



**REQUEST FOR BIDS  
EDEN PRAIRIE GARAGE, GARAGE DOOR REPLACEMENT**

**For**

**SouthWest Transit**

**14405 West 62nd Street**

**Eden Prairie, MN 55346**

**Issue Date: April 14, 2022**

**Final Questions Due from Bidders: May 10, 2022, 4:00 p.m.**

**Bids Due: May 17, 2022, 1:00 p.m.**

**Bids received late, for any reason, will not be accepted.**

**TABLE OF CONTENTS**

**INSTRUCTIONS FOR PREPARATION OF BIDS**

1. Request for Bids .....3  
2. SWT’s Rights.....3  
3. Project Time Frame.....4  
4. Background .....4  
5. RFB Administrator; Bid Questions; Addenda.....4  
6. Bid Format.....5  
7. Submission of Bids .....5  
8. Items Required to be Submitted with the Bid .....5  
9. Withdrawal or Modification of Bids.....6  
10. Form of Contract; Bonds.....6  
11. Bid Opening, Contract Award, and Execution .....6  
12. Organizational Conflict of Interest.....7  
13. Protests .....7  
14. Data Practices Act .....7  
15. Responsible Contractor Verification .....8  
16. Subcontracting .....8  
17. Non-Collusion Affidavit.....9

**LIST OF ATTACHMENTS TO BID INSTRUCTIONS**

A. Bid Form .....11  
B. Bid Bond Form .....12  
C. Form of Contract.....13  
D. Performance and Payment Bonds .....24  
E. Notice to Proceed .....27  
F. Dispute and Protest Procedures.....28  
G. Responsible Contractor Verification .....32  
H. Non-Collusion Affidavit.....34  
I. Specifications .....35

## INSTRUCTIONS FOR PREPARATION OF BIDS

### 1. REQUEST FOR BIDS

SouthWest Transit (“SWT”) is requesting bids from qualified bidders for the supply and installation of three (3) new high-speed rubber garage doors at the Eden Prairie Garage located at 14405 West 62<sup>nd</sup> Street, Eden Prairie, MN 55346. Specifications are set forth in Attachment I: Specifications.

Failure to follow these instructions and requirements may result in the rejection of your bid. SWT is not responsible for any costs incurred by prospective bidders in the preparation and presentation of their bids. The entire Request for Bids (“RFB”) and the specifications must be used by bidders in preparing their bids. SWT does not assume any responsibility for errors or misinterpretations resulting from use of an incomplete set of these documents by a bidder.

All references in this RFB to a time of day are references to the legal local time in Eden Prairie, Minnesota.

Bids must be submitted on the Bid Form attached hereto as Attachment A: Bid Form. Bids must be accompanied by a certified check made payable to SWT or a corporate surety bond in the form attached as Attachment B: Bid Bond Form made in favor of SWT, each in an amount of five percent (5%) of the bid amount.

Questions regarding the bidding documents must be submitted in writing by 4:00 p.m. on May 10, 2022 to:

Mike Dartt, Buildings Engineer  
SouthWest Transit  
14405 W 62nd Street  
Eden Prairie, MN 55346  
Email: [mdartt@swtransit.org](mailto:mdartt@swtransit.org)

All questions will be answered in a written addendum.

To be considered, **One (1) original and Four (4) photocopies of the sealed bid** must be received by 1:00 p.m. on May 17, 2022. All bids must be sealed and marked “***Bid for Eden Prairie Garage, Garage Door Replacement***”. SWT reserves the right to reject any or all bids submitted. Oral, facsimile, electronic-mail, telephone or telegraphic bids are invalid and will not receive consideration.

All bids must be addressed as follows: Mike Dartt, Buildings Engineer, SouthWest Transit, 14405 West 62nd Street, Eden Prairie, MN 55346.

### 2. SWT’S RIGHTS

SWT reserves the right to cancel this RFB in writing or postpone the date and time for submitting bids at any time prior to the bid due date. SWT shall have the right to accept or reject any or all bids. SWT is not obligated to accept any bid and specifically reserves the right to reject any or all bids; to waive any or all informalities or irregularities in the bids received; to investigate the qualifications and experience of any

bidder; to reject any provisions in any bid; to modify RFB contents; to obtain new bids; to negotiate the requested services and contract terms with any bidder; and/or to proceed to do the work otherwise.

### 3. PROJECT TIME FRAME

<u>Project Milestones</u>	<u>Tentative Date</u>
Issue the RFB	April 14, 2022
Final questions due from bidders	May 10, 2022 4:00 p.m.
Bids due to SWT	May 17, 2022 1:00 p.m.
Notice of award	May 27, 2022
Commencement of work	June 15, 2022
Start of planned suspension of work	August 25, 2022
End of planned suspension of work	September 5, 2022
Completion deadline	October 31, 2022

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

### 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 an at-large member appointed by the six city-designated members. 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 currently operates four major park and ride lots, including its main hub, SouthWest Station in Eden Prairie, Minnesota. SWT operates its service from its garage facility located at 14405 West 62<sup>nd</sup> Street, Eden Prairie, MN 55346. The work procured under this RFB is replacement of three garage doors at the garage facility located in Eden Prairie. More information about SWT can be found at [www.swtransit.org](http://www.swtransit.org).

### 5. RFB ADMINISTRATOR; BID QUESTIONS; ADDENDA

The RFB administrator for the Request for Bids is:

Mike Dartt, Buildings Engineer  
SouthWest Transit  
14405 W 62nd Street  
Eden Prairie, MN 55346  
Email: [mdartt@swtransit.org](mailto:mdartt@swtransit.org)  
Telephone: (763) 227-2591

The RFB administrator shall serve as the contact person and will send and receive all communications regarding the RFB. **Bidders may be disqualified if any unsolicited contact related to this RFB is made with an employee, commission member or representative of SWT during the bid process except as provided in these instructions.**

If any person contemplating submitting a bid is in doubt as to the true meaning of any part of the RFB or specifications, or finds discrepancies in or omissions from the RFB or specifications, the person shall submit to the RFB administrator a written request for an interpretation or correction by the date indicated in Section 1 of this RFB.

Any corrections or changes to this RFB, including any changes made as a result of the pre-bid meeting, will be made by written addendum only. SWT shall not be bound by any oral comments or representations.

## 6. BID FORMAT

The Bid Form must be submitted 8-1/2" x 11" size paper and must be typed. **One (1) original and Four (4) photocopies of the bid are required.** All Bids must be sealed and marked "***Bid for Eden Prairie Garage, Garage Door Replacement***".

## 7. SUBMISSION OF BIDS

All Bids must be addressed as follows: Mr. Mike Dartt, Buildings Engineer, SouthWest Transit, 14405 West 62nd Street, Eden Prairie, MN 55346.

Bids must be **physically delivered** to the above address by the date and time indicated in Section 1 of this RFB. Bids received after the specified time and date will not be considered.

**If Bids are sent by U.S. mail or other delivery service, it is wholly the responsibility of the bidder to ensure that the Bid package is properly addressed and physically delivered on time.**

SWT may evaluate an improperly marked bid only if it discovers prior to the deadline for submission of bids that it is a bid for this project. Improperly marked bids that are not discovered prior to that deadline will be treated as late bids.

The submission of a bid shall constitute an acknowledgment upon which SWT may rely that the bidder has thoroughly examined and is familiar with the RFB, the specifications, the addenda (if any), and work site, 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 bidder to do so shall in no way relieve the bidder from any obligations with respect to the bid or the contract issued as a result of this RFB. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any aspect of the RFB, addenda (if any), work sites, statutes, regulations, ordinances or resolutions

## 8. ITEMS REQUIRED TO BE SUBMITTED WITH THE BID

Items listed in this section must accompany the Bid. If any required item is omitted, the Bid may be rejected and returned without further consideration.

- Bidder's full legal name, principal place of business, and bidder's business address through which most contract work will be performed.
- Name, title, address, telephone number, e-mail address, and facsimile number of contact person during period of bid evaluation.
- Bid Form (See Attachment A).

- Certified check or Bid Bond (See Attachment B), in an amount of five percent (5%) of the bid amount.
- A statement that the bidder has authority to submit the bid, that the bid shall remain valid for a period of not less than sixty (60) days from the date of bid opening, and that the bidder has authority to enter into a contract for the work.
- Responsible Contractor Verification and Additional Subcontractor List (See Attachment G).
- Non-Collusion Affidavit (See Attachment H)

***Please note the above is not a complete list. Bidders must refer to the RFB and specifications for all information or documentation required to be submitted with the bid. Bidders are responsible for providing all information or documentation required to be submitted with the bid.***

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

Bids which are timely withdrawn shall be returned to the bidder. If a substitute bid is timely submitted, SWT shall deem a previous bid submitted by the bidder to have been withdrawn and the previous bid shall be returned to the bidder unopened. A bidder may submit a substitute bid only prior to the time bids are due. A substitute bid must be **physically received** prior to the time bids are due.

