



REQUEST FOR BIDS (RFB)
Construction of Infrastructure for SouthWest Transit EV
Charging Project

For

SouthWest Transit (SWT)

14405 West 62nd Street

Eden Prairie, MN 55346

Issue Date: 1/21/2025

Virtual Pre-Bid Conference: 1/29/2025 10:00am CST

Bids due: 2/6/2025 BY 4PM CST

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..... 4
3. Project Time Frame 4
4. Background 4
5. RFB Administrator; Bid Questions; Addenda 5
6. Bid Format..... 5
7. Submission of Bids..... 6
8. Items Required to be Submitted with the Bid 6
9. Withdrawal or Modification of Bids 7
10. Form of Contract; Bonds 7
11. Bid Opening, Contract Award, and Execution 7
12. Organizational Conflict of Interest 8
13. Disputes and Protests 8
14. Data Practices Act 8
15. Subcontracting 9
16. Certification of Non-Debarment 9
17. Lobbying Restriction Certification 9
18. Non-Collusion Affidavit 10
19. Buy America and Build America, Buy America Certification 10
20. Telecommunications Certification 10
21. Affirmative Action Certification 10
22. Responsible Contractor Verification 11
23. Disadvantaged Business Enterprise (DBE) Certification 12

LIST OF ATTACHMENTS TO BID INSTRUCTIONS

A. Bid Form..... 14
B. Bid Bond Form 15
C. Form of Contract..... 16
D. Performance Bond and Payment Bond Forms 48
E. Dispute and Protest Procedures..... 52
F. Certificate of Non-Debarment..... 56
G. Lobbying Restriction Certification 58
H. Non-Collusion Affidavit 60
I. Buy America and Build America, Buy America Certification 61
J. Specifications..... 62
K. Telecommunications Certification 63
L. Affirmative Action Certification 66
M. Responsible Contractor Verification 68
N. Disadvantaged Business Enterprise (DBE) Contract Requirements 70
O. DBE Commitment Form, DBE Letter of Intent Form(s), and DBE Good Faith Efforts ... 89

INSTRUCTIONS FOR PREPARATION OF BIDS

1. REQUEST FOR BIDS

SouthWest Transit (“SWT”) is requesting bids from qualified electricians for the installation of needed infrastructure for the SouthWest Transit EV charging project. SouthWest Transit will provide complete electrical plans showing required components and installation locations of needed infrastructure. The winning bidder will be expected to provide all required components and install all components as per the electrical engineer’s plans. This project is part of a Federal LO/NO grant and all materials must be Buy America, Build America Act (BABA) compliant. Specifications are attached as Attachment J: 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.

A virtual pre-bid meeting will be held 1/29/2025 at 10:00am CST virtually, hosted by SWT via Microsoft Teams. Connect using the following link. [SWT Teams Meeting](#)

Bids must be submitted on the Bid Form attached hereto as Attachment A: Bid Form.

This procurement is being conducted with only one round of bids. Bidders should submit their best and final offer.

Questions regarding the bid documents must be asked either at the pre-bid meeting or be submitted in writing by 2/3/2025 to:

Tony Kuykendall
14405 West 62nd Street
Eden Prairie, MN 55346
Email: tkuykendall@swtransit.org

All questions will be answered, in a written addendum no later than 2/4/2025.

To be considered, **One (1) original and Four (4) photocopies of the bid** must be received by

2/6/2025 no later than 4:00pm CST. All bids must be marked “**Construction of Infrastructure for SouthWest Transit EV Charging Project.**” SouthWest Transit will also accept electronic mailed bids that are complete, properly labeled and received no later than 4:00pm CST on 2/6/2025. SouthWest Transit reserves the right to reject any or all bids submitted. Oral, facsimile, telephone or telegraphic bids are invalid and will not receive consideration.

All bids must be addressed as follows: Tony Kuykendall, Director of Fleet and Facilities, SouthWest Transit, 14405 West 62nd Street, Eden Prairie, MN 55346, Or electronically mailed to tkuykendall@swtransit.org no later than 4:00pm CST on 2/6/2025. All bids must include all

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

Project Milestones	Tentative Date
Issue the RFB	1/21/2025
Pre-Bid meeting	1/29/2025
Final questions due from bidders	2/3/2025
Responses to bidder questions from SWT	2/4/2025
Bids due	2/6/2025
Notice of award	2/24/2025

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. The RFB seeks infrastructure components and installation for 5 EV DC fast chargers.

The Mission of SouthWest Transit is that “we provide a premium experience for the southwest Twin Cities through safe, reliable, and cost-effective transit that builds community and connects our customers from where they are to where they want to go.”

SouthWest Transit provides three main services which provide connections within our main service areas of Chaska, Chanhassen, and Eden Prairie as well as connecting service to our surrounding Twin Cities Metropolitan area, including the cities of Minneapolis, St Paul, Bloomington, Edina, Shakopee and others.

More information about SWT can be found at www.swtransit.org.

5. RFB ADMINISTRATOR; BID QUESTIONS; ADDENDA

The RFB administrator for the Request for Bids is:

Tony Kuykendall
Director of Facilities and Fleet
SouthWest Transit
14405 West 62nd Street
Eden Prairie, MN 55346
Email: tkuykendall@swtransit.org
Telephone: (952) 949-3185

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, or be sent using electronic mail. **One (1) original and Four (4) photocopies of the bid are required if sent**

using U.S. mail or any other physical delivery service. All Bids must be marked “***Bid for construction of infrastructure for SouthWest Transit EV charging project***”.

7. SUBMISSION OF BIDS

All Bids must be addressed as follows: Tony Kuykendall, Director of Facilities and Fleet. SouthWest Transit, 14405 West 62nd Street, Eden Prairie, MN 55346, or tkuykendall@swtransit.org

Bids must be **physically, or electronically 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, electronic mail or other delivery service, it is wholly the responsibility of the bidder to ensure that the Bid package is properly addressed and physically or electronically 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 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).
- Bid Bond (See Attachment B) in an amount equal to five percent (5%) of the bidder’s 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 ninety (180) days from the date of bid opening, and that the bidder has authority to enter into a contract for the procurement.

- Certificate of Non-Debarment (See Attachment F).
- Lobbying Restriction Certification (See Attachment G).
- Non-Collusion Affidavit (See Attachment H).
- Buy America and Build America, Buy America Certification (See Attachment I)
- Telecommunications Certification (See Attachment K).
- Affirmative Action Certification (See Attachment L).
- Responsible Contractor Verification (See Attachment M).
- DBE Commitment Form, DBE Letter of Intent Form(s), and, if applicable, DBE Good Faith Efforts (See Attachment O).
- Documentation establishing bidder's experience in installation of electrical infrastructure for EV charging.

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 between the parties will be in the form of Attachment C: Form of Contract.

The selected bidder shall post a Performance Bond and a 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 Performance and Payment Bonds shall be in the form attached hereto as Attachment D: Performance Bond and Payment Bond Forms. Bidder shall provide the Performance and Payment 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 2/6/2025 immediately after bids are due at SouthWest Transit, 14405 West 62nd Street, Eden Prairie, MN 55346, or tkuykendall@swtransit.org

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.

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, and the signed contract, SWT will execute the contract.

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. DISPUTES AND 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 E: 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. 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.

16. CERTIFICATION OF NON-DEBARMENT

Bidders must sign and submit with their bids the Certification of Non-Debarment attached hereto as Attachment F: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

17. LOBBYING RESTRICTION CERTIFICATION

Bidders must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352(b)(5), and 49 CFR part 20, which provide restrictions on lobbying with federally appropriated funds and impose disclosure requirements for lobbying with non-federal funds. The Lobbying Restriction Certification attached hereto as Attachment G: Lobbying Restriction Certificate must be completed and submitted with bids equal to or exceeding \$100,000. The certification and disclosures are material representations of fact upon which the Commission will rely in awarding the contract. Upon award of any subcontracts or supply contracts equal to or exceeding \$100,000 under the contract, the successful bidder will be required to obtain the same certification from its subcontractors and suppliers and forward the certification and any disclosures to SWT.

18. NON-COLLUSION AFFIDAVIT

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

19. BUY AMERICA AND BUILD AMERICA, BUY AMERICA CERTIFICATION

Bidders must submit the appropriate Buy America and Build America, Buy America certification with their bids. Bids that are not accompanied by a completed Buy America and Build America, Buy America Certification will be rejected as nonresponsive. Bidders must submit with their bid Attachment I: Buy America and Build America, Buy America Certification.

20. TELECOMMUNICATIONS CERTIFICATION

Bidders must submit a telecommunications certification in accordance with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232). Bids that are not accompanied by a completed telecommunications certification will be rejected as nonresponsive. Bidders must submit with their bid Attachment K: Telecommunications Certification.

21. AFFIRMATIVE ACTION CERTIFICATION

The provisions of Minnesota Statutes, Section 473.144, and Minnesota Rules, parts 5000.3400 to 5000.3600 will be incorporated into the contract awarded. The referenced

provisions relate to contractor requirements for affirmative action plans for minority individuals, women, and disabled individuals. Copies of the referenced provisions are available upon request from the RFB Administrator. Copies may also be accessed at the following internet web sites:

Minnesota Statutes, section 473.144: www.revisor.mn.gov/statutes/cite/473.144
Minnesota Rules, parts 5000.3400 - .3600: www.revisor.mn.gov/rules/5000/

Under the provisions of Minnesota Statutes section 473.144, SWT may not accept a bid for over \$100,000 from any business having more than forty (40) full-time employees in Minnesota on a single working day during the previous twelve (12) months, unless that business has submitted an affirmative action plan to the Minnesota Commissioner of Human Rights for approval. SWT may not execute a contract for over \$100,000 with any business having more than forty (40) full-time employees in Minnesota on a single working day during the previous twelve (12) months, unless that business has an approved affirmative action plan, evidenced by a Certificate of Compliance from the Minnesota Department of Human Rights. A certificate is valid for 2 years. In addition, for any business which did not have more than forty (40) full-time employees in Minnesota, but which had more than forty (40) full-time employees on a single working day during the previous twelve (12) months in the state in which it has its primary place of business, SWT may not execute a contract with such a business unless the business has an approved affirmative action plan, evidenced by a Certificate of Compliance from the Minnesota Department of Human Rights, or the business certifies to SWT that the business is in compliance with federal affirmative action requirements.

To ensure compliance with this statute, bidders must submit with their bid either:

- A. a copy of the bidder's currently effective affirmative action Certificate of Compliance issued by the Minnesota Department of Human Rights; or
- B. An Affirmative Action Certification Statement attached hereto as Attachment L: Affirmative Action Certification with information which indicates that SWT can accept the bidder's bid.

Failure to submit one of these documents along with the bid will result in the bid being rejected and returned to the bidder without further consideration. Bidders are advised that SWT may verify representations made by a bidder in any Affirmative Action Certification Statement which is submitted.

If a bidder submits an Affirmative Action Plan for approval of the Minnesota Commissioner of Human Rights in order to qualify for acceptance of its bid by SWT and becomes the selected bidder, SWT will not execute the contract until the bidder has actually been issued a Certificate of Compliance from the Minnesota Department of Human Rights. SWT is under no obligation to delay the award and execution of a contract until a bidder has completed the human rights certification process. It is the sole responsibility of a bidder to apply for and obtain a human rights certificate prior to contract award and execution.

22. 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 M: Responsible Contractor Verification, which must include a list of all 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.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION

The work sought to be procured under this RFB is intended to be funded under a federal grant as to which the Metropolitan Council is the designated recipient. Accordingly, this RFB and any contract awarded under it are subject to the terms and conditions of the Metropolitan Council’s Disadvantaged Business Enterprise (DBE) Contract Requirements, a copy of which are attached as Attachment N. As part of their bids, all bidders must submit Attachment O: DBE Commitment Form, DBE Letter of Intent Form(s), and DBE Good Faith Efforts.

List of Attachments to Bid Instructions

Bids must include all required attachments in this RFB.

Attachment #	Document Title	Bid Instructions Section Reference
A	Bid Form	1
B	Bid Bond Form	8
C	Form of Contract	10
D	Performance Bond and Payment Bond Forms	10
E	Dispute and Protest Procedures	13
F	Certificate of Non-Debarment	16
G	Lobbying Restriction Certification	17
H	Non-Collusion Affidavit	18
I	Buy America and Build America, Buy America Certification	19
J	Specifications	1
K	Telecommunications Certification	20
L	Affirmative Action Certification	21
M	Responsible Contractor Verification	22
N	Disadvantaged Business Enterprise (DBE) Contract Requirements	23
O	DBE Commitment Form, DBE Letter of Intent Form(s), and DBE Good Faith Efforts	23

ATTACHMENT A: BID FORM

TO: SOUTHWEST TRANSIT

PROJECT: SWT CONSTRUCTION OF INFRASTRUCTURE FOR EV DC FAST CHARGING

THE UNDERSIGNED BIDDER AGREES TO ENTER INTO A CONTRACT WITH SOUTHWEST TRANSIT TO SUPPLY ALL COMPONENTS AND INSTALL ALL INFRASTRUCTURE AS PER THE RFB'S SUPPLIED ENGINEERING PLANS.

ALL PRICES MUST BE BROKEN DOWN INTO MATERIAL COST AND LABOR COST, MATERIAL COST SHOULD INCLUDE IN SHIPPING COST, LABOR COST SHOULD INCLUDE ANY PERMITS, INSPECTIONS OR ANYOTHER COST RELATED TO THE PROJECT. THE FINAL COST AT THE BOTTOM OF YOUR SUBMISSION MUST BE THE FINAL COST FOR ENTIRE PROJECT.

DESCRIPTION	AMOUNT
MATERIALS	\$
LABOR	\$
TOTAL	\$

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 (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 pursuant to the REQUEST FOR BIDS (RFB) FOR CONSTRUCTION OF INFRASTRUCTURE FOR SOUTHWEST TRANSIT EV CHARGING PROJECT, which Bid 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 (RFB) FOR CONSTRUCTION OF INFRASTRUCTURE FOR SOUTHWEST TRANSIT EV CHARGING PROJECT shall be accepted by said Principal and said Principal shall enter into a contract for the furnishing of said CONSTRUCTION OF INFRASTRUCTURE FOR SOUTHWEST TRANSIT EV CHARGING PROJECT, and give bond with the _____, as Surety, or with other Surety or Sureties to 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 _____, 2024.

Principal

Surety/Attorney-in-fact

ATTACHMENT C: FORM OF CONTRACT

Construction Contract

This Contract ("Contract") is made on the ____ day of _____, 20____, 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 Minnesota _____ ("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 Construction of Infrastructure for SouthWest Transit EV Charging Project ("Work").

SWT and Contractor agree as follows:

1. **Scope of Work.** 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; Liquidated Damages.** The Work to be performed under this Contract shall be commenced immediately after execution of this Contract. The Work shall be completed by March 13, 2025. If Contractor fails to fully provide, perform, and complete the Work by the date set forth in this Section 2, then Contractor shall pay to SWT an amount equal to \$____ per day for each business day such failure continues ("Liquidated Damages"). The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that SWT's harm caused by Contractor's failure to fully provide, perform, and complete the Work by the date set forth in Section 2 would be impossible or very difficult to accurately estimate at the time of contracting, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from Contractor's failure to fully provide, perform, and complete the Work by the date set forth in this Section 2.
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.
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 policies 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 policies, 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.

- 40. **Federally Required Provisions.** This Contract shall incorporate by reference all applicable federally required provisions set forth in Exhibit B. Notwithstanding anything to the contrary in the Contract, all federally required provisions shall be deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SWT requests which would cause SWT to be in violation of the federally required provisions. Contractor shall comply with all applicable federally required provisions set forth in Exhibit B. Contractor's failure to comply with applicable federal regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of the Contract, shall constitute a material breach of the Contract.

Executed as of the day and year first written above.

SOUTHWEST TRANSIT

By: _____
Erik Hansen, Its Chief Executive Officer

CONTRACTOR

By: _____
Its: _____

Exhibit A

SCOPE OF WORK

SouthWest Transit was awarded a Federal LO/NO grant for the purchase of (4) MCI CRT LE fully electric coaches, (2) Heliox 180 Kw DC fast chargers, (6) Fully electric <30 ft buses, and (3) 50-63Kw DC fast chargers to be selected later.

This Contract is for the construction of the electrical infrastructure needed to tie the above DC fast chargers into the existing building electrical. This Contract does not include the installation of any DC fast chargers. Work will be performed in a heated facility, free from rain or snow. SouthWest Transit is committed to completing this project quickly to align with the delivery of the first EV buses.

Contractor shall furnish and install electrical infrastructure for installation of (5) five level 3 DC fast EV chargers. Scope of work includes, but is not limited to power distribution switches, switchboard modifications, automatic transfer switches, disconnect switches, raceway and wiring installation as defined in attached Construction Documents and Specifications produced by Dunham Associates dated 9/23/2024.

This project has a DBE goal of 9%.

Contractor is responsible for obtaining any required permits or licenses. Work and components must pass all city, state, and federal requirements and inspections.

All components used must meet (BABA) Build America, Buy America requirements.

All work must be completed within 90 days of award of project.

Exhibit B

FEDERALLY REQUIRED PROVISIONS

The provisions of this Exhibit B are required because this Contract is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in this Exhibit are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement of this Exhibit is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in this Exhibit shall prevail.

ARTICLE FTA-1. DEFINITIONS

- 1.1 C.F.R.: The acronym referring to the United States Code of Federal Regulations, which contains regulations applicable to FTA grant recipients and their contractors and subcontractors.
- 1.2 DOT: The acronym referring to the United States Department of Transportation. Also represented as USDOT.
- 1.3 EPA: The acronym referring to the United States Environmental Protection Agency. Also represented as USEPA.
- 1.4 FTA: The acronym referring to the Federal Transit Administration, a public transit regulatory unit of the USDOT, formerly known as the Urban Mass Transit Administration.
- 1.5 U.S.C.: The acronym referring to the United States Code.

ARTICLE FTA-2. ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 2.1 **Access to Records.** The CONTRACTOR agrees to provide sufficient access to FTA and its contractors to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.

In accordance with 49 U.S.C. section 5325(g), CONTRACTOR agrees to provide SWT, the Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this Contract for the purposes of making audits, examinations, inspections, excerpts, and transcriptions.

CONTRACTOR also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight ("PMO") contractor, access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311.

