



REQUEST FOR PROPOSALS (RFP)

For an electrical engineer to design infrastructure plans and assist in releasing an RFP to construct electrical infrastructure for EV Charging.

For

SouthWest Transit (SWT)

14405 West 62nd Street

Eden Prairie, MN 55346

Issue Date: May 20th, 2024.

Virtual Pre-Proposal Conference: June 5th, 2024.

Proposals due: June 17th, 2024.

Proposals received late, for any reason, will not be accepted.

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INSTRUCTIONS FOR PREPARATION OF PROPOSALS

1. REQUEST FOR PROPOSALS

SouthWest Transit (“SWT”) is requesting proposals from qualified electrical engineers for the design of electrical infrastructure from our current transformer to our bus storage garage for 5 DC fast chargers. As part of this proposal the winning proposer will engineer infrastructure design plans and will write a scope of work to release an RFP for construction of said infrastructure.

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

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

A virtual pre-proposal meeting will be held June 5th, 2024 at 1:30pm CST. virtually, hosted by SWT via Teams. Connect using the following link.

<https://tinyurl.com/2kzsz477>

or by call in number:

(469) 206-8556

Meeting ID: 996 070 79

Proposals must be submitted on the Proposal Form attached hereto as Attachment A: Proposal Form.

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

Questions regarding the proposal documents must be asked either at the pre-proposal meeting or be submitted in writing by June 12th, 2024. to:

Tony Kuykendall
14405 West 62nd Street

Eden Prairie, MN 55346
Email: tkuykendall@swtransit.org

To be considered, proposals must be received by June 17th, 2024, by 4:00pm. All proposals must be marked “**Proposal for Electrical engineer design for EV Charging infrastructure.**” SouthWest Transit reserves the right to reject any or all proposals submitted. Oral, facsimile, electronic-mail, telephone or telegraphic proposals are invalid and will not receive consideration.

2. **SWT’S RIGHTS**

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

3. **PROJECT TIME FRAME**

Project Milestones	Tentative Date
Issue the RFP	
Pre-Proposal meeting	
Final questions due from proposers	
Responses to proposer questions from SWT	
Proposals due	
Notice of award	

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 appoints two members (including at least one elected official) and the seventh member is an at-large member appointed by the other six members. SWT currently operates 3 major park and ride lots. This RFP seeks to design plans for infrastructure for 5 additional EV DC fast chargers and provide a plan for future EV charging needs with the addition of minimal infrastructure.

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 provides 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. RFP ADMINISTRATOR; PROPOSAL QUESTIONS; ADDENDA

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

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

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

6. PROPOSAL FORMAT

The Proposal Form must be submitted either via email or delivered on 8-1/2" x 11" size paper and must be typed. All Proposals must be marked ***“Proposal for Electrical Engineer for EV Charging infrastructure”***.

7. SUBMISSION OF PROPOSALS

All mailed Proposals must be addressed as follows: Tony Kuykendall, Director of Facilities and Fleet. SouthWest Transit, 14405 West 62nd Street, Eden Prairie, MN 55346.

Proposals must be emailed to tkuykendall@swtransit.org or delivered to the above address by the date and time indicated in Section 1 of this RFP. Proposals received after the specified time and date will not be considered.

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

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

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

8. ITEMS REQUIRED TO BE SUBