. Qualifications**

Clearly and completely describe the Proposer's general and specialized qualifications to undertake this project. The proposal must demonstrate that the Proposer has the qualifications to successfully execute and complete this project.

#### **4. Experience/References**

- a. Provide a description of the firm's experience and competence of the Proposer.
- b. Provide records of Proposer performance on **all** garage vehicle locator system installation contracts performed from January 1, 2018 to the present date, including:

- the contract name;
  - client name, address and phone number;
  - the date the project started and was completed; and
  - contact information (phone and email).
- c. Provide a description of any defaults on any previous contracts in the last five years including a full explanation of the circumstances surrounding the default.
- d. Provide a list of references.

## **5. INTENTIONALLY OMITTED**

### **6. Key Personnel:**

Identify key personnel to be used on the project, and their experience and qualifications, for Proposer that will be assigned to work on this contract, including:

- name;
- title;
- company affiliation;
- proposed responsibilities; and
- site lead personnel contact

## **7. INTENTIONALLY OMITTED**

### **8. Appendix**

Include any other information the Proposer wishes SWT to know and evaluate in an appendix to the Proposal Document.

### **B. Proposer Certifications**

Certificate of Insurance as outlined in Exhibit A, Scope of Work

### **C. Price Proposal**

1. Proposal will include the total cost for the Project

## **9. WITHDRAWAL OR MODIFICATION OF PROPOSALS**

Proposals which are timely withdrawn shall be returned to the Proposer. If a substitute proposal is timely submitted, SWT shall deem a previous proposal submitted by the Proposer to have been withdrawn and the previous proposal shall be returned to the Proposer unopened. A Proposer may submit a substitute proposal only prior to the time proposals are due. A substitute proposal must be **physically received** by the RFP Administrator prior to the time proposals are due.

## **10. PROPOSAL SELECTION CRITERIA AND PROCEDURE**

### **A. Selection Criteria**

Proposals will be evaluated on the basis of the following criteria: a) proposer experience in providing garage vehicle locator system installation; b) Reference from current customers; c.) all other information submitted in the proposal; d.) proposer compliance with this RFP; and e,) the proposers cost proposal.

## **B. Evaluation Panel**

The evaluation process may include the use of an Evaluation Panel consisting of SWT staff and others deemed appropriate by the RFP Administrator. If an Evaluation Panel is not used, the compliant proposals will be submitted to the SouthWest Transit Commission with a recommendation from the CEO for award of the contract. If used, the Evaluation Panel may solicit comment from other SWT staff or from outside advisors. The Evaluation Panel may review the proposals and evaluate each by applying the Selection Criteria. The Evaluation Panel may rate the proposals using any comparative method; provided that the Evaluation Panel may convert each rating to a numerical rank for presentation to the SouthWest Transit Commission. The Evaluation Panel may solicit and use staff expertise in making its findings and conclusions, including a proposer's past performance on SWT contracts. The Evaluation Panel may report its findings and conclusions in writing to the SouthWest Transit Commission. The report may include a recommendation as to which, in its judgment, is in the best interest of SWT.

1. Prohibited Contact with Proposers. Except as otherwise provided, oral communications between a Proposer and members of the Evaluation Panel (other than the RFP Administrator) and the SouthWest Transit Commission regarding the procurement in progress is prohibited. Each Evaluation Panel member shall report any such communication, in writing, to the RFP Administrator, who shall determine any appropriate remedial action.
2. Permitted Contact with Proposers. The Evaluation Panel may conduct written communications through the RFP Administrator to Proposers. In addition, the role of the Evaluation Panel may include formal interviews with the top choice(s). Evaluation Panel members may have contact with proposers only in a meeting of the Evaluation Panel called by SWT for the purpose of receiving oral presentations from a Proposer or Proposers. The purpose of the presentation is to permit the Proposers to explain and clarify their written proposals and not to modify any proposals. The proceedings will be formal and structured, consisting of a timed presentation by the Proposer followed by a question and answer session.

## **C. Selection by SouthWest Transit (SWT)**

SWT shall determine which proposal, if any, is in the best interest of SWT, Additionally, SWT reserves the right to negotiate the final terms and contract with the selected Proposer. If SWT and the selected proposer are unable to reach agreement, SWT reserves the right to reject the selected proposer and begin negotiation with another selected proposer from the Proposers who submitted proposals. SWT may base any selection on the Selection Criteria stated above in conjunction with the report and recommendations of the Evaluation Panel, if used; provided that

SWT's Commission may accept, reject, modify, amend or request clarification of the report of the Evaluation Panel.

#### **D. Awarding of Contract**

If a proposal is accepted and award is authorized, in accordance with SWT's policies and procedures, the contracts for the work will be executed. Until authorization of the award and execution of the contracts, SWT has no obligation for the cost associated with any work performed. SWT proposes to enter into two contracts: a contract for the supply and installation, and a contract for the post-installation maintenance and support. The Forms of Contract are attached as Exhibit C.

### **11. ORGANIZATIONAL CONFLICT OF INTEREST**

#### **A. Definition of Organizational Conflict of Interest**

An "organizational conflict of interest" exists when, because of existing or planned activities or because of relationships with other persons, a proposer is unable or potentially unable to render impartial assistance or advice to SWT, or the proposer's objectivity in performing the contract work is or might be otherwise impaired, or the proposer has an unfair competitive advantage.

#### **B. Warranty against Organizational Conflict of Interest**

By submitting a proposal, each Proposer warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that could give rise to an organizational conflict of interest on this project with respect to the Proposer. A selected Proposer shall have continuing obligations to disclose to SWT organizational conflicts of interest which may be later discovered.