## **10. FORM OF CONTRACT; BONDS**

The contract for the project will be in the form attached to this RFB as Attachment C: Form of Contract.

The selected bidder shall post a Performance and Payment Bond each in an amount equal to one hundred percent (100%) of the payments due under the contract to insure the prompt and faithful performance of the contract by the bidder and to insure prompt payment to the subcontractors and suppliers of the bidder. The Bonds shall be in the form attached hereto as Attachment D: Performance and Payment Bonds. Bidder shall provide the Bonds 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, the contract shall not be executed by SWT and the award of the Contract shall be considered void.

If the surety of any bond furnished by the successful bidder is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the work is located, the successful bidder shall, within ten (10) calendar days thereafter, substitute another bond and surety, both of which must be acceptable to SWT.

## **11. BID OPENING, CONTRACT AWARD, AND EXECUTION**

Bid opening is to take place on May 17, 2022 at 1:00 p.m. at SouthWest Transit, 14405 West 62<sup>nd</sup> Street, Eden Prairie, MN 55346.

The properly identified bids which have been received on time will be opened publicly and will be read aloud. A tabulation of the bids will be made available for public inspection.

During the initial review of bids, SWT reserves the right to request clarification of minor issues from any bidder to assure a complete understanding of the offer and to adjust any evaluations made with faulty or

unclear information. Requests for any such clarifications will be initiated by SWT and may be addressed through telephone calls, correspondence, or meetings with a bidder and may be confirmed in writing.

The SWT Commission will determine which bidder is the lowest responsive and responsible bidder. SWT shall not have any obligation whatsoever until a contract is signed with the successful bidder and a written Notice to Proceed (“NTP”) in the form attached hereto as Attachment E: Notice to Proceed is issued.

The bidder to whom SWT awards the contract shall sign and return the written contract to SWT. Upon receipt by SWT all required documentation and submittals, including certificates of insurance, an acceptable performance and payment bond in the form required herein, and the signed contract, SWT will issue a NTP.

## **12. 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 bidder is unable or potentially unable to render impartial assistance to SWT, or the bidder’s objectivity in performing the contract work is or might be otherwise impaired, or the bidder has an unfair competitive advantage.

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

By submitting a bid, each bidder 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 bidder. Provisions will be included in the contract for this project imposing continuing obligations on the successful bidder to disclose to SWT organizational conflicts of interest which may be later discovered and consequences which may arise from such a situation.

## **13. PROTESTS**

Bidders who wish to file a protest regarding the RFB process shall conform in all respects to SWT’s Protest Procedure attached hereto as Attachment F: Dispute and Protest Procedures. All protests must be addressed to the RFB Administrator at the email address identified in section 5 of this RFB.

## **14. DATA PRACTICES ACT**

The Minnesota Government Data Practices Act provides that the names of bidders are public once the bids are opened. With the exception of trade secret information as defined in Minnesota Statutes, section 13.37, all other information submitted by a bidder in response to this RFB 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 bidder; (2) that is the subject of efforts by the bidder 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 RFB for which the Bidder claims protection as trade secret information in accordance with the above provisions must be limited and set apart in the RFB 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 RFB which does not meet the legal definition will be considered public information, regardless of the bidder's identification of it as trade secret information. **Bidders 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 Bidder claims trade secret protection must be clearly identified as such.**

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

## **15. RESPONSIBLE CONTRACTOR VERIFICATION**

The successful bidder must be a "responsible contractor," as that term is defined in Minnesota Statutes, section 16C.285, subdivision 3. Any prime contractor, subcontractor, or motor carrier that does not meet the minimum criteria or fails to comply with the verification requirements is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project. A prime contractor, subcontractor, or motor carrier that makes a false statement under oath verifying compliance with the minimum criteria will be ineligible to be awarded a construction contract on the project, and the submission of a false statement may result in termination of a contract awarded to a prime contractor, subcontractor, or motor carrier that submits the false statement.

Bidders must submit Attachment G: Responsible Contractor Verification, which must include a list of all of the first-tier subcontractors that the respective bidder intends to retain for work on the project. Before execution of a construction contract, a prime contractor shall submit a supplemental verification under oath confirming that all subcontractors and motor carriers that the prime contractor intends to use to perform project work have verified to the prime contractor, through a signed statement under oath by an owner or officer, that they meet the minimum criteria for a responsible contractor.

A bidder or subcontractor who does not meet the minimum criteria specified in the statute, or who fails to verify compliance with the criteria, is not a "responsible contractor" and is ineligible to be awarded the contract for this project or to work on this project. Submitting a false verification makes the bidder or subcontractor ineligible to be awarded a construction contract for this project. Additionally, submitting a false statement may lead to contract termination. If only one bidder submits a bid, SWT may, but is not required to, award a contract even if that bidder does not meet the minimum criteria.

## **16. SUBCONTRACTING**

All subcontractors are subject to approval by SWT. SWT reserves the right to reject any subcontractor for any reason. Upon rejection of any subcontractor, bidder shall arrange to perform the work itself or shall provide an alternative subcontractor acceptable to SWT.



**17. NON-COLLUSION AFFIDAVIT**

Bidders must sign and submit with their bids the Non-Collusion Affidavit attached hereto as Attachment H: Non-Collusion Affidavit.

### List of Attachments to Bid Instructions

<b>Attachment #</b>	<b>Document Title</b>	<b>Bid Instructions Section Reference</b>
A	Bid Form	1
B	Bid Bond Form	1
C	Form of Contract	10
D	Performance and Payment Bonds	10
E	Notice to Proceed	11
F	Dispute and Protest Procedures	13
G	Responsible Contractor Verification	15
H	Non-Collusion Affidavit	17
I	Specifications	1

**ATTACHMENT A: BID FORM**

**To:** SouthWest Transit

**Project:** Eden Prairie Garage, Garage Door Replacement

The undersigned bidder agrees to enter into a contract with SouthWest Transit to furnish all labor, tools, materials/supplies and all else necessary (including any state, county, and local permits) to complete the supply and installation of three (3) new high-speed rubber garage doors in accordance with the specifications and all other provisions of the Request for Bids in strict accordance with the price set forth below. The bidder will not be entitled to any compensation for any item other than those listed on this bid form.

Line Item	Description	Bid Price (Figures)	Bid Price (Words)
1	(2) 14'x14' and (1) 24'x16' doors  Door makes and models: _____	\$	Dollars
Alternate 1	(4) 14'x 14' doors  Door makes and models: _____	\$	Dollars

ALL PRICES MUST BE ALL-INCLUSIVE.

The undersigned bidder represents and warrants to SWT that the bidder has authority to submit the bid, that the bid shall remain valid for a period of not less than ninety (90) days from the date of bid opening, and that the bidder has authority to enter into a contract for the work.

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

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

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

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

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

Contact Information: \_\_\_\_\_



**ATTACHMENT B: BID BOND FORM**

**BID BOND**

Bond No. \_\_\_\_\_ Premium \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that

we, \_\_\_\_\_  
(hereinafter called "Principal"), as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Minnesota, (hereinafter called "Surety"), as Surety, are held and firmly bound unto SOUTHWEST TRANSIT, a public joint powers entity under the laws of the State of Minnesota (hereinafter called "Obligee"), in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), in good and lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounded Principal has submitted a Bid Proposal pursuant to the Request for Bids – Eden Prairie Garage, Garage Door Replacement which Bid Proposal is referred to and made a part hereof as fully and to the same extent as if copied at length for the purpose of explaining but not of varying or enlarging the obligation.

NOW, THEREFORE, the condition of this obligation is such, that if any award made by said Obligee, to the above bounded Principal, its executors, administrators, personal representatives or assigns under the Request for Bids – Eden Prairie Garage, Garage Door Replacement shall be accepted by said Principal and said Principal shall enter into a contract for the furnishing of said garage door replacement project, and give bond with the Surety as surety, or with other surety or sureties to be approved by the Obligee, for the faithful performance thereof, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

## ATTACHMENT C: FORM OF CONTRACT

### Construction Contract

This Contract ("Contract") is made on the \_\_\_\_ day of \_\_\_\_\_, 2022, between SouthWest Transit, a joint powers entity under the laws of the State of Minnesota ("SWT"), whose business address is 14405 West 62nd Street, Eden Prairie, MN 55346, and \_\_\_\_\_,  
a \_\_\_\_\_ ("Contractor") whose business address is \_\_\_\_\_.

### Preliminary Statement

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 SWT. The purpose of this Contract is to set forth the terms and conditions for the provision of services by Contractor for supply and installation of three (3) new high-speed rubber garage doors at SWT's Eden Prairie Garage ("Work").

SWT and Contractor agree as follows:

1. **Scope of Work/Proposal.** 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 October 31, 2022.
3. **Compensation for Services.** SWT agrees to pay 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 Contractor shall require prior written approval by an authorized representative of SWT or by the SWT Commission. 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.** Contractor shall submit to 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 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, Contractor shall provide an itemized listing and such documentation as reasonably required by SWT.

Each invoice shall contain 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 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 SWT to Contractor when the Work has been completed, the Contract fully performed, and SWT accepts the Work in writing. The acceptance of final payment shall constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of Application for Final Payment.
  - d. Income Tax Withholding. No final payment shall be made to Contractor until Contractor has provided satisfactory evidence to SWT that 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.** 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 Contractor at Contractor's expense.
  8. **Correction of Work.** 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. Contractor shall bear all costs of correcting such rejected Work.
  9. **Warranty.** 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 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, 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 CONTRACTOR'S LIABILITY TO THOSE DEFECTS APPEARING WITHIN THE WARRANTY PERIOD. 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.

Contractor shall post bonds to secure the warranties.

10. **Private Property.** Contractor shall not enter upon private property for any purpose without having previously obtained permission from SWT. 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, Contractor shall remove all of Contractor's equipment, tools and supplies from the property of SWT. Should 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 Contractor in writing. The work shall be resumed by Contractor within ten (10) days after the date fixed in the written notice from SWT to 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 Contractor, SWT shall reimburse 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 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 Contractor, or for any other delay provided for in this Contract. Notwithstanding the foregoing, Contractor acknowledges that it will not be entitled to any compensation for any suspension of the Work from August 25, 2022 through September 5, 2022, which suspension was planned by SWT and known to Contractor before the parties entered into this Contract.
13. **SWT's Right to Carry Out the Work.** If 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 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



Contractor the cost of correcting such deficiencies. If the payments then or thereafter due Contractor are not sufficient to cover such amount, 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. 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 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 Contractor and may finish the Work by whatever methods SWT may deem expedient at Contractor's expense.

Upon Contract termination, 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 Contractor. If such expense exceeds the unpaid balance, Contractor shall pay the difference to SWT.

In the event that 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 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 Contractor agrees to pay all costs, including reasonable attorney's fees.

15. **Contractor's Right to Terminate Contract.** 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 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.** 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 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.
17. **Subcontractor.** 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. Contractor shall pay any subcontractor involved in the performance of this Contract within the ten (10) days of Contractor's receipt of payment by SWT for undisputed services provided by the subcontractor. If Contractor fails within that time to pay the subcontractor any undisputed amount for which Contractor has received payment by SWT, 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, Contractor shall pay the actual interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from 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. 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, 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 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 \$500,000 disease policy limit \$500,000 disease each employee
Commercial General Liability	\$1,000,000 property damage and bodily injury per occurrence \$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. 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 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 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 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 Contractor, but any use of the Information by SWT or 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.
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, 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.** 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, 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. 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. 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. 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 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 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 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 Practices Act, Minnesota Statutes Chapter 13 (Data Practices Act). All government data, as defined in the Data Practices Act, 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 Practices 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**

By: \_\_\_\_\_  
Matt Fyten, Its Interim Chief Executive Officer

**CONTRACTOR**

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

EXHIBIT A

[TO BE INSERTED BEFORE CONTRACT SIGNING - SEE RFB ATTACHMENT I: SPECIFICATIONS]



**ATTACHMENT D: PERFORMANCE AND PAYMENT BONDS**

[Remainder of the page is blank. Performance Bond and Payment Bond forms follow on the subsequent pages.]

**PERFORMANCE BOND**

**BOND NO.** \_\_\_\_\_

**PENAL SUM** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_,  
("Principal"), and \_\_\_\_\_, a corporation organized under the  
laws of the State of \_\_\_\_\_ and duly authorized to transact business in the State of  
Minnesota, ("Surety"), are held and firmly bound unto SOUTHWEST TRANSIT, a public joint powers entity  
under the laws of the State of Minnesota, ("Obligee"), in the penal sum of  
\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), for the  
payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs,  
executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal and the Obligee have entered into an Agreement, dated the \_\_\_\_\_ day of  
\_\_\_\_\_, 2022, ("Agreement") which Agreement is by reference made a part hereof, as if  
fully set forth.

NOW, THEREFORE, the condition of this obligation is such that if the Principal, its heirs, executors,  
successors, and assigns shall in all things well and truly perform and observe all of the covenants, agreements,  
and conditions on their part to be performed and observed which are contained in the Agreement then this  
obligation shall be void; otherwise, it shall remain in force.