- 2.2 **Access to the Sites of Performance.** CONTRACTOR agrees to permit FTA and its contractor access to the sites of performance under this Contract as may reasonably be required.
- 2.3 **Reproduction of Documents.** The Contractor will retain, and will require its subcontractors at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- 2.4 **Retention Period.** The CONTRACTOR agrees to comply with the record retention requirements in accordance with 2 C.F.R section 200.333. CONTRACTOR shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

The expiration or termination of this Contract does not alter the record retention or access requirements of this Section.

ARTICLE FTA-3. BUY AMERICA

The provisions of this article apply if the value of this Contract (including the value of any amendments) exceeds \$150,000.

- 3.1 **Buy America Provision.** The CONTRACTOR agrees to comply with 49 U.S.C section 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless iron, steel, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §section 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time

to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The CONTRACTOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

ARTICLE FTA-4. CARGO PREFERENCE

- 4.1 **Cargo Preference–Use of United States-Flag Vessels.** The CONTRACTOR agrees:
- 4.1.1 To use privately owned United States-Flag commercial vessels to ship at least 50 % of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
 - 4.1.2 To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in Section 4.1.1 above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to SWT; (through the CONTRACTOR in the case of a lower-tier participating subcontractor’s bill of lading); and
 - 4.1.3 To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- 4.2 **Fly America Requirements** The CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this section FTA-4.2 in all subcontracts that may involve international air transportation.

ARTICLE FTA-5. EMPLOYEE PROTECTIONS

Certain employee protections apply to all FTA-funded contracts with particular emphasis on construction related projects. The CONTRACTOR will comply with all federal laws, regulations, and requirements, including:

5.1 **Prevailing Wage Requirements.**

5.1.1 Federal transit laws, specifically 49 U.S.C. section 5333(a), (“FTA’s Davis-Bacon Related Act”);

5.1.2 The Davis-Bacon Act, 40 U.S.C. sections 31441-3144, 3146, and 3147; and

5.1.3 U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non- construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5

5.2 **Anti-Kickback Prohibitions.**

5.2.1 Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. section 874;

5.2.2 Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. section 3145; and

5.2.3 U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.

5.3 **Contract Work Hours and Safety Standards.**

5.3.1 Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

5.4 **Flow Down.** These requirements extend to all third-party contractors and their contracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers

- 5.5 **Model Clause/Language.** The CONTRACTOR must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.
- 5.6 **Prevailing Wage and Anti-Kickback.** For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti- Kickback” Act. Under 49 U.S.C. section 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. sections 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. section 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled
- 5.7 **Contract Work Hours and Safety Standards.** For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the CONTRACTOR shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the CONTRACTOR shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District

or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

ARTICLE FTA-6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

- 6.1 The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 during the term of this Contract. By signing this Contract, the CONTRACTOR certifies that neither it nor its principals, affiliates, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this contract by any Federal department or agency. This certification is a material representation of fact upon which SWT relies in entering this Contract. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to other remedies available to SWT, the Federal Government may pursue available remedies, including suspension and/or debarment. The CONTRACTOR shall provide SWT with immediate written notice if at any time the CONTRACTOR learns that its certification was erroneous when submitted or has become erroneous because of changed circumstances. The CONTRACTOR will include a provision requiring such compliance in its lower tier covered transactions.

ARTICLE FTA-7. ENVIRONMENTAL STANDARDS AND PRACTICES

- 7.1 **Clean Water Act.** For any project of \$150,000 or more, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251-1387. The CONTRACTOR agrees to report each violation to SWT and understands and agrees that SWT will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (“EPA”) Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

- 7.2 **Clean Air Act Compliance.** For any project of \$150,000 or more, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401-7671q. The CONTRACTOR agrees to report each violation to SWT and understands and agrees that SWT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.3 **Energy Conservation.** CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.
- 7.4 **Recovered Materials.** CONTRACTOR agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (“RCRA”) as amended (42 U.S.C. section 6962) and U.S. Environmental Protection Agency, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.
- 7.5 **Air Pollution and Fuel Economy.** Reserved.

ARTICLE FTA-8. LOBBYING RESTRICTIONS

For any project of \$100,000 or more, the CONTRACTOR is required to make the following certifications. The CONTRACTOR must also require its contractors or subcontractors to make the following certification in any contracts or subcontracts valued at or above \$100,000.

- 8.1 **Certification of Restrictions on Lobbying; Disclosure.** The CONTRACTOR certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the CONTRACTOR for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or

cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which SWT has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By its signature on this Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Section 3801, et seq., apply to this certification and disclosure, if any.

ARTICLE FTA-9. SEISMIC SAFETY.

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the Regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

ARTICLE FTA-10. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

10.1 National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

ARTICLE FTA-11. Program Fraud and False or Fraudulent Statements or Related Acts

11.1 Program Fraud and False or Fraudulent Statements or Related Acts. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. section 3801 et seq., and USDOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

The CONTRACTOR agrees to include the above language in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

ARTICLE FTA-12. CIVIL RIGHTS

Under this Contract, the CONTRACTOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part hereof.

12.1 Nondiscrimination.

12.1.1 Nondiscrimination in Employment. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, the CONTRACTOR agrees to comply with applicable federal

implementing regulations and other implementing requirements FTA may issue.

12.1.2 Nondiscrimination in Contracting. The CONTRACTOR agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every sub-agreement and third-party contract it signs: (1) The CONTRACTOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted sub-agreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (2) the CONTRACTOR must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted sub-agreements, third party contracts, and third party subcontracts, as applicable.

12.2 Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Contract:

12.2.1 Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 200e et seq., and federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. section 2000e note, as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e note. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

12.2.2 Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial

Assistance,” 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

12.2.3 Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 et seq., and Federal transit law at 49 U.S.C. section 5332, the CONTRACTOR agrees that it will not discriminate against individuals on the basis of disability. In addition, the CONTRACTOR agrees to comply with the requirements of U.S. Equal Employment Opportunity commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, “29 C.F.R. part 1630, and any implementing requirements FTA may issue. The CONTRACTOR will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. section 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 et seq., and any applicable implementing regulations.

12.3 Inclusion in Subcontracts. The CONTRACTOR agrees to include the requirements of this article FTA-12 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

ARTICLE FTA-13. GENERAL PROVISIONS

13.1 Federal Changes. The CONTRACTOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between SWT and FTA. The CONTRACTOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.

13.2 No Obligation by the Federal Government. SWT and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SWT, CONTRACTOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract. The CONTRACTOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

- 13.3 **Incorporation of FTA Terms.** Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in the most recent edition and any revisions of FTA Circular 4220.1 “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this Contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any SWT requests which would cause SWT to be in violation of the FTA terms and conditions.

ARTICLE FTA-14. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- 14.1 **Nondiscrimination.** Pursuant to 49 CFR part 26, the CONTRACTOR, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this Contract or such other remedy as SWT deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this Contract.

14.2 Prompt Payment.

14.2.1 Reserved

14.2.2 The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR’s receipt of payment from SWT for undisputed services provided by the subcontractor. The CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of completion of the work, regardless of whether the CONTRACTOR has received any retainage payment from SWT. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of SWT.

14.2.3 The CONTRACTOR shall not, by reason of said payments, be relieved from responsibility for Work done by the subcontractor and shall be responsible for the entire Work under this contract until the same is finally accepted by SWT.

14.2.4 The CONTRACTOR shall pay interest at the rate of 1-1/2 percent per month or part thereof to a subcontractor on any undisputed amount not paid in accordance with the preceding paragraph. The minimum monthly interest

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 due to the subcontractor.

14.2.5 The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

14.2.6 The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work, they have performed. Failure to comply with the provisions of this section FTA-14.2 may result in SWT finding a CONTRACTOR in noncompliance with the DBE provisions of this contract.

14.3 **DBE Good Faith Efforts** During the term of this Contract, the Contractor will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the contract, and that the Contractor meets its DBE commitment as set forth in its bid. These efforts shall include, without limitation, the following:

14.3.1 If the Contractor requests substitution of a DBE subcontractor or supplier listed in its Disadvantaged Business Enterprise Information and Certifications form, the Contractor shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of SWT.

14.3.2 The Contractor shall not terminate for convenience any DBE subcontractor or supplier listed in its Disadvantaged Business Enterprise Information and Certifications form (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written consent of SWT.

14.3.3 If a DBE subcontractor or supplier is terminated or fails to complete its work on the contract for any reason, the Contractor shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.

14.3.4 The dollar amount of amendments or any other contract modifications will be entered into the DBE Contract Monitoring System (CMS).

14.3.5 The Contractor will identify a “DBE and Workforce Liaison” who will serve as a single point of contact for all Contractor DBE and Workforce issues.

14.3.6 Failure to comply with the provisions of this section FTA-14.3 may result in SWT finding the Contractor in noncompliance with the DBE provisions of this Contract and the imposition of Administrative Sanctions described in section FTA-14.6.

14.4 **Reporting.** The Contractor will submit monthly progress reports to SWT reflecting its DBE participation through the CMS.

14.4.1 Upon award of a contract a representative from SWT will assign the DBE and Workforce Liaison a CMS user account and provide a CMS User Manual detailing the following guidelines.

14.4.2 All committed DBE subcontractors to be used on the contract must be entered into the CMS system.

14.4.3 All DBE billing, submitted during the reporting period, must be finalized and entered into CMS prior to submission of the Contractor's payment application.

14.4.4 Any changes to the DBE subcontractor list or their amounts must be entered into CMS. Changes include; DBE firms removed, DBE firms added, changes to subcontract amounts, and DBE credit adjustments.

14.4.5 All payments made to DBE firms must be finalized and entered into CMS within 10 days of receipt of payment from SWT.

14.4.6 Failure to submit this report in a timely manner will result in a penalty of \$10 per late day per report and may also result in the imposition of Administrative Sanctions under section FTA-14.6, pursuant to SWT's DBE policy and USDOT regulations. For the purposes of this section FTA-14.4, timely submittal means receipt by SWT by the close of business on the fifteenth (15th) of the following month.

14.5 **Review of Good Faith Efforts**

14.5.1 SWT will review the Contractor's DBE progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the Contractor as stated in its bid.

14.5.2 If it is determined that the Contractor's DBE utilization under the contract is not consistent with its commitment, the Contractor will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The Contractor shall be given ten (10) working days to submit this documentation. Failure to respond shall place the Contractor in non-compliance and subject to imposition of Administrative Sanctions as described in section FTA- 14.6.

14.5.3 The Contractor's good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. SWT staff shall make a determination as to the adequacy of the Contractor's good faith efforts documentation and so inform the Contractor. If it is determined that the Contractor's good faith efforts documentation is acceptable, the Contractor will be deemed to be in compliance with the DBE program.

14.5.4 If it is determined that the Contractor's good faith efforts documentation is not acceptable, the Contractor will be notified and be deemed to be in non-compliance with the DBE program.

14.5.5 Non-compliance by the Contractor with the requirements of federal DBE regulations (49 CFR part 26) constitutes a breach of contract and may result in imposition of Administrative Sanctions as described in section FTA-14.6.

14.6 Administrative Sanctions.

14.6.1 If SWT deems the Contractor to be in non-compliance with the DBE requirements of this Contract, SWT will inform the Contractor in writing, by certified mail, that sanctions shall be imposed for failure to meet DBE utilization goals and/or failure to submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.

14.6.2 The Contractor has five (5) working days from the date of the notice to file a written appeal to SWT's CEO. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The CEO or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to SWT's governing board.

14.6.3 Sanctions may include, without limitation: suspension of any payment or part due to the Contractor for work that was identified to be performed by a DBE at the time of contract award, or of any monies held by SWT as retained on the contract; denial to the Contractor (including its principal and key personnel) of the right to participate in future contracts of SWT for a period of up to three years; and/or termination of the contract for cause.

ARTICLE FTA-15. VETERANS PREFERENCE

The CONTRACTOR will give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C Section 2108) who have the requisite skills and abilities to perform the construction work required under this contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to

any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with disability, or former employee.

**ARTICLE FTA-16. EXECUTIVE ORDER – SPECIAL DEPARTMENT
OF LABOR EQUAL EMPLOYMENT OPPORTUNITY FOR
CONSTRUCTION PROJECTS**

The following provisions of this Section FTA-16 apply if the value of a subsequent construction contract exceeds \$10,000.

- 16.1 The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by SWT setting forth the provisions of this nondiscrimination clause.
- 16.2 The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 16.3 The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by SWT, advising the labor union or workers' representative of the CONTRACTOR's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 16.4 The CONTRACTOR shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.
- 16.5 The CONTRACTOR shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by SWT and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 16.6 In the event of the CONTRACTOR’s noncompliance with the nondiscrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 16.7 The CONTRACTOR shall include the provisions of this Section 16 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The CONTRACTOR shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. If the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE FTA-17. INTELLECTUAL PROPERTY RIGHTS - RESERVED

ARTICLE FTA-18. SAFE OPERATION OF MOTOR VEHICLES.

18.1 Seat Belt Use.

The CONTRACTOR agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

- (2) Including a “Seat Belt Use” provision in each third-party agreement related to this Contract.

18.2 Distracted Driving, Including Text Messaging While Driving.

The CONTRACTOR agrees to implement Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by:

(1)The CONTRACTOR agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract.

(2) The CONTRACTOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) The CONTRACTOR agrees to include the preceding “Distracted Driving, Including Text Messaging While Driving” provisions in each third-party agreement related to this Contract.

ARTICLE FTA-19. TELECOMMUNICATIONS CERTIFICATION

CONTRACTOR certifies through the signing of this contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the CONTRACTOR does not and will not use any equipment, system, or service that uses “covered telecommunications equipment or services” (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The CONTRACTOR will include this certification as a flow down clause in any contract related to this Contract.

ARTICLE FTA-20. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

20.1 When applicable contracts in excess of \$175,000, and all non-procurement transactions, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. Specific language for dispute resolution will be provided in any resultant contract of the successful bidder.

20.2 Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify SWT and FTA’s Region 5 Office’s FTA Chief Counsel and Regional Counsel. The Contractor must include these requirements as a flow down clause in any subcontract related to this Contract.

20.2.1 The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

ARTICLE FTA – 21. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

- 21.1 Applicability to Contracts; Flow down Requirements. This requirement is applicable to all contracts. The Federal Tax Liability and Recent Felony Convictions prohibition extends to all third party contractors and their subcontracts at every tier.
- 21.2 Transactions Prohibited. The Contractor agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third-Party Participant:
- (1) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - (2) was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
- 21.3 Failure to Certify. If the prospective Third-Party Participant cannot so certify, the Contractor agrees to refer the matter to SWT and not to enter into any Third-Party Agreement with the Third-Party Participant without SWT's written approval.

ARTICLE FTA-22. BUS TESTING – RESERVED

ARTICLE FTA-23. PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS - RESERVED

END OF DOCUMENT

ATTACHMENT D: PERFORMANCE BOND AND PAYMENT BOND FORMS

[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, (“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 regarding the CONSTRUCTION OF INFRASTRUCTURE FOR SOUTHWEST TRANSIT EV CHARGING PROJECT, dated the ____ day of _____, 2024, (“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, his 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 _____, 2024.

By _____
Principal

By _____
Surety/Attorney-in-fact

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, (“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 regarding the CONSTRUCTION OF INFRASTRUCTURE FOR SOUTHWEST TRANSIT EV CHARGING PROJECT, dated the ____ day of _____, 2024, (“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 _____, 2024.

By _____
Principal

By _____
Surety/Attorney-in-fact

ATTACHMENT E: 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 Director of Facilities and Fleet. A protester may request review of the Director of Facilities and Fleet's decision by the Director of Operation.

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 bidders or 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 bidder or 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 Director of Operations. If the contact person cannot be identified in the solicitation or is otherwise unavailable, the protest should be filed with the Director of Operations, 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 Director of Operations of the Director of Facilities and Fleet's decision *must* be filed within three (3) working days after the protester's receipt of the Director.
- d) Failure to file a protest or request for review by the Director of Operations 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 Director of Facilities and Fleet 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 Director of Facilities and Fleet

The Director of Facilities and Fleet 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 Director of Facilities and Fleet 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 Director of Facilities and Fleet will render a final decision no more than ten (10) working days after the filing of the protest.

7. Director of Operations Review

Within three (3) working days after receiving the Director of Facilities and Fleet's written decision, a protester may request that the Director of Operations review the Director of Facilities and Fleet's decision. A request for Director of Operations review must be made in writing to the Director of Facilities and Fleet, 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 Director of Facilities and Fleet's decision.

The Director of Operations 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 Director of Operations may, as he or she sees fit, accept further written submissions, take testimony, and/or make a transcript of hearings or proceedings. The Director of Operations will issue a written decision no later than fourteen (14) working days after receipt of the request for review.

8. Effect on Procurement

The Director of Facilities and Fleet, Director of Operations, 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 Director of Facilities and Fleet may waive stated deadlines and/or insubstantial deviations from the requirements herein.

ATTACHMENT F: CERTIFICATE OF NON-DEBARMENT

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Bidder Company Name: _____

(NOTE: This form MUST be submitted with each bid if the bid amount exceeds \$100,000.)

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

- 1. By signing and submitting this bid, the bidder is providing the signed certification set out below.**
2. The certification referred to in this paragraph is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, SWT may pursue available remedies, including suspension and/or debarment.
3. The bidder shall provide immediate written notice to SWT if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered participant,” “persons,” “lower tier covered transaction,” “principal,” “Bid,” and “voluntarily excluded,” as used in this paragraph, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 49 CFR part 29. You may contact SWT for assistance in obtaining a copy of those regulations.
5. The bidder agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by SWT.
- 6. The bidder further agrees by submitting this bid that it will include this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**
7. A participant in a covered transaction may rely upon certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which

it determines the eligibility of its principles. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this paragraph. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under subparagraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, SWT may pursue available remedies including suspension and/or debarment.

CERTIFICATION

1. The bidder certifies, by submission of this bid, that neither it nor its “principals” (as defined at 49 CFR section 29.105(p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. When the bidder is unable to certify the statements in this certification, such prospective bidder shall attach an explanation to this certification.

Bidder Name: [OBJ]

By: [OBJ] _____ Date: [OBJ]

Name: _____

Title: [OBJ]

ATTACHMENT G: LOBBYING RESTRICTION CERTIFICATION

Bidder Company Name: _____

(NOTE: This form MUST be submitted with each bid if the bid amount is equal to or exceeds \$100,000.)

The undersigned bidder certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federally funded contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. **IF ANY FUNDS** other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally funded contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of the fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The bidder certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the bidder understands and agrees that the provisions of 31 U.S.C.A. 3801, *et. seq.*, apply to this certification and disclosure, if any.

Bidder Name: [OBJ]

By: [OBJ] _____ Date: [OBJ]

Name: _____

Title: [REDACTED]

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 proposals 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 proposals 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 proposals and will not be communicated to any such person prior to the official opening of the bid or proposals; and
4. That I have fully informed myself regarding the accuracy of the statements made in this statement.

By _____

Its _____

By _____

Its _____

ATTACHMENT I: BUY AMERICA AND BUILD AMERICA, BUY AMERICA CERTIFICATION

Buy America. The undersigned Bidder hereby certifies (**check only one**):

_____ That it will comply with the requirements of 49 U.S.C. §5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

_____ That it cannot comply with the requirements of 49 U.S.C. §5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. §5323(j)(2)(B) or 49 U.S.C. §5323(j)(2)(D) and the regulations in 49 C.F.R. Part 661.7.

Build America, Buy America. The undersigned Bidder hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Build America, Buy America requirements in Section 70914 of the Bipartisan Infrastructure Law P.L. 117-58, using one of the following provisions (**check only one**):

_____ The infrastructure project/product contains no steel or iron products, manufactured products or construction materials manufactured outside the United States per Section 70914 of the Bipartisan Infrastructure Law, P.L. 117-58. If there is ANY foreign steel or iron, manufactured products or construction materials in your infrastructure project/product you may not check this box.

_____ The project/product has foreign steel or iron, manufactured products, or construction materials; a Build America, Buy America waiver is required. SWT may, but is not obligated to, seek a waiver of Build America, Buy America requirements if grounds for the waiver exist. However, Bidder certifies that it will comply with the applicable Build America, Buy America requirements if a waiver of those requirements is not available or not pursued by SWT. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Certification be investigated, Bidder has the burden of proof to establish that it is in compliance.

Bidder: _____

Signature of Authorized Official: _____

Name of Authorized Official: _____

Title: _____

Date: _____

ATTACHMENT J: SPECIFICATIONS

SEE ATTACHMENT ENGINEERING DRAWINGS AND SPECS ON THE SWT WEBSITE AS
DETAILED IN SECTION 1

ATTACHMENT K: TELECOMMUNICATIONS CERTIFICATION

In accordance with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) (the “Act”), Bidder represents to SWT that:

(1) ~~It~~ _____ will _____ will not provide covered telecommunications equipment or services to SWT in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. If Bidder responds “will,” Bidder must provide the following additional disclosure information:

- (i) For covered equipment—
 - (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);
 - (B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
 - (C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in Section 889(a)(1)(A) of the Act.
- (ii) For covered services—
 - (A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
 - (B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in Section 889(a)(1)(A) of the Act.

(2) ~~(b)~~After conducting a reasonable inquiry, for purposes of this representation, Bidder represents that it _____ does _____ does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. If Bidder responds “does,” Bidder must provide the following additional disclosure information:

- (i) For covered equipment—
 - (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);
 - (B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
 - (C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in Section 889(a)(1)(B) of the Act.

- (ii) For covered services—
 - (A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
 - (B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in Section 889(a)(1)(B) of the Act.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

ATTACHMENT L: AFFIRMATIVE ACTION CERTIFICATION

Bidder Company Name: _____

NOTE: If the bid amount exceeds \$100,000, EITHER this form OR a currently effective affirmative action Certificate of Compliance for the bidder, issued by the Minnesota Department of Human Rights, MUST be submitted with the bid.

Instructions: If a bid is in an amount greater than \$100,000, SWT cannot accept the bid unless the bidder can affirm either Statement #1 or Statement #2 below. The bidder must select (by checking the appropriate box) and certify as true one of the two statements below, if it is able to do so. In making its certification, the bidder should carefully bear in mind the post-submittal requirements noted in connection with each statement. After submitting the bid SWT reserves the right to request documentation from the bidder supporting the certification or to otherwise verify the accuracy of the certification. **If neither statement can be affirmed, no bid should be submitted.**

CHECK ONLY ONE BOX!

- _____ 1. The business executing this certification did have more than 40 full-time employees within the State of Minnesota on one or more working days during the 12 months previous to the date the bid is due. IN ADDITION, the business either:
- a. has submitted an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals to the Commissioner of Human Rights for approval; or
 - b. has a currently effective Certificate of Compliance from the Commissioner of Human Rights indicating that it has an approved affirmative action plan.

Note: Prior to execution of any agreement arising out of this procurement, the bidder will be required to provide SWT with a copy of its currently effective Certificate of Compliance.

- _____ 2. The business executing this certification did not have more than 40 full-time employees within the State of Minnesota on any working day during the 12 months previous to the date the bid is due.

Note: Prior to execution of any agreement arising out of this procurement, the bidder will be required to provide SWT with at least one of the following on a form to be provided by SWT:

- a. a certification that the business has a currently effective Certificate of Compliance issued by the Commissioner of Human Rights, along with the copy of that document; or
- b. a certification that the business is in compliance with federal

- affirmative action requirements; or
- c. a certification that the business's primary place of business is not in the United States; or
- d. a certification that the business did not have more than 40 full-time employees on any working day during the 12 months prior to the date on which it submitted its bid, in the state where the business has its primary place of business.

CERTIFICATION

On behalf of the bidder, I certify that the above response is true as of the date this form is signed. I have read and understand the requirements related to this certification statement.

Bidder Name: _____

By: _____ Date: _____

Name: _____ Title: _____

ATTACHMENT M: 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 Request for Bids in section 22 entitled "Responsible Contractor Verification."

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 _____, 20__

By: _____ [printed name]

_____ [title] of _____ [name of bidder]

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

Signed and sworn to before me on _____, 20__, by _____.

Notary Public

ADDITIONAL SUBCONTRACTORS AND MOTOR CARRIERS LIST

PROJECT TITLE: _____

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 _____, 20__

By: _____ [printed name]

_____ [title] of _____ [name of company]

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

Signed and sworn to before me on _____, 20__, by _____.

Notary Public

ATTACHMENT N: DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT
REQUIREMENTS

DOCUMENT 00485
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
CONTRACT REQUIREMENTS

PART 1 - DBE PROGRAM

1.1 PREFACE

The Metropolitan Council recognizes its responsibility to eliminate the effects of illegal discrimination. These requirements define the Council's commitment to create and support programs that result in the inclusion of minority-owned, women-owned, and other small, disadvantaged business enterprises in its procurement and contracting activities.

The Council will, in accordance with the authority granted by federal regulations and state statute, act affirmatively to create a "level playing field" for minority-owned, woman-owned, and other small, disadvantaged business enterprises to achieve the goal of equal opportunity.

To help ensure equal opportunity, the Council utilizes small, disadvantaged businesses in the procurement of goods and services, and the award of contracts. The Council sets inclusion goals on construction contracts and on contracts for consultant, professional, or technical services that feature subcontract opportunities. Where feasible, the Council encourages its grant recipients to engage in efforts to solicit and include small, disadvantaged businesses and to report to the Council the results of these efforts. The Council will set benchmarks to track and measure its efforts to include small, disadvantaged businesses across its divisions.

These provisions outline the bidder's requirements to comply with U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program and the standards set forth in 49 CFR Part 26. The Council adheres to the Federal DBE Regulations and adopts these provisions for the Metropolitan Council's Environmental Protection Agency (EPA) DBE Program, and the Metropolitan Council Underutilized Business (MCUB) Program.

1.2 DEFINITIONS

- 1. Day** is defined in Metropolitan Council 00700 General Conditions.
- 2. Disadvantaged Business Enterprise (DBE)** has the meaning given in 49 C.F.R. 26.5. DBEs are certified by the Minnesota Unified Certification Program.

3. Minnesota Unified Certification Program (MNUCP) means the group of state and local agencies who work together to certify DBEs (as mandated by USDOT). MNUCP is comprised of the following certifying agencies: City of Minneapolis, Metropolitan Airports Commission, Minnesota Department of Transportation, and Metropolitan Council.

1.3 CONTACT INFORMATION

Questions regarding the DBE Program and these procedures should be directed to the DBE Liaison Officer, or designee, at the Office of Equity and Equal Opportunity (OEEO), Metropolitan Council, 390 Robert Street, Saint Paul, Minnesota 55101, or DBE@metc.state.mn.us or (651) 602-1426.

PART 2 – CONTRACT GOAL

2.1 DBE PARTICIPATION GOAL

1. The DBE participation goal for this contract is ____%.
2. For purposes of award, the bidder must either:
 - a) Provide documentation of DBE participation to meet or exceed the goal on the total bid, or if the bid consists of a base bid and allowances, alternatives, or additives, the base bid, or;
 - b) Provide documentation that demonstrates adequate good faith efforts (GFE) to meet the DBE goal.
3. After award, the bidder has a continuing obligation to make good faith efforts to meet the goal and, will be responsible for applying the DBE participation goal to the total contract amount including any alternatives, additives, contract modifications and change orders.

PART 3 - BID SUBMITTAL

3.1 AT TIME OF BID

All bids MUST include a properly completed:

1. **00485 - Disadvantaged Business Enterprise (DBE) Commitment Form** (DBE Commitment Form); and
2. **00485 - Disadvantaged Business Enterprise (DBE) Letter of Intent** (DBE Letter of Intent Form)

In addition:

If applicable, all bids MUST include DBE Good Faith Efforts

3. 00485 - Disadvantaged Business Enterprise (DBE) Good Faith Efforts Submission Reference

- a. If the Bidder's DBE participation commitment is less than the goal established for this contract, the Bidder must submit documented Good Faith Efforts at the

time of bid that provides information about efforts the bidder took to meet the goal.