### **12. DATA PRACTICES ACT**

The Minnesota Government Data Practices Act provides that the names of Proposers are public once the proposals are opened. With the exception of trade secret information as defined in Minnesota Statutes, section 13.37, all other information submitted by a Proposer in response to this RFP becomes public at the times specified in the act and is then available to any person upon request. Trade secret information is defined in section 13.37 as data, including a formula, pattern, compilation, program, device, method, technique, or process, (1) that was supplied by the Proposer; (2) that is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy; and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

**Any information in its response to this RFP for which the Proposer claims protection as trade secret information in accordance with the above provisions must be limited and set apart in the RFP response on separate pages, with a heading that identifies the information as trade secret information.** SWT will make the ultimate determination whether the information meets the applicable definition. Any information submitted in response to this RFP which does not

meet the legal definition will be considered public information, regardless of the proposer's identification of it as trade secret information. **Proposers are advised that blanket-type identification by designating whole pages or sections as containing trade secret information will not assure protection. The specific information for which the Proposer claims trade secret protection must be clearly identified as such.**

**Submitted proposals shall not be copyrighted. A statement by the Proposer that submitted information is copyrighted or otherwise protected does not prevent public access to the information contained in the RFP response.**

### **13. FORMS OF CONTRACT**

The forms of the contract for the work are attached to this RFP as Exhibit C, Forms of Contract. The contracts outline various legal and administrative duties and responsibilities to be assumed by the person or organization providing the garage vehicle locator system installation and support services including, without limitation, insurance requirements and certain federal, state, and local requirements to be met by the contractor.

### List of Exhibits to Proposal Instructions

| Exhibit # | Document Title    |
|-----------|-------------------|
| A         | Scope of Work     |
| B         | Price Proposal    |
| C         | Forms of Contract |
|           |                   |
|           |                   |

## **Exhibit A, Scope of Work**

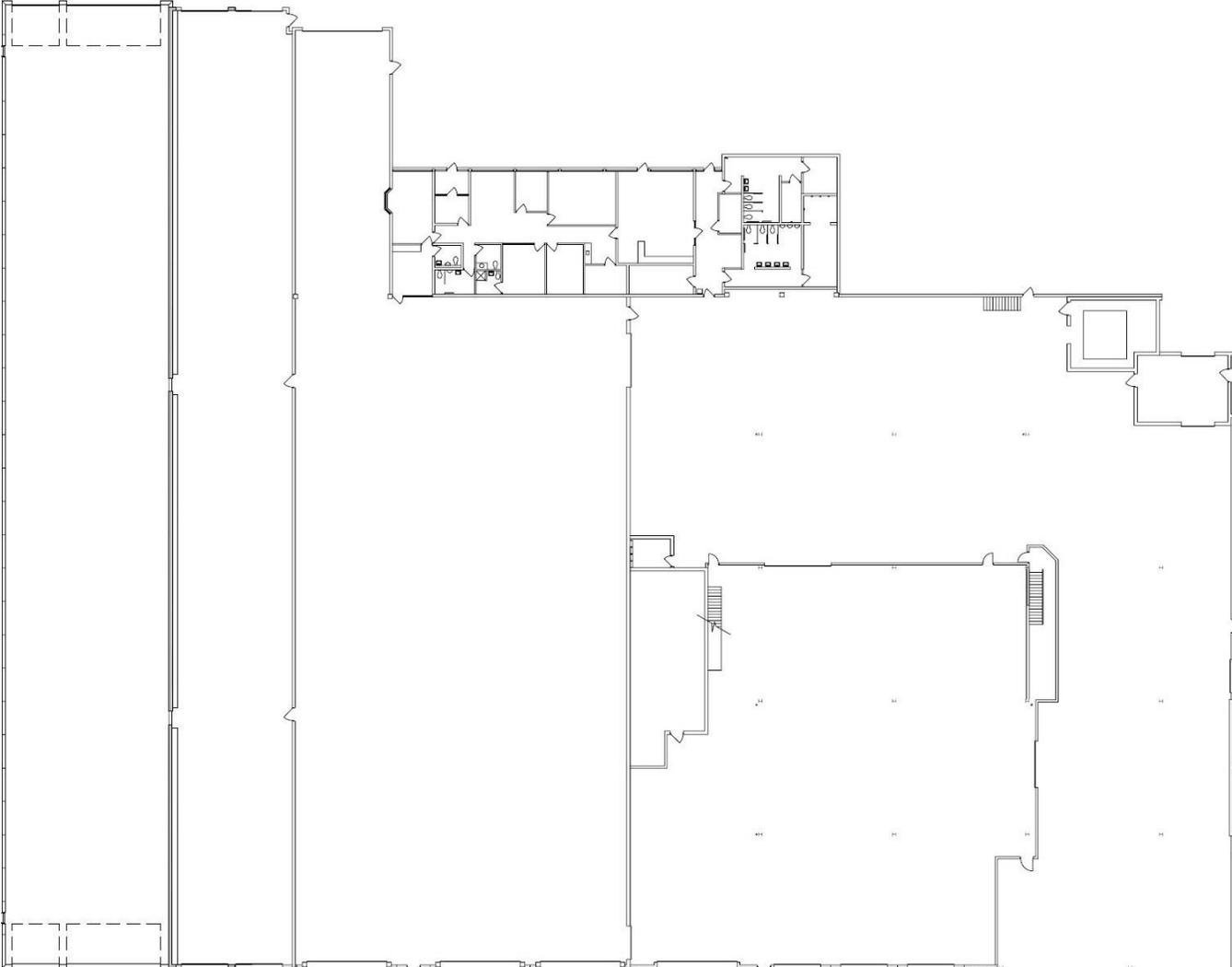
Provide, install, and maintain a garage vehicle locator system at SouthWest Transit's Eden Prairie Garage location (80,000 square feet) located at 14405 W 62nd St, Eden Prairie, MN 55346. The system shall locate each of SouthWest Transit's approximately 110 vehicles while they are parked on the Eden Prairie Garage property.

Supply all necessary hardware and software for the system, including, but not limited to, on-board locator units, facility-mounted sensors, and system software.