SIGNED, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By \_\_\_\_\_  
Principal

By \_\_\_\_\_  
Surety

**PAYMENT BOND**

**BOND NO.** \_\_\_\_\_

**PENAL SUM** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, (“Principal”), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and duly authorized to transact business in the State of Minnesota, (“Surety”), are held and firmly bound unto SOUTHWEST TRANSIT, a public joint powers entity under the laws of the State of Minnesota, (“Obligee”), in the penal sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal and the Obligee have entered into an Agreement, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2022, (“Agreement”) which Agreement is by reference made a part hereof, as if fully set forth.

NOW, THEREFORE, the condition of this obligation is such that if the Principal, its heirs, executors, administrators, successors, or assigns, or a subcontractor, shall fail to pay any person or persons furnishing labor and/or materials, as defined in Minnesota Statute Section 574.26, pursuant to the Agreement, then Surety will pay for the same, in or to an amount not exceeding the penal sum of this bond, set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney’s fees as shall be fixed by the court.

This bond shall inure to the benefit of any persons furnishing labor and/or materials, as defined in Minnesota Statute Section 574.26, pursuant to the Agreement, so as to give a right of action to such person or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason on any breach of the Agreement, but the sole conditions of recovery shall be that claimant is a person furnishing labor and/or materials, as defined in Minnesota Statute Section 574.26, pursuant to the Agreement, and has not been paid the full amount of his/her or its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

SIGNED, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By \_\_\_\_\_  
Principal

By \_\_\_\_\_  
Surety

**ATTACHMENT E: NOTICE TO PROCEED**

---

**To:** \_\_\_\_\_ (“Contractor”)

**From:** SouthWest Transit (“Owner”)

**Project Name:** Eden Prairie Garage, Garage Door Replacement (“Project”)

**Project Location:** Eden Prairie, Minnesota

**Amount of Contract:** \$ \_\_\_\_\_

---

Pursuant to the Contract Documents as defined in that certain Agreement between Contractor and Owner dated \_\_\_\_\_, you are hereby notified to commence work on the above-referenced Project on \_\_\_\_\_, and shall fully complete all work under said Agreement on or before October 31, 2022.

Failure to complete all work under the Agreement on or before October 31, 2022 will result in enforcement of liquidated damages as set forth in the Contract Documents for each consecutive calendar day after October 31, 2022 that the work remains incomplete.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

---

Acceptance of Notice

---

Receipt of the forgoing Notice to Proceed is hereby acknowledged.

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## ATTACHMENT F: DISPUTE AND PROTEST PROCEDURES

SWT desires to have the opportunity to know about and resolve controversies and disputes concerning its procurements, prior to commencement of actions in court. Therefore, it establishes the administrative remedies and procedures set forth herein.

Any actual or prospective bidder, proposer, or contractor who is aggrieved in connection with the solicitation or award of a SWT contract may protest in accordance with these Dispute and Protest Procedures. SWT will endeavor to fairly resolve protests that conform to the requirements of these procedures.

Protests will be decided by the Chief Operations Officer (“COO”). A protester may request review of the COO’s decision by the Chief Executive Officer (“CEO”).

If the procurement is funded in whole or in part by the Federal Transit Administration (“FTA”), interested persons are hereby notified that a protester must exhaust all administrative remedies with SWT before pursuing a protest with FTA. Reviews of protests by FTA will be limited to:

1. SWT’s failure to have or follow its protest procedures, or its failure to review a complaint or protest;  
or
2. violations of Federal law or regulation; or
3. violations of State or Local Law or Regulation.

An appeal to FTA must be received by the appropriate FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by SWT or other basis of appeal to FTA.

### 1 Purpose

The Dispute and Protest Procedures provide a process for a full and fair consideration of controversies or disputes concerning procurement, without allowing protesters to exploit protest procedures to obtain a competitive advantage or obstruct procurement. The requirements herein are intended to serve important public purposes. Protesters are cautioned that noncompliance will result in waiver of protest rights. Protesters should review the Dispute and Protest Procedures carefully before filing a protest.

### 2 Definitions

The words defined in this section shall have the meaning set forth below when they appear hereafter:

- a) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term includes all functions that pertain to the obtaining of any supplies, services, or construction, including descriptions of requirements, selection, solicitation of sources, and preparation and award of contracts.
- b) A *protest* is a written objection by an interested person to a SWT procurement. SWT will not consider or respond to oral protests.

- c) *Solicitation* means the process under which SWT invites interested persons to bid or make Bids in connection with its procurement.
- d) A *solicitation phase protest* is a protest based on alleged improprieties in a solicitation, including, but not limited to, exclusion of proposers and objections to pre-evaluation processes.
- e) An *award phase protest* means all protests other than solicitation phase protests.
- f) An *interested person* is an actual or prospective proposer, or contractor who alleges that it has been aggrieved in connection with the solicitation or award of a SWT contract.
- g) A *working day* is an office business day for SWT staff.

### **3 Specific Procedures**

*SWT requires strict compliance with the following procedures. Failure to comply with these procedures will result in a waiver of protest rights.*

An interested person desiring to protest must file a written protest, by certified mail, with the SWT contact person designated in the solicitation issued by SWT, with a copy to the COO. If the contact person cannot be identified in the solicitation or is otherwise unavailable, the protest should be filed with the COO, 14405 West 62nd Street, Eden Prairie, MN 55346.

The written protest must include the following information:

- a) The protester's name, the protester's company name, address, telephone and fax numbers, and, if available, email address.
- b) The project name and number (if any) and the contract name and number (if any) or other solicitation identifier.
- c) Information establishing that the protester is an interested party for the purpose of filing a protest and that the protest is timely.
- d) A detailed statement of the legal and factual grounds for the protest, including a description of the alleged injury or prejudice to the protester.
- e) Identification of evidence known to support allegations in the protest, including, but not limited to, names of the persons involved; a description of relevant occurrences; the documents upon which the protester relies; and the particular aspects or language, if any, in the solicitation documents which are alleged to be defective or illegal. To the greatest extent reasonably practicable, copies of relevant documents should be furnished with the protest.
- f) A statement identifying the requested relief or remedy.

#### **4 Deadlines**

The following deadlines apply to protests:

- a) All protests *must* be filed within seven (7) working days after the basis of the protest is known or should have been known, whichever is earlier.
- b) A solicitation phase protest *must* be filed before the bid opening or the closing date for the receipt of Bids. If a solicitation phase protest is not filed before the bid opening or the closing date for the receipt of Bids, a protester's right to bring a protest is waived.
- c) A request for review by the CEO of the COO's decision *must* be filed within three (3) working days after the protester's receipt of the COO's decision.
- d) Failure to file a protest or request for review by the CEO within the time periods indicated *shall* result in a waiver of the protest.

#### **5 Designated Contact Person**

Once a written protest is filed with the designated contact person, the protest will be given to the COO for review and consideration.

In the case of a timely solicitation phase protest, the designated contact person initially will determine if the scheduled bid opening or Bid due date should be extended pending resolution of the protest and, if so, will issue a notification to all bidders or proposers. The designated contact person will notify funding authorities (such as the FTA) upon protest filing and as required by rule or regulation. Notification to FTA will include a brief description of the protest, the basis of disagreement, the status of the protest, and whether an appeal has been taken or is likely to be taken.

#### **6 Consideration by the COO**

The COO will review and consider a timely filed protest and supporting documents, and will render a written decision that addresses the issues raised in the protest. The COO shall not hold any hearing, and will take action on the basis of such review and investigation as he or she deems appropriate in his or her discretion. The COO will render a final decision no more than ten (10) working days after the filing of the protest.

#### **7 CEO Review**

Within three (3) working days after receiving the COO's written decision, a protester may request that the CEO review the COO's decision. A request for CEO review must be made in writing to the COO, by certified mail, and shall include a clear reference to the decision to be reviewed and shall state the legal and factual reasons for disagreement with the COO's decision.

The CEO shall not be required to hold any hearing, and may take action on the basis of such review and investigation as they deem appropriate at their discretion. The CEO may, as he or she sees fit, accept further

written submissions, take testimony, and/or make a transcript of hearings or proceedings. The CEO will issue a written decision no later than fourteen (14) working days after receipt of the request for review.

**8 Effect on Procurement**

The COO or CEO, as a matter of their sole discretion, may suspend or proceed with the procurement process, pending the outcome of a protest.

**9 Records Retention**

All protest-related documents must be retained by SWT for six (6) years.

**10 Deviations**

In the exercise of his or her discretion, and for good cause adequately demonstrated, the COO may waive stated deadlines and/or insubstantial deviations from the requirements herein.



**ATTACHMENT G: RESPONSIBLE CONTRACTOR VERIFICATION**

**Responsible Contractor Verification**

I am an owner or officer of \_\_\_\_\_ [name of bidder] (“Bidder”). I hereby verify that Bidder is in compliance with the minimum criteria required of a “responsible contractor” as that term is defined in Minnesota Statutes § 16C.285, subdivision 3, and as explained in the attached document entitled “Responsible Contractor Requirement.”

I further agree that Bidder has received a signed statement under oath from each subcontractor and motor carrier that Bidder intends to use to perform work on the project verifying that the subcontractor or motor carrier meets the minimum criteria under Minn. Stat. § 16C.285, and that Bidder will furnish such statements to the contracting authority upon request. Bidder intends to retain the following first-tier subcontractors and motor carriers for work on this project [attach additional sheet as necessary to list of contractors]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If Bidder is awarded the contract for the project, I further agree that Bidder will submit the attached document entitled “Additional Subcontractor List” as required.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_

By: \_\_\_\_\_ [printed name]

\_\_\_\_\_ [title] of \_\_\_\_\_ [name of bidder]

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

Signed and sworn to before me on \_\_\_\_\_, 2022, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**ADDITIONAL SUBCONTRACTORS AND MOTOR CARRIERS LIST**

PROJECT TITLE: Eden Prairie Garage, Garage Door Replacement

Pursuant to Minn. Stat. § 16C.285, subd. 5, the prime contractor must submit this form within 14 days of retaining any additional subcontractor or motor carrier on the project. This form must be submitted to the Project Manager or other individual as identified in the solicitation document.

**Additional Subcontractors and Motor Carriers**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By signing this document, I certify that I am an owner or officer of the company, and I swear under oath that all additional subcontractors and motor carriers listed on this Additional Subcontractors and Motor Carriers List have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_

By: \_\_\_\_\_ [printed name]

\_\_\_\_\_ [title] of \_\_\_\_\_ [name of company]

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

Signed and sworn to before me on \_\_\_\_\_, 2022, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**ATTACHMENT H: NON-COLLUSION AFFIDAVIT**

**NON-COLLUSION AFFIDAVIT**

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

**(NOTE: This form MUST be submitted with each bid.)**

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the bidder (if the bidder is an individual), a partner of the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation (if the bidder is a corporation), having authority to sign on his, hers, or its behalf and if awarded the contract to enter into such contract;
2. That the attached bid or bids have been arrived at by the bidder independently and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment or services described in the Invitation for Bids, designed to limit independent bidding or competition;
3. That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids and will not be communicated to any such person prior to the official opening of the bid or bids; and
4. That I have fully informed myself regarding the accuracy of the statements made in this statement.

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

## ATTACHMENT I: SPECIFICATIONS

Work will consist of furnishing all coordinating, scheduling, obtaining, and assembling at the work site all equipment, materials, permits, supplies, staffing, supervision and any other essentials and incidentals necessary. Labor, materials, and waste disposal shall comply with all federal, state, and local ordinances and laws and will be the responsibility of the contractor.

### **Scope of work for equipment and labor:**

To supply and install three (3) new high-speed rubber doors of ¼-inch (6 mm) thickness with windbars, openers, and all necessary safety devices.

Doors must be TNR model HDC or equivalent.

Door approximate sizes are:

(2) 14'x14'

(1) 24'x16'

**(4) 14'x 14' As a line-item bid alternate.**

Contractor is responsible to make final measurements and provide correct sized and correct voltage garage doors.

Wireless safety edges on all new doors.

Two (2) sets of photo eyes for each new door.

A new control panel for each new door.

A set of new Red/Green warning lights for each new door.

Removal and disposal of existing doors. SWT will keep old doors' openers.

All conduit and wiring done by SWT's electrician.

Final low-voltage connections done by awarded contractor.

Minimum of a 1-year warranty for parts and labor, or as provided by manufacturer, whichever is greater. Warranty period to commence on completion date.

Clean up of all waste and discarded material shall be done at the close of each workday.

The contractor will need to coordinate work with the Facilities and Maintenance Engineer or his designee to allow for the garage and maintenance shop to remain operational during the duration of the above project. SWT will accommodate the contractor to best of its ability as to not interfere with the reasonable progress of the work as described above.

**Timeline:**

No work will be allowed before June 15, 2022.

No work will be allowed August 25, 2022 through September 5, 2022, because of Minnesota State Fair activities at SWT's facilities.

Work must be completed by October 31, 2022.

Access to building for this project will be weekdays during the hours of 7:00 a.m. and 9:00 p.m.