Failure to submit a properly completed DBE Commitment Form, DBE Letter of Intent Form(s), or DBE Good Faith Efforts (if applicable) with the bid may be considered nonresponsive and result in no further consideration. The Council will not entertain requests to waive the requirements to meet the goal or submit good faith efforts.

3.2 DBE COMMITMENT FORM (due at the time of bid)

A DBE Commitment Form is required at the time of bid.

1. The DBE Commitment Form must be completed and signed by the Bidder.
2. The Bidder must list all DBE firms, if any, whose participation is proposed to be credited toward meeting the DBE goal. A DBE Commitment Form will not be considered complete unless it includes the following information for each DBE firm:
 - a. The name of each DBE that the Bidder intends to credit toward the DBE goal;
 - b. A description of the work to be performed or materials to be supplied by each DBE;
 - c. The DBE bid amount;
 - d. A description of how each DBE firm will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation on the contract as a prime contractor, joint venture partner, subcontractor, trucker, manufacturer, supplier or broker; and
 - e. The dollar value of each DBE's participation/ DBE credit on the contract.
3. On the DBE Commitment form, the Bidder should also include:
 - a. The total value of all DBE participation; and
 - b. The total percent of all DBE participation relative to the bid amount
4. All DBE firms which are listed on the DBE Commitment Form must, at time of bid, be listed in the DBE directory. The DBE directory can be found at:
<https://mnucp.metc.state.mn.us/>.

3.3 DBE LETTER OF INTENT FORM (due at the time of bid)

At time of bid, you must provide a completed and signed letter of intent for each DBE firm listed on the DBE Commitment Form as being utilized for credit to meet the goal. If you fail to include a Letter of Intent Form signed by the DBE, that DBE's participation will not be counted towards the DBE goal. Failure to include any of the other information required by this section may result in the DBE's participation not being counted towards the DBE goal.

1. The DBE Letter of Intent Form must be completed and signed by the Bidder and DBE representative.
2. The DBE Letter of Intent Form must include the following information:
 - a. A selection of how each DBE firm will participate in this contract;
 - b. A description of the work to be performed or materials to be supplied by each DBE;
 - c. The DBE bid amount;
 - d. The dollar value of each DBE's participation on the contract; and
3. The DBE Letter of Intent must confirm the description of work and dollar value of participation as listed on the DBE Commitment Form.

3.4 DBE GOOD FAITH EFFORTS REQUIREMENT (due at the time of bid)

Award of this contract is conditioned on meeting the requirements of 49 C.F.R. Section 26.53, requiring Bidders to make good faith efforts to meet the DBE participation goal specified in Section 2.1 of this document. A Bidder's plan to self-perform 100% of the work does not satisfy the requirement to demonstrate Good Faith Efforts.

Bidders are required to demonstrate good faith efforts to meet the goal by either:

1. Documenting the participation commitment of specific DBEs to meet the DBE participation goal, or
2. Documenting adequate good faith efforts taken to meet the goal, if the DBE participation goal is not met.
3. For purposes of award, DBE participation to meet or exceed the goal will be calculated on the total bid, or if the bid consists of a base bid and allowances, alternatives, or additives, the base bid.
4. After award, the Bidder has a continuing obligation to make good faith efforts to meet the goal and, will be responsible for applying the DBE participation goal to the total contract amount including any additives, contract modifications and change orders.

If the information provided in the DBE Commitment Form, submitted with the bid, indicates that the committed DBE participation is less than the DBE participation goal established for this contract, the Bidder must provide documentation at the time of bid regarding the Bidder's good faith efforts to meet the DBE participation goal taken prior to the bid deadline. (See Section 4.1.)

The Bidder is responsible for the accurate calculation of the DBE participation and properly completing the required forms. If the Bidder miscalculates the DBE participation or the Bidder's participation is lowered due to failure to properly complete the required forms, the Council will determine if the proper calculation lowers the Bidder's DBE participation commitment below the DBE participation goal. If the Bidder does not meet the DBE participation goal, and the Bidder does not submit DBE Good Faith Efforts with its bid, its bid will be rejected as non-responsive. The Council will not accept DBE Good Faith Efforts the Bidder submits after the bid deadline. For this reason, Bidders may wish to submit Good Faith Efforts even if they have calculated that they meet the goal.

All DBE Good Faith Efforts to achieve the DBE goal must be accomplished by the bid deadline and submitted with the bid. The Council will not consider DBE Good Faith Efforts carried out after the bid deadline or Good Faith Efforts materials submitted after the bid deadline.

PART 4 - PRE-AWARD

4.1 GOOD FAITH EFFORTS DETERMINATION

In accordance with 49 C.F.R. Section 26.53 and Appendix A to Part 26, the following guidelines will apply to a good faith efforts determination.

The Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. (See Section 3.4 and 00485 – DBE Good Faith Efforts Form.)

All Good Faith Efforts to achieve the DBE participation goal must be completed by the bid deadline.

The Bidder must submit copies of each DBE and non-DBE subcontractor quote submitted to the Bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. The Council will review whether the DBE prices were substantially higher and contact the DBEs listed to inquire as to whether the DBEs were contacted by the Bidder.

1. The Council's DBE Liaison Officer, or designee, will determine whether a Bidder made sufficient Good Faith Efforts to meet the goal in accordance with the guidelines set forth in 49 C.F.R. Section 26.53, and Appendix A to Part 26. Compliance will be determined on a case-by-case basis based on a review of documentation including a review of the following types of activities. The following is not an exclusive or exhaustive list, and other factors, or types of efforts, may be relevant in appropriate cases.
 - a. Soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid meetings and events, advertising or written notices, posting of Notices of Sources Sought or Requests for Quote, written notices, or emails to all DBEs listed in the MNUCP DBE Directory of firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The Bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation. The Bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Bidder might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
 - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. Negotiating in good faith with interested DBEs. The Bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - i. Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would

take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for Bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a Bidder to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate bases for the rejection or non-solicitation of bids in the Bidder's efforts to meet the contract goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy contract goals.
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required for this contract.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- i. The performance of other Bidders in meeting the contract goal. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, the Council may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful Bidder could have met the goal. If the apparent successful Bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other Bidders, the Council may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.

4.2 ADMINISTRATIVE RECONSIDERATION PROCESS

The Council's DBE Liaison Officer, or designee, will determine whether a Bidder met the numeric goal or made adequate good faith efforts to meet the DBE participation goal assigned. If the Council's DBE Liaison Officer, or designee, determines that the apparent successful Bidder has failed to meet the goal and did not make adequate good faith efforts, it will, at the Bidder's request, provide the Bidder an opportunity for an administrative review by Council employees who were not involved in the determination. This administrative reconsideration process gives the Bidder the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder may not use this opportunity to challenge the Council's decision to assign a goal to the contract or to request a waiver of the DBE requirements. Any administrative reconsideration will occur before contract award.

1. Administrative Reconsideration Request

The Contract Administrator will send the Bidder a letter notifying the Bidder of OEEO's determination that the Bidder did not meet the numeric participation goal and did not make adequate good faith efforts and will provide the Bidder the option to request an administrative reconsideration of the decision.

The letter will include OEEO's basis for the decision and all material considered in making the determination pertaining to the Bidder's good faith efforts.

- a. The Bidder must, within five business days, make a written request to the DBE Liaison Officer, or designee, for an administrative reconsideration.
- b. Once a written request has been received, the DBE Liaison Officer, or designee, will contact the Bidder to discuss the reconsideration process. The Bidder will confirm or withdraw its request for reconsideration and will indicate whether it is requesting a paper review or a hearing. The DBE Liaison Officer, or designee, will ask the Bidder to designate a contact person for purposes of the reconsideration process and will obtain the contact information for that person.

A designated OEEO staff member will coordinate the logistics of the administrative reconsideration process. If the Bidder has requested a paper review, the OEEO staff member will send a letter to the Bidder and the reconsideration panel establishing deadlines for submission of written arguments. If the Bidder has requested a hearing, the OEEO staff member will schedule the hearing with at least 7 days advance notice and within 30 days of the Bidder's written request. The administrative reconsideration hearing will be conducted in person or virtually. In person hearings will take place at the Metropolitan Council located at 390 Robert Street N., St. Paul, MN 55101.

Note: The Bidder must indicate if it will be represented by legal counsel at the administrative reconsideration hearing. If the Bidder indicates that it will be represented by legal counsel, OEEO may choose to have legal counsel present at the administrative reconsideration hearing. Panel members may choose to have separate legal counsel present at the hearing regardless of whether the Bidder is represented by legal counsel.

2. Administrative Reconsideration Panel

- a. The Administrative Reconsideration hearing panel will consist of three Metropolitan Council staff, including a Chair and two panel members, who did not take part in the original determination that the Bidder failed to meet the participation goal or to make adequate good faith efforts. To avoid conflicts, the panel members will not participate in a paper review or hearing for a bid for their respective department.
- b. If on the day of the hearing a panel member is unable to attend, the hearing will proceed with two members. If the Chair is unable to attend, the Chair will designate one of the two remaining panel members as acting chair. If the remaining two panel members disagree on the outcome, the final decision will be made by the Chair or acting Chair.