### **Performance Specification**

- The system shall function both within the garage and up to a distance of 100 meters of the garage for those vehicles that are parked outside.
- Each vehicle shall be located accurately to within one meter of its actual location
- The system shall locate each vehicle once every minute.
- The system shall draw no power from the vehicle.
- The battery life of any on-board units shall be approximately 2 years.
- Vehicle on-board installation shall not require any wiring.
- Facility mounted sensors must be weather proof and rated for indoor/outdoor use. Sensors must be zero maintenance, be hardwired and Powered over Ethernet(POE).
- Installation of wiring in the garages, if required, shall have minimal impact on garage operations.
- Vehicles should be located in 100% of the indoor and outdoor garage space
- The system should be able to utilize SWT's current VMware server cluster for processing power
- Vehicle location should be displayed overlaid on the footprint of the garage on a web interface accessible by PC and Mac computers on our current LAN.
- The successful proposer shall demonstrate that the proposed solution works.
- The successful proposer shall warranty the system for 5 years after the date of completion of the installation.
- The successful proposer shall provide on-site training.
- The successful proposer shall provide user documentation
- Provide standard maintenance and support, including, but not limited to, firmware updates and software updates, for 5 years after the date of completion of the installation.

**Floor Map**



Site Map



## Exhibit B,

### Form of Price Proposal

**To:** SouthWest Transit

The undersigned proposer agrees to enter into a contract with SouthWest Transit to provide Eden Prairie Garage Vehicle Positioning System. The proposer will not be entitled to any compensation on any item other than those listed on this proposal form.

**Project:** Eden Prairie Garage Vehicle Positioning System.

**Identify below the cost..**

- |                                 |  |         |
|---------------------------------|--|---------|
| 1.                              | Vehicle Tags                               | \$_____ |
| 2.                              | Software Costs                             | \$_____ |
| 3.                              | Hardware Costs                             | \$_____ |
| 4.                              | Installation Costs                         | \$_____ |
| 5.                              | Services and Other Expenses*               | \$_____ |
| 6.                              | Five-Year Service and Maintenance Contract | \$_____ |
| <b><u>TOTAL COST OF 1-6</u></b> |  | \$_____ |

\*Explain in detail

#### **Proposer Information and Authorized Signature:**

Signature: \_\_\_\_\_

Signatory's Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

State of Incorporation/Organization: \_\_\_\_\_

Company Address: \_\_\_\_\_

Contact Information, Email and Telephone: \_\_\_\_\_

## **Exhibit C, Forms of Contract**

**Exhibit C-1 is the form of contract for the supply and installation.**

**Exhibit C-2 is the form of contract for the post-installation maintenance and support.**

**Exhibit C-1**

**Construction Contract**

This Contract ("Contract") is made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the SouthWest Transit, a joint powers entity under the laws of the State of Minnesota (hereinafter "SWT"), whose business address is 13500 Technology Drive, Eden Prairie, MN 55344, and \_\_\_\_\_, a Minnesota \_\_\_\_\_(hereinafter "Contractor") whose business address is \_\_\_\_\_

**Preliminary Statement**

The SWT has adopted a policy regarding the selection and hiring of contractors to provide a variety of services for SWT projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the SWT. The purpose of this Contract is to set forth the terms and conditions for the provision of services by Contractor for hereinafter referred to as the "Work".

The SWT and Contractor agree as follows:

1. **Scope of Work/Proposal.** The Contractor agrees to provide, perform and complete all the provisions of the Work in accordance with attached Exhibit A. Any general or specific conditions, terms, agreements, contractor or industry proposal, or contract terms attached to or a part of Exhibit A are declined in full and, accordingly, are deleted and shall not be in effect in any manner.
2. **Time of Commencement and Completion.** The Work to be performed under this Contract shall be commenced immediately after execution of this Contract. The Work shall be completed by \_\_\_\_\_.
3. **Compensation for Services.** SWT agrees to pay the Contractor a fixed sum of \$\_\_\_\_\_ as full and complete payment for the labor, materials and services rendered pursuant to this Contract and as described in Exhibit A.
  - a. Any changes in the scope of the work which may result in an increase to the compensation due the Contractor shall require prior written approval by an authorized representative of the SWT or by the SWT Commission. The SWT will not pay additional compensation for services that do not have prior written authorization.
  - b. If Contractor is delayed in performance due to any cause beyond its reasonable control, including but not limited to strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of SWT, the time for performance shall

be extended by a period of time lost by reason of the delay. Contractor will be entitled to payment for its reasonable additional charges, if any, due to the delay.

4. **Method of Payment.** The Contractor shall submit to the SWT, on a monthly basis, an itemized invoice for services performed under this Contract. Invoices submitted shall be paid in the same manner as other claims made to the SWT.
  - a. Invoices. Contractor shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Contractor shall provide an itemized listing and such documentation as reasonably required by the SWT. Each invoice shall contain the SWT's project number and a progress summary showing the original (or amended) amount of the contract, current billing, past payments and unexpended balance of the contract. Each invoice shall be accompanied by general lien waiver and further lien waivers from all subcontractors on the project waiving liens for work for which payment was requested by Contractor and paid for by SWT on the preceding invoice.
  - b. Claims. To receive any payment on this Contract, pursuant to Minn. Stat. 471.38, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
  - c. Final Payment. Contractor's request for final payment shall be accompanied by Contractor's affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the SWT or its property might in any way be responsible, have been paid or otherwise satisfied. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the SWT to the Contractor when the Work has been completed, the Contract fully performed, and the SWT accepts the Work in writing. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of Application for Final Payment.
  - d. Income Tax Withholding. No final payment shall be made to the Contractor until the Contractor has provided satisfactory evidence to the SWT that the Contractor and each of its subcontracts has complied with the provisions of Minn. Stat. Section 290.92 relating to withholding of income taxes upon wages. A certificate by the Commissioner of Revenue shall satisfy this requirement.
5. **Standard of Care.** Contractor shall exercise the same degree of care, skill and diligence in the performance of its services as is ordinarily exercised by members of the profession under similar circumstances in Hennepin County, Minnesota. Contractor shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by Contractor's breach of this standard of care. Contractor shall put forth reasonable efforts to complete its duties in a timely manner. Contractor shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the

time of execution of this Contract. Contractor shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