3. Administrative Reconsideration Paper Review Process

- a. Once a paper review has been confirmed, OEEO staff will confirm the panel and set up a date and time for the panel to convene to review the documentation submitted by the Bidder and OEEO. The review will be scheduled with at least 7 days advance notice to the Bidder and within 30 days of the Bidder's written request.
- b. The panel may choose to conduct the review in person, at a location that works for the panel, or virtually. If the panel would like to meet in person, OEEO staff will secure a conference room for the review to take place.
- c. OEEO will send a confirmation email to the Bidder and the Panel confirming the date of the paper review. OEEO staff will attach the OEEO Determination Report to the email. The email will provide notice that the Bidder's documents are required to be submitted no later than five business days before the date of the review and that the documents will be forwarded to the panel upon receipt. All documents should be submitted as Adobe pdfs. Bidders should note that the panel is not permitted to consider documentation of good faith efforts made after the submission of the bid or documentation of good faith efforts made before the submission of the bid that was not submitted with the bid.

- d. Upon receipt of the Bidder's documents, OEEO staff will provide an electronic copy to the Reconsideration Chair, two reconsideration panel members, DBE Liaison Officer and/or designee, OEEO Specialist, Attorneys advising OEEO and the Panel.
- e. The Panel will meet on the scheduled date to review the Bidder's documentation, deliberate, and make a decision. The Chair may schedule a follow-up meeting for the Panel to discuss a draft decision. The Chair will distribute a draft to other Panel members for comment before finalizing the decision.
- f. The Panel Chair will write the decision and submit the signed, written decision to the Contract Administrator (Director of Contracts and Procurement) for final formatting and distribution within six calendar days after the review. The Chair will copy the Program Technical Specialist for the Director of Contracts and Procurement when submitting the decision.
- g. Within seven calendar days after the date of the paper review, the Contract Administrator (Director of Contracts and Procurement) will send OEEO, the Bidder and the panel members the written decision. The written decision will explain the basis for finding that the Bidder did or did not meet the goal or make adequate good faith efforts to do so.
- h. The decision of the reconsideration panel is the final decision of the Metropolitan Council.

4. Administrative Reconsideration Hearing Process

During the administrative reconsideration hearing, OEEO staff and the Bidder will have an opportunity to make a persuasive presentation to a neutral panel. The reconsideration panel will consider in its determination the information presented about the Bidder's actions, documentation, and efforts that occurred prior to the submission of the bid.

Prehearing Procedures

- a. Once a hearing date and time has been confirmed, OEEO staff will send a calendar invite to the Bidder and the Bidder's representatives, panel members, court reporter, DBE Liaison Officer and/or designee, SBU Manager, SBU Specialist, Attorney advising OEEO (if applicable), and the Attorney advising the panel. If the meeting is being conducted virtually, the calendar invite will include instructions for accessing the hearing. If the hearing will be conducted in

person, OEE0 staff will secure a conference room (4 hours) for the hearing to take place.

- b. OEE0 staff will send a confirmation email to the Bidder that contains details regarding the reconsideration process and procedure.
- c. The Bidder must submit a copy of its supporting documentation to the DBE Liaison Officer, or designee, no later than 5:00 PM, five business days before the hearing date. Bidders should note that the panel is not permitted to consider documentation of good faith efforts made after the submission of the bid or documentation of good faith efforts made before the submission of the bid that was not submitted with the bid.
- d. OEE0 may also submit written arguments to the panel members and Bidder no later than 5:00 PM five business days before the hearing date.

Note: All documentation must be submitted in pdf format via email to the DBE Liaison Officer or designee.

- e. OEE0 staff will email OEE0's Evaluation Determination Report to the panel members and Council attorney(s) (if applicable). The email will provide notice that the Bidder's documents are required to be submitted no later than five business days before the hearing date and that the documents will be forwarded to the panel upon receipt.
- f. Upon receipt of the Bidder's documents, OEE0 staff will provide an electronic copy to the Reconsideration Chair, two reconsideration panel members, DBE Liaison Officer and/or designee, OEE0 Specialist, Court Reporter, and Attorneys advising OEE0 and the Panel.

Hearing Process

- a. On the day of the hearing, for in-person hearings, OEE0 staff will ensure the conference room is ready, recording device is provided to the panel chair, and sign-in sheet is provided.
- b. In the case of a virtual hearing, once OEE0 staff starts the meeting, they should prep the meeting as follows:
 - 1) Check the "Mute on Entry"
 - 2) Uncheck the "Entry and Exit Tone"
 - 3) Once all meeting attendees are present, OEE0 staff will take a screen shot of the participants list, which serves as the official sign-in sheet. This list will later be sent to the Court Reporter and the Reconsideration Panel.

- c. The Chair will open the hearing with introductions of all in attendance, explain the purpose of the reconsideration hearing, and outline the order for the hearing.

Note: In the case of a virtual meeting, the Chair will start the hearing with introductions and then review best practices for conducting the meeting virtually:

- a) All attendees will enter the meeting automatically muted.*
 - b) The meeting will be recorded through the virtual platform.*
 - c) A verbal role call will be conducted at the beginning of the meeting for introductions of all attendees, including Panel members, presenters and others.*
 - d) Attendees are to use the “raise hand” button if they wish to speak, and the meeting host will then unmute them.*
 - e) The Panel Chair will lead the meeting and call on attendees to recognize their turn to speak. Each time when speaking, people should say their names for both the recording and the Court Reporter.*
 - f) Panelists should keep their videos on during the hearing. When possible, presenters should turn on their videos while presenting. Other attendees should keep their videos off and remain muted when not speaking or presenting.*
- d. Court reporter introduces self and asks clarifying questions throughout the hearing to capture an accurate record of the reconsideration hearing.
- e. Each party will be given 30 minutes to present their persuasive arguments. OEEO staff will present first. Bidder will present second. Each party will have 5 minutes to respond after the Bidder has completed its presentation (if necessary). This will not be a cross examination and the parties may not ask questions of the other party.
- f. The panel members may ask questions of each party during the presentations or at the conclusion of both of their presentations.
- g. The Panel Chair will state when the reconsideration hearing has concluded. All parties, excluding the panel members, will exit the hearing room (or log off the virtual meeting, whichever is applicable). OEEO staff will stop recording the hearing after the parties have left the hearing. The panel and its attorney may remain to participate in the post-hearing discussion.

Panel Post Hearing Process

- a. Panel members will meet immediately after the reconsideration hearing to deliberate and make a decision. The Chair will draft the written decision. The Chair may schedule a follow-up meeting for the Panel to discuss a draft decision. The Chair may listen to the recording or review the transcript of the

hearing when drafting a decision. The Chair will distribute a draft to other Panel members for comment before finalizing the decision

- b. The Chair will submit the signed, written decision to the Contract Administrator (Director of Contracts and Procurement) for final formatting and distribution within six calendar days after the hearing. The Chair will copy the Program Technical Specialist for the Director of Contracts and Procurement when submitting the decision
- c. Within seven calendar days after the date of the reconsideration hearing, the Contract Administrator (Director of Contracts and Procurement) will send OEEO, the Bidder and the panel members the written decision. The written decision will explain the basis for finding that the Bidder did or did not meet the goal or make adequate good faith efforts to do so.
- d. The decision of the reconsideration panel is the final decision of the Metropolitan Council.

4.3 COUNTING DBE PARTICIPATION

1. COUNTING DBE PARTICIPATION – GENERAL

In accordance with 49 CFR Section 26.55, the Council will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

- a. If a firm is not certified as a DBE before the due date for bids the firm's participation will not be counted toward any DBE goals.
- b. DBE participation will not count toward a contractor's final compliance with its DBE commitment on a contract until the amount has been paid to the DBE.
- c. When a DBE participates in a contract, the value of the work performed will be counted as follows:
 - i. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 49 CFR Part 26.55) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or leased equipment by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the Contractor or its affiliate).

- ii. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as, professional, technical, consultant, or managerial services; or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided that the Council determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- iii. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
- d. When a DBE performs as a participant in a joint venture, the Council will count toward the DBE goals a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
- e. The Council will count expenditures to a DBE subcontractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
 - i. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Council will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.
 - ii. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Council will examine similar transactions, particularly those in which DBEs do not participate.
 - iii. Many Council contracts contain materials, equipment, or supplies which are manufactured to contract specifications, oversized, unique, or just not economically feasible to be routinely kept in stock. These "specialty materials", which include but are not limited to items such as utility pipe, large electrical

items, and rail sections, are typically shipped directly from a manufacturer to specific job sites based upon standard industry practice.

- iv. The Council will presume that these “specialty materials” purchased by a certified DBE are being supplied in a manner best described as that of a contract expediter or broker. The amount of DBE “credit” participation that Bidders may count towards the overall DBE contract goal will be limited to the DBE’s commission and cost in transporting the materials, and not the cost of the materials themselves. The Council anticipates that standard commissions and transportation value amounts will range between 1-5% of the cost of materials
 - v. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Council will presume that it is not performing a commercially useful function.
 - vi. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. The Council may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - vii. The Council’s decisions on matters of whether a DBE performs a commercially useful function are subject to review by the concerned operating administration (FTA), but not subject to an administrative appeal to USDOT.
- f. The Council will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- i. The Council will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
 - ii. The Council will count 60% of the cost of the materials or supplies toward the DBE goal if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.

- a) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR Section 26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.
- c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 CFR Section 26.55(e)(2).
- d) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Council will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided that the Council has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The Council will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

2. COUNTING DBE PARTICIPATION – TRUCKING

- a. DBE trucking companies must perform a commercially useful function in order to receive DBE credit for the trucking services they perform on a contract. To perform a commercially useful function, a DBE trucking company must:
 - i. Be responsible for the management and supervision of the entire trucking operation for which it is responsible for on the contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - ii. Own and operate at least one fully licensed, insured, and operational truck used on its contract.
- b. The Council will award DBE credit to a DBE for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

- c. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- d. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
- e. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- f. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE

PART 5 - POST AWARD

5.1 DBE REMOVAL/REPLACEMENT PROCESS

- 1. Prime contractors may not remove a DBE subcontractor from a project without good cause.
- 2. Prime contractors must obtain written consent from OEEEO prior to the removal of a DBE. The prime contractor must submit to OEEEO a request to terminate or substitute a DBE subcontractor that documents good cause. Good cause includes issues such as:
 - a. Poor performance
 - b. Unresponsiveness
 - c. Bankruptcy

- d. Ineligibility
 - e. Voluntary withdrawal from the project
 - f. Other satisfactory circumstances
3. OEEO staff will review the request for removal and confirm the circumstances with the Council Authorized Representative (CAR), DBE, and all parties involved. OEEO staff will then provide written consent to the prime contractor for the removal of the firm.
 4. OEEO will require the prime contractor to make good faith efforts to find another DBE to perform at least the same amount of work under the contract as the firm that was terminated, to the extent needed to meet the overall contract goal.

5.2 RACE AND GENDER NEUTRAL DBE PARTICIPATION

If the contract does not have a specific numerical DBE participation goal, the bidder will be required to document DBE participation obtained or added to their contract after award by submitting a letter of intent form.

5.3 ELECTRONIC REPORTING REQUIREMENTS

The awarded Bidder is required to enter monthly DBE invoice and payment amounts into the Council's online Contract Management System (CMS). The CMS can be found in at: <https://dbecms.metc.state.mn.us/Account/Login?ReturnUrl=%2Fdefault.aspx>

Upon award of a contract, OEEO staff will assign the awarded Contractor a CMS user account and provide the Contractor a CMS User Manual detailing the following guidelines:

1. The required data for all DBE subcontractors to be used on the project, must be entered into CMS prior to the construction start date.
2. All DBE billing, submitted during the reporting period, must be finalized, and entered into the CMS prior to submission of Contractor's payment application.
 - a. If there is no DBE billing during the reporting period, the Contractor must send a notification email to the project's Council Authorized Representative (CAR) and OEEO Consultant, stating that there were no DBE invoices received during the reporting period. Notification must contain the payment application number and reporting period.
 - b. Contractor must update Total Billed Amount even if there is no DBE billing to report.

- c. Any changes to the DBE subcontractor list or their contract amounts must be reported through CMS monthly. Changes include:
 - i. DBE firms removed from the project;
 - ii. DBE firms added to the project;
 - iii. Increases/Reductions to DBE contract amounts;
 - iv. Credit adjustments; and
 - v. DBE Contact information.
- d. All payments made to DBE firms, must be finalized and entered within 10 days of receipt of payment from the Council. DBE payments, and required data fields, must be entered into CMS.
- e. Failure to comply with the provision of this section, may result in the Council finding the Contractor in noncompliance with the DBE provision of this contract and may result in imposition of Administrative Sanctions as described in section FTA-14.6 of document 00710 or document 00711, whichever is applicable.

ATTACHMENT O: DBE COMMITMENT FORM, DBE LETTER OF INTENT FORM(S), AND DBE GOOD FAITH EFFORTS

00485 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT FORM

(Must be completed, signed, and submitted with each bid)

Bidder Name		Project Name			DBE Goal	
DBE Name (Legal business name used for certification)		Description of Work	Participating As? <i>Prime, Subcontractor, Trucker, Supplier or Broker</i>	DBE Bid Amount	DBE Credit amount <i>dollar value</i>	DBE %
For purposes of award, bidder must demonstrate good faith efforts to meet the goal on the total bid or the base bid if the bid consists of base bid and allowances and or additives. Use copies of this form if additional space is needed to list committed DBEs.					Total Value	Total %

Were any non-DBE subcontractors selected over DBE subcontractors (check one) YES NO
 (If you select “yes” or do not check a box and you do not meet the numeric goal, you must provide the quotes required by Section 4.1 in the 00485 – DBE Contract Requirements)

I have read the DBE requirements in Document 00485 Disadvantaged Business Enterprise (DBE) Contract Requirements. I further certify that the Bidder has made appropriate efforts to comply with the DBE requirements for this contract by making good faith efforts to meet the assigned DBE goal as specified in 00485 Disadvantaged Business Enterprise (DBE) Contract Requirements. I am authorized

on behalf of the Bidder to submit this certification to the Council. This certification is a material representation of fact on which the Council may rely in awarding the contract.

Bidder _____ Name _____ / _____ Title _____ / _____ Phone: _____

Bidder Signature: _____ Date: _____

00485 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) LETTER OF INTENT
(Must be completed and signed by each DBE listed on 00485 Commitment Form, and submitted with each bid)

Bidder:	Contract Number:	Project Name:

DBE Name: _____ **Phone:** _____

Address: _____ **City:** _____ **State:** _____ **Zip:** _____

Participating As: ___ Prime Contractor ___ Subcontractor ___ Supplier (60% credit) ___ Manufacturer ___ Trucker
 ___ Broker

Description	DBE Bid Amount	Dollar Amount for DBE Credit

1. This is a letter of intent between the bidder on this project and a DBE firm to perform subcontract work on this project.
2. By signing below, the bidder is committing to utilize the above-named DBE to perform the work described above.
3. By signing below, the above-named DBE is committing to perform the work described above.

Affirmation: I hereby affirm that the information above is true and correct.

Bidder Representative Name: _____ Title: _____

Bidder Representative Signature: _____ Date: _____

DBE Representative Name: _____ Title: _____

DBE Representative Signature: _____ Date: _____

00485 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS (GFE) SUBMISSION REFERENCE

(Must be submitted at time of bid when DBE Commitment is less than the assigned goal)

See Section 3.4, Good Faith Efforts Determination, section of the 00485 Disadvantaged Business Enterprise (DBE) Contract Requirements for guidelines in applying Good Faith Efforts

The bidder must show that it took all necessary and reasonable steps to achieve the DBE goal which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. For reference, a list of actions to be considered is provided; the list is not exclusive or exhaustive.

The bidder's good faith efforts information submission should address the following:

1. Narrative statement

- A statement of the bidder's efforts and overall plan for obtaining DBE participation noting barriers or challenges encountered in obtaining DBE participation. Specifically, detailing how all necessary and reasonable steps to achieve the DBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective of achieving the DBE goal, could reasonably be expected to obtain sufficient DBE participation were taken- even if the bidder was not successful.

2. Documented solicitation efforts

The solicitation requirement includes the initial solicitation and appropriate follow up.

- Evidence of solicitation efforts to DBEs such as copies of requests for quotes sent via email or fax to DBE firms with identification of the firms clearly stated
- List of all DBE firms contacted to date, contact name and response; or, email distribution lists with date and time clearly indicated
- Evidence the solicitations to DBEs provided sufficient information about the type of work available on the project
 - Evidence the current [DBE Directory](#) was used to identify DBE firms
 - Evidence of efforts taken to break out and solicit for work in economically feasible units
 - Evidence solicitations included work that the bidder would otherwise self-perform

3. Timely notice

- Evidence the solicitation notices (email/fax) were sent timely to DBE firms allowing sufficient time for response.
- Evidence the solicitation notice included sufficient information about the project such as:
 - Name and location of project
 - Bid due date
 - Scope of work requested
 - Location where DBE's can review plans and specifications
 - Date and time to submit quote
 - Contact name for technical assistance
 - Any special requirements

4. Assistance

- A detailed explanation of efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
- A detailed explanation of the efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

5. Follow up

- Evidence of sufficient efforts to follow up with DBE firms. The bidder is encouraged to keep a communication log that documents follow up efforts. Information on the log shall include:
 - Type of contact (fax, telephone, e-mail)
 - Name of contact person
 - Name of DBE firm
 - Date and time of DBE contacted
 - Response received
 - Reason for DBE not bidding project (if applicable)

6. Outreach and Advertisements

- Evidence of DBE informational workshops and/or Metropolitan Council sponsored DBE events, such as networking sessions, DBE conferences, DBE/Contractors meetings, etc. that the bidder hosted or attended
- A detailed explanation of the effective use of the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of DBEs
- Copies provided of any advertisements placed on hardcopy or websites. Advertisements should include information about the project(s), type(s) of work for which quotes are being solicited, and specific contact information for the bidder

7. Copies of quotes

- Provide copies of quotes from all non-DBEs
 - Indicate which quotes are being utilized
- Provide copies of quotes from all DBEs
 - Indicate which quotes are being utilized
 - For DBEs quoted but not selected, provide explanation as to why quote was not accepted

8. Explanation of rejected DBE quotes

- A detailed explanation for not accepting any DBE quotes submitted but not selected
- Each non-accepted quote should be addressed individually
- Provide an explanation of the efforts made to negotiate in good faith with interested DBEs
- Provide information about any cost comparisons that were considered in the decision to not accept DBE quotes
 - The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable
- The bidder is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Provide a written explanation for this conclusion if such a determination is made.

9. Self-Performance

- Bidder shall provide a detailed list of scopes and dollar value of those scopes for which they intend to self-perform