6. **Project Manager and Staffing.** The Contractor shall designate a Project Manager and notify SWT in writing of the identity of the Project Manager before starting work on the Project. The Project Manager shall be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Contractor may not remove or replace the Project Manager without the approval of SWT.
7. **Condition and Inspection.** All goods and other materials furnished under this Contract shall be new and in current manufacture, unless otherwise specified, and all goods and work shall be of good quality, free from faults and defects and in conformance with this Contract. All goods and work not conforming to these requirements shall be considered defective. Goods shall be subject to inspection and testing by SWT. Defective goods or goods not in current manufacture may be returned to the Contractor at the Contractor's expense.
8. **Correction of Work.** The Contractor shall promptly correct all Work rejected by SWT as defective or as failing to conform under this Contract whether observed before or after completion of the Work and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work.
9. **Warranty.** The Contractor expressly warrants and guarantees to SWT that all Work performed and all materials furnished shall be in accord with the Contract and shall be free from defects in materials, workmanship, and operation which appear within a period of one year, or within such longer period as may be prescribed by law or in the terms of the Contract, from the date of SWT's written acceptance of the Work. SWT's rights under the Contractor's warranty are not SWT's exclusive remedy. SWT shall have all other remedies available under this Contract, at law or in equity.

Should any defects develop in the materials, workmanship or operation of the system within the specified period, upon notice from SWT, the Contractor agrees, within ten (10) calendar days after receiving written notice and without expense to SWT, to repair, replace and in general to perform all necessary corrective Work with regard to the defective or nonconforming Work or materials to the satisfaction of SWT. THE FOREGOING SHALL NOT IN ANY MANNER LIMIT SWT'S REMEDY OR THE CONTRACTOR'S LIABILITY TO THOSE DEFECTS APPEARING WITHIN THE WARRANTY PERIOD. The Contractor agrees to perform the Work in a manner and at a time so as to minimize any damages sustained by SWT and so as to not interfere with or in any way disrupt the operation of SWT or the public.

The corrective Work referred to above shall include without limitation, (a) the cost of removing the defective or nonconforming Work and materials from the site, (b) the cost of correcting all Work of other Contractors destroyed or damaged by defective or nonconforming Work and materials including the cost of removal of such damaged Work and materials from the site, and (c) the cost of correcting all damages to Work of other Contractors caused by the removal of the defective or nonconforming Work or materials.

The Contractor shall post bonds to secure the warranties.

10. **Private Property.** The Contractor shall not enter upon private property for any purpose without having previously obtained permission from SWT. The Contractor shall be responsible for the preservation of, and shall use every precaution to prevent damage to all trees, shrubbery, plants, lawns, fences, culverts, bridges, pavements, driveways, sidewalks, etc.; all water, sewer and gas lines; all conduits; all overhead pole lines or appurtenances thereof; and all other public or private property along or adjacent to the work.
11. **Removal of Construction Equipment, Tools and Supplies.** At the termination of this Contract, before acceptance of the Work by SWT, the Contractor shall remove all of Contractor's equipment, tools and supplies from the property of SWT. Should the Contractor fail to remove such equipment, tools and supplies, SWT shall have the right to remove them and deduct the cost of removal from any amount owed to Contractor.
12. **Suspension of Work by SWT.** SWT may at any time suspend the Work, or any part thereof, by giving ten (10) days' notice to the Contractor in writing. The work shall be resumed by the Contractor within ten (10) days after the date fixed in the written notice from SWT to the Contractor to resume. If SWT's suspension of all or part of the Work causes additional expenses not due to the fault or negligence of the Contractor, SWT shall reimburse the Contractor for the additional expense incurred due to suspension of the work. Claims for such compensation, with complete substantiating records, shall be filed with SWT within ten (10) days after the date of order to resume Work in order to receive consideration. This paragraph shall not be construed as entitling the Contractor to compensation for delays due to inclement weather, failure to furnish additional surety or sureties specified herein, for suspension made at the request of the Contractor, or for any other delay provided for in this Contract.
13. **SWT's Right to Carry Out the Work.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract or fails to perform any provisions of the Contract, SWT may, after ten (10) days written notice to the Contractor and without prejudice to any other remedy SWT may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payment then or thereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to SWT.
14. **SWT's Right to Terminate Contract and Complete the Work.** SWT has the right to terminate this Contract for any of the following reasons:
  - a. The Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or becomes insolvent;
  - b. Failure of Contractor to supply adequate properly skilled workmen or proper materials;
  - c. Failure of Contractor to make prompt payment to subcontractor for material or labor;
  - d. Any disregard of laws, ordinances or proper instructions of SWT;

- e. Assignment or work without permission of SWT;
- f. Abandonment of the work by Contractor;
- g. Failure to meet the work progress schedule set forth in this Contract;
- h. Unnecessary delay which, in the judgment of SWT, will result in the work not being completed in the prescribed time.

Termination of the Contract shall be preceded by ten (10) days written notice by SWT to the Contractor and its surety stating the grounds for termination and the measures, if any, which must be taken to assure compliance with the Contract. The Contract shall be terminated at the expiration of such ten (10) day period unless SWT Commission shall withdraw its notice of termination.

Upon termination of the Contract by SWT, SWT may, without prejudice to any other remedy SWT may have, take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods SWT may deem expedient at the Contractor's expense.

Upon Contract termination, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the contract price exceeds the expense of finishing the Work, including compensation for additional managerial and administrative services, the excess shall be paid to the Contractor. If such expense exceeds the unpaid balance, the Contractor shall pay the difference to SWT.

In the event that the Contractor abandons the Work, fails or refuses to complete the Work or fails to pay just claims for labor or material, SWT reserves the right to charge against the Contractor all legal, engineering, or other costs resulting from such abandonment, failure or refusal. Legal costs will include SWT's cost of prosecuting or defending any suit in connection with such abandonment, failure or refusal, and non-payment of claims wherein SWT is made co-defendant, and the Contractor agrees to pay all costs, including reasonable attorney's fees.

15. **Contractor's Right to Terminate Contract.** The Contractor may terminate this Contract upon ten (10) days written notice to SWT for any of the following reasons:
- a. If an order of any court or other public authority caused the Work to be stopped or suspended for a period of 90 days through no act or fault of the Contractor or its employees.
  - b. If SWT should fail to pay any undisputed sum owed Contractor within forty-five (45) days after the sum becomes due.

16. **Performance and Payment Bonds.** The Contractor shall post a Performance and Payment Bond each in an amount equal to one hundred percent (100%) of the payments due Contractor to insure the prompt and faithful performance of this Contract by Contractor and to insure

prompt payment to the subcontractor and suppliers of the Contractor. The Bonds shall be in a form approved by SWT. Contractor shall provide the Bond to SWT before commencing work and together with the executed contract document. If the Performance and/or Payment Bond are not submitted as provided herein, this Contract shall be considered void.

**[BONDS ARE REQUIRED FOR A CONSTRUCTION CONTRACT THAT IS \$175,000 OR MORE; THEY ARE OPTIONAL FOR ANY CONTRACT THAT IS LESS THAN \$175,000]**

17. **Subcontractor.** The Contractor shall bind every subcontractor and every subcontractor shall agree to be bound by the terms of this Contract as far as applicable to its work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by SWT. The Contractor shall pay any subcontractor involved in the performance of this Contract within the ten (10) days of the Contractor's receipt of payment by SWT for undisputed services provided by the subcontractor. If the Contractor fails within that time to pay the subcontractor any undisputed amount for which the Contractor has received payment by SWT, the Contractor shall pay interest to the subcontractor on the unpaid amount at the rate of 1.5 percent per month or any part of a month. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

18. **Responsible Contractor**

Contractor warrants under oath that Contractor is in compliance with the minimum criteria required of a "responsible contractor" as that term is defined in Minnesota Statutes § 16C.285, subd. 3. Contractor has provided to SWT a list of all of its first-tier subcontractors and motor carriers that it intends to retain for work on the project. The Contractor has obtained from all subcontractors and motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that the subcontractor or motor carrier meets all of the minimum criteria in § 16C.285, subd. 3. If Contractor retains additional subcontractors or motor carriers on the project after submitting its verification of compliance, the Contractor shall obtain verification of compliance from each additional subcontractor and motor carrier with which it has a direct contractual relationship and shall submit to SWT a supplemental verification confirming the subcontractor's and motor carrier's compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors or motor carriers. Contractor shall submit to SWT upon request copies of the signed verifications of compliance from all subcontractors and motor carriers of any tier pursuant to Minn. Stat. § 16C.285, subd. 3(7). A false statement under oath, by Contractor, subcontractor, or motor carrier, verifying compliance with any of the minimum criteria may result in termination of the Contract.

19. **Independent Contractor.** Contractor is an independent contractor engaged by SWT to perform the services described herein and as such (i) shall employ such persons as it shall deem necessary and appropriate for the performance of its obligations pursuant to this Contract, who shall be employees, and under the direction, of Contractor and in no respect employees of

SWT, and (ii) shall have no authority to employ persons, or make purchases of equipment on behalf of SWT, or otherwise bind or obligate SWT. No statement herein shall be construed so as to find the Contractor an employee of SWT.

20. **Insurance.**

- a. General Liability. Prior to starting the Work, Contractor shall procure, maintain and pay for such insurance as will protect against claims or loss which may arise out of operations by Contractor or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, required by law, or the insurance coverage actually obtained by Contractor, whichever is greater.
- b. Contractor shall procure and maintain the following minimum insurance coverages and limits of liability for the Work:

|                                    |   |
|------------------------------------|---|
| Worker’s Compensation              | Statutory Limits  |
| Employer’s Liability               | \$500,000 each accident<br>\$500,000 disease policy limit<br>\$500,000 disease each employee  |
| Commercial General Liability       | \$1,000,000 property damage and bodily injury per occurrence<br>\$2,000,000 general aggregate<br>\$2,000,000 Products – Completed Operations Aggregate<br>\$100,000 fire legal liability each occurrence<br>\$5,000 medical expense |
| Comprehensive Automobile Liability | \$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles.)   |
| Umbrella or Excess Liability       | \$1,000,000   |

- c. Commercial General Liability. The Commercial General Liability Policy shall be on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.

- d. Contractor shall maintain “stop gap” coverage if Contractor obtains Workers’ Compensation coverage from any state fund if Employer’s liability coverage is not available.
- e. All policies, except the Worker’s Compensation Policy, shall name the “SouthWest Transit” as an additional insured.
- f. All policies, except Worker’s Compensation Policy, and Professional Liability Policy, shall name the “SouthWest Transit” as an additional insured including products and completed operations.
- g. All polices shall contain a waiver of subrogation in favor of SWT.
- h. All General Liability policies, Automobile Liability policies, and Umbrella policies shall contain a waiver of subrogation in favor of SWT.
- i. All polices, except the Worker’s Compensation Policy, shall insure the defense and indemnity obligations assumed by Contractor under this Contract.
- j. Contractor agrees to maintain all coverage required herein throughout the term of the Contract and for a minimum of two (2) years following SWT’s written acceptance of the Work.
- k. It shall be Contractor’s responsibility to pay any retention or deductible for the coverage’s required herein.
- l. All policies shall contain a provision or endorsement that coverages afforded thereunder shall not be cancelled or non-renewed or restrictive modifications added, without thirty (30) days’ prior notice to SWT, except that if the cancellation or non-renewal is due to non-payment, the coverages may not be terminated or non-renewed without ten (10) days’ prior notice to SWT.
- m. Contractor shall maintain in effect all insurance coverages required under this Paragraph at Contractor’s sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by SWT in writing.
- n. **A copy of the Contractor’s Certificate of Insurance which evidences the compliance with this Paragraph, must be filed with SWT prior to the start of Contractor’s Work.** Upon request a copy of the Contractor’s insurance declaration page, Rider and/or Endorsement, as applicable shall be provided. Such documents evidencing Insurance shall be in a form acceptable to SWT and shall provide satisfactory evidence that Contractor has complied with all insurance requirements. Renewal certificates shall be provided to SWT prior to the expiration date of any of the required policies. SWT will not be obligated, however, to review such Certificate of Insurance, declaration page, Rider, Endorsement or certificates or other evidence of

insurance, or to advise Contractor of any deficiencies in such documents and receipt thereof shall not relieve Contractor from, nor be deemed a waiver of, SWT's right to enforce the terms of Contractor's obligations hereunder. SWT reserves the right to examine any policy provided for under this paragraph.

- o. **Effect of Contractor's Failure to Provide Insurance.** If Contractor fails to provide the specified insurance, then Contractor will defend, indemnify and hold harmless SWT, SWT's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to SWT (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Contractor, its subcontractors, agents, employees or delegates. Contractor agrees that this indemnity shall be construed and applied in favor of indemnification. Contractor also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, SWT may require Contractor to:

- i. Furnish and pay for a surety bond, satisfactory to SWT, guaranteeing performance of the indemnity obligation; or
- ii. Furnish a written acceptance of tender of defense and indemnity from Contractor's insurance company.

Contractor will take the action required by SWT within fifteen (15) days of receiving notice from SWT.

21. **Indemnification.** Contractor will defend and indemnify SWT, its officers, agents, and employees and hold them harmless from and against all judgments, claims, damages, costs and expenses, including a reasonable amount as and for its attorney's fees paid, incurred or for which it may be liable resulting from any breach of this Contract by Contractor, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Contractor, its agents, contractors and employees, relative to this Contract. SWT will indemnify and hold Contractor harmless from and against any loss for injuries or damages arising out of the negligent acts of SWT, its officers, agents or employees.
22. **Ownership of Documents.** All plans, diagrams, analyses, reports and information generated in connection with the performance of the Contract ("Information") shall become the property of SWT, but Contractor may retain copies of such documents as records of the services provided. SWT may use the Information for its purposes and the Contractor also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Contract does not relieve any liability on the part of the Contractor, but

any use of the Information by SWT or the Contractor beyond the scope of this Contract is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.

23. **Mediation.** Each dispute, claim or controversy arising from or related to this agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Eden Prairie, Chanhassen or Chaska unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

### **GENERAL TERMS AND CONDITIONS**

24. **Assignment.** Neither party shall assign this Contract, nor any interest arising herein, without the written consent of the other party.
25. **Compliance with Laws and Regulations.** In providing services hereunder, the Contractor shall abide by statutes, ordinances, rules, and regulations pertaining to the provisions of services to be provided. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Contract and entitle SWT to immediately terminate this Contract.
26. **Conflicts.** No salaried officer or employee of SWT and no member of the Commission of SWT shall have a financial interest, direct or indirect, in this Contract. The violation of this provision renders the Contract void.
27. **Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be considered an original.
28. **Damages.** In the event of a breach of this Contract by SWT, Contractor shall not be entitled to recover punitive, special or consequential damages or damages for loss of business.
29. **Employees.** Contractor agrees not to hire any employee or former employee of SWT and SWT agrees not to hire any employee or former employee of Contractor prior to termination of this Contract and for one (1) year thereafter, without prior written consent of the former employer in each case.

30. **Enforcement.** The Contractor shall reimburse SWT for all costs and expenses, including without limitation, attorneys' fees paid or incurred by SWT in connection with the enforcement by SWT during the term of this Contract or thereafter of any of the rights or remedies of SWT under this Contract.
31. **Entire Contract, Construction, Application and Interpretation.** This Contract is in furtherance of SWT's public purpose mission and shall be construed, interpreted, and applied pursuant to and in conformance with SWT's public purpose mission. The entire agreement of the parties is contained herein. This Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Contract shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.
32. **Governing Law.** This Contract shall be controlled by the laws of the State of Minnesota.
33. **Non-Discrimination.** During the performance of this Contract, the Contractor shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Contractor shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Contractor further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
34. **Notice.** Any notice required or permitted to be given by a party upon the other is given in accordance with this Contract if it is directed to either party by delivering it personally to an officer of the party, or if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed to the address listed on page 1 hereof. Notices shall be deemed effective on the earlier of the date of receipt or the date of mailing or deposit as aforesaid, provided, however, that if notice is given by mail or deposit, that the time for response to any notice by the other party shall commence to run one business day after any such mailing or deposit. A party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.
35. **Rights and Remedies.** The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

36. **Services Not Provided For.** No claim for services furnished by the Contractor not specifically provided for herein shall be honored by SWT.
37. **Severability.** The provisions of this Contract are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Contract.
38. **Statutory Provisions.**
- a. **Audit Disclosure.** The books, records, documents and accounting procedures and practices of the Contractor or other parties relevant to this Contract are subject to examination by SWT and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Contract.
- b. **Data Practices.** Any reports, information, or data in any form given to, or prepared or assembled by the Contractor under this Contract which SWT requests to be kept confidential, shall not be made available to any individual or organization without SWT's prior written approval. This Contract is subject to the Minnesota Government Data Practice Act, Minnesota Statutes Chapter 13 (Data Practices Act). All government data, as defined in the Data Practices Act Section 13.02, Subd 7, which is created, collected, received, stored, used, maintained, or disseminated by Contractor in performing any of the functions of SWT during performance of this Contract is subject to the requirements of the Data Practice Act and Contractor shall comply with those requirements as if it were a government entity. All subcontracts entered into by Contractor in relation to this Contract shall contain similar Data Practices Act compliance language.
39. **Waiver.** Any waiver by either party of a breach of any provisions of this Contract shall not affect, in any respect, the validity of the remainder of this Contract.

Executed as of the day and year first written above.

**SouthWest Transit**

\_\_\_\_\_  
Chief Executive Officer

**CONTRACTOR**

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

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

**Exhibit A to Form of Contract**

**[INSERT SCOPE OF WORK FROM RFP]**

## Exhibit C-2

### Agreement for Professional Services

This Agreement ("Agreement") is made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the SouthWest Transit, a joint powers entity under the laws of the State of Minnesota, (hereinafter "SWT"), whose business address is 13500 Technology Drive, Eden Prairie, MN 55344, and \_\_\_\_\_ ("Consultant"), a Minnesota corporation (hereinafter "Consultant") whose business address is \_\_\_\_\_.

#### Preliminary Statement

SWT has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for SWT projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with SWT. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Consultant for \_\_\_\_\_ hereinafter referred to as the "Work".

SWT and Consultant agree as follows:

1. **Scope of Work.** The Consultant agrees to provide the professional services shown in Exhibit A ( ) in connection with the Work. Exhibit A is intended to be the scope of service for the work of the Consultant. Any general or specific conditions, terms, agreements, consultant or industry proposal, or contract terms attached to or a part of Exhibit A are declined in full and, accordingly, are deleted and shall not be in effect in any manner.
2. **Term.** The term of this Agreement shall be from \_\_\_\_\_ through \_\_\_\_\_ the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
3. **Compensation for Services.** SWT agrees to pay the Consultant on a flat-fee basis in a total amount not to exceed \$ \_\_\_\_\_ per month for the services as described in Exhibit A.
  - a. Any changes in the scope of the work which may result in an increase to the compensation due the Consultant shall require prior written approval by an authorized representative of SWT or by the Commission. SWT will not pay additional compensation for services that do not have prior written authorization.
  - b. Special Consultants may be utilized by the Consultant when required by the complex or specialized nature of the Project and when authorized in writing by SWT.
  - c. If Consultant is delayed in performance due to any cause beyond its reasonable control, including but not limited to strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of SWT, the time for performance shall be extended by a period of time lost by reason of the delay. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.

4. **SWT Information.** SWT agrees to provide the Consultant with the complete information concerning the Scope of the Work and to perform the following services:
  - a. Access to the Area. Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, SWT shall obtain access to and make all provisions for the Consultant to enter upon public and private lands or property as required for the Consultant to perform such services necessary to complete the Work.
  - b. Consideration of the Consultant's Work. SWT shall give thorough consideration to all reports, sketches, estimates, drawings, and other documents presented by the Consultant, and shall inform the Consultant of all decisions required of SWT within a reasonable time so as not to delay the work of the Consultant.
  - c. Standards. SWT shall furnish the Consultant with a copy of any standard or criteria, including but not limited to, design and construction standards that may be required in the preparation of the Work for the Project.
  - d. SWT's Representative. A person shall be appointed to act as SWT's representative with respect to the work to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define SWT's policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement.
5. **Method of Payment.** The Consultant shall submit to SWT, on a monthly basis, an itemized invoice for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to SWT for services. To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
6. **Project Manager and Staffing.** The Consultant shall designate a Project Manager and notify SWT in writing of the identity of the Project Manager before starting work on the Project. The Project Manager shall be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace the Project Manager without the approval of SWT.
7. **Standard of Care.** Consultant shall exercise the same degree of care, skill and diligence in the performance of its services as is ordinarily exercised by members of the profession under similar circumstances in Hennepin County, Minnesota. Consultant shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by Consultant's breach of this standard of care. Consultant shall put forth reasonable efforts to complete its duties in a timely manner. Consultant shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Agreement. Consultant shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

8. **Termination.** This Agreement may be terminated by either party by seven (7) days written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, SWT terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payment shall be made to the Consultant, and SWT may retain another consultant to undertake or complete the Work identified herein.
9. **Subcontractor.** The Consultant shall not enter into subcontracts for services provided under this Agreement except as noted in the Scope of Work, without the express written consent of SWT. The Consultant shall pay any subcontractor involved in the performance of this Agreement within ten (10) days of the Consultant's receipt of payment by SWT for undisputed services provided by the subcontractor. If the Consultant fails within that time to pay the subcontractor any undisputed amount for which the Consultant has received payment by SWT, the Consultant shall pay interest to the subcontractor on the unpaid amount at the rate of 1.5 percent per month or any part of a month. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Consultant shall pay the actual interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Consultant shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.
10. **Independent Consultant.** Consultant is an independent contractor engaged by SWT to perform the services described herein and as such (i) shall employ such persons as it shall deem necessary and appropriate for the performance of its obligations pursuant to this Agreement, who shall be employees, and under the direction, of Consultant and in no respect employees of SWT, and (ii) shall have no authority to employ persons, or make purchases of equipment on behalf of SWT, or otherwise bind or obligate SWT. No statement herein shall be construed so as to find the Consultant an employee of SWT.
11. **Insurance.**
- a. **General Liability.** Prior to starting the Work, Consultant shall procure, maintain and pay for such insurance as will protect against claims or loss which may arise out of operations by Consultant or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law.
- b. Consultant shall procure and maintain the following minimum insurance coverages and limits of liability for the Work:

|                              |   |
|------------------------------|---|
| Worker's Compensation        | Statutory Limits  |
| Employer's Liability         | \$500,000 each accident<br>\$500,000 disease policy limit<br>\$500,000 disease each employee  |
| Commercial General Liability | \$1,000,000 property damage and bodily injury per occurrence<br>\$2,000,000 general aggregate |

\$2,000,000 Products – Completed Operations  
Aggregate  
\$100,000 fire legal liability each occurrence  
\$5,000 medical expense

Comprehensive Automobile  
Liability \$1,000,000 combined single limit each accident (shall include  
coverage for all owned, hired and non-owned vehicles.)

Umbrella or Excess Liability \$1,000,000

- c. Commercial General Liability. The Commercial General Liability Policy shall be on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.
- d. Professional Liability Insurance. In addition to the coverages listed above, Consultant shall maintain a professional liability insurance policy in the amount of \$2,000,000. Said policy need not name SWT as an additional insured. It shall be Consultant's responsibility to pay any retention or deductible for the professional liability insurance. Consultant agrees to maintain the professional liability insurance for a minimum of two (2) years following termination of this Agreement.
- e. Consultant shall maintain "stop gap" coverage if Consultant obtains Workers' Compensation coverage from any state fund if Employer's liability coverage is not available.
- f. All policies, except the Worker's Compensation Policy, Automobile Policy, and Professional Liability Policy, shall name the "SouthWest Transit Commission" as an additional insured including products and completed operations.
- g. All policies, except the Professional Liability Policy, shall apply on a "per project" basis.
- h. All General Liability policies, Automobile Liability policies and Umbrella policies shall contain a waiver of subrogation in favor of SWT.
- i. All policies, except for the Worker's Compensation Policy and the Professional Liability Policy, shall be primary and non-contributory.
- j. All policies, except the Worker's Compensation Policy, shall insure the defense and indemnity obligations assumed by Consultant under this Agreement. The Professional Liability policy shall insure the defense and indemnity obligations assumed by Consultant under this Agreement except with respect to the liability for loss or damage resulting from the negligence or fault of anyone other than the Consultant or others for whom the Consultant is legally liable.

- k. Consultant agrees to maintain all coverage required herein throughout the term of the Agreement and for a minimum of two (2) years following SWT's written acceptance of the Work.
- l. It shall be Consultant's responsibility to pay any retention or deductible for the coverages required herein.
- m. All policies shall contain a provision or endorsement that coverages afforded thereunder shall not be cancelled or non-renewed or restrictive modifications added, without thirty (30) days' prior notice to SWT, except that if the cancellation or non-renewal is due to non-payment, the coverages may not be terminated or non-renewed without ten (10) days' prior notice to SWT.
- n. Consultant shall maintain in effect all insurance coverages required under this Paragraph at Consultant's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by SWT in writing.
- o. **A copy of the Consultant's Certificate of Insurance which evidences the compliance with this Paragraph, must be filed with SWT prior to the start of Consultant's Work.** Upon request a copy of the Consultant's insurance declaration page, Rider and/or Endorsement, as applicable shall be provided. Such documents evidencing Insurance shall be in a form acceptable to SWT and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to SWT prior to the expiration date of any of the required policies. SWT will not be obligated, however, to review such Certificate of Insurance, declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, SWT's right to enforce the terms of Consultant's obligations hereunder. SWT reserves the right to examine any policy provided for under this paragraph.
- p. **Effect of Consultant's Failure to Provide Insurance.** If Consultant fails to provide the specified insurance, then Consultant will defend, indemnify and hold harmless SWT, SWT's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to SWT (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Consultant, its subcontractors, agents, employees or delegates. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, SWT may require Consultant to:

- i. Furnish and pay for a surety bond, satisfactory to SWT, guaranteeing performance of the indemnity obligation; or
- ii. Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company.

Consultant will take the action required by SWT within fifteen (15) days of receiving notice from SWT.

12. **Indemnification.** Consultant will defend and indemnify SWT, its officers, agents, and employees and hold them harmless from and against all judgments, claims, damages, costs and expenses, including a reasonable amount as and for its attorney's fees paid, incurred or for which it may be liable resulting from any breach of this Agreement by Consultant, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Consultant, its agents, contractors and employees, relative to this Agreement. SWT will indemnify and hold Consultant harmless from and against any loss for injuries or damages arising out of the negligent acts of SWT, its officers, agents or employees.
13. **Ownership of Documents.** All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement ("Information") shall become the property of SWT, but Consultant may retain copies of such documents as records of the services provided. SWT may use the Information for its purposes and the Consultant also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement ("Project") does not relieve any liability on the part of the Consultant, but any use of the Information by SWT or the Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.
14. **Mediation.** Each dispute, claim or controversy arising from or related to this agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Eden Prairie, Chanhassen or Chaska unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

## **GENERAL TERMS AND CONDITIONS**

15. **Assignment.** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.
16. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant shall abide by statutes, ordinances, rules, and regulations pertaining to the provisions of services to be provided. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle SWT to immediately terminate this Agreement.
17. **Conflicts.** No salaried officer or employee of SWT and no member of the Commission shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision renders the Agreement void.
18. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.
19. **Damages.** In the event of a breach of this Agreement by SWT, Contractor shall not be entitled to recover punitive, special or consequential damages or damages for loss of business.
20. **Employees.** Contractor agrees not to hire any employee or former employee of SWT and SWT agrees not to hire any employee or former employee of Contractor prior to termination of this Agreement and for one (1) year thereafter, without prior written consent of the former employer in each case.
21. **Enforcement.** The Contractor shall reimburse SWT for all costs and expenses, including without limitation, attorneys' fees paid or incurred by SWT in connection with the enforcement by SWT during the term of this Agreement or thereafter of any of the rights or remedies of SWT under this Agreement.
22. **Entire Agreement, Construction, Application and Interpretation.** This Agreement is in furtherance of SWT's public purpose mission and shall be construed, interpreted, and applied pursuant to and in conformance with SWT's public purpose mission. The entire agreement of the parties is contained herein. This Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Contract shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.
23. **Governing Law.** This Agreement shall be controlled by the laws of the State of Minnesota.
24. **Non-Discrimination.** During the performance of this Agreement, the Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant

shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.

25. **Notice.** Any notice required or permitted to be given by a party upon the other is given in accordance with this Agreement if it is directed to either party by delivering it personally to an officer of the party, or if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed to the address listed on page 1 hereof. Notices shall be deemed effective on the earlier of the date of receipt or the date of mailing or deposit as aforesaid, provided, however, that if notice is given by mail or deposit, that the time for response to any notice by the other party shall commence to run one business day after any such mailing or deposit. A party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.
26. **Rights and Remedies.** The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
27. **Services Not Provided For.** No claim for services furnished by the Consultant not specifically provided for herein shall be honored by SWT.
28. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
29. **Statutory Provisions.**
  - a. **Audit Disclosure.** The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by SWT and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement.
  - b. **Data Practices.** Any reports, information, or data in any form given to, or prepared or assembled by the Consultant under this Agreement which SWT requests to be kept confidential, shall not be made available to any individual or organization without SWT's prior written approval. This Agreement is subject to the Minnesota Government Data Practice Act, Minnesota Statutes Chapter 13 (Data Practices Act). All government data, as defined in the Data Practices Act Section 13.02, Subd 7, which is created, collected, received, stored, used, maintained, or disseminated by Consultant in performing any of the functions of SWT during performance of this Agreement is subject to the requirements of the Data Practice Act and Consultant shall comply with those requirements as if it were a government entity. All subcontracts entered into by Consultant in relation to this Agreement shall contain similar Data Practices Act compliance language.

30. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

**Executed as of the day and year first written above.**

**SOUTHWEST TRANIT**

\_\_\_\_\_  
Its Chief Executive Officer

**CONSULTANT**

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

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

**EXHIBIT A**

**Scope of Work**

**Five years' standard maintenance and support for the garage locator system installed by Consultant.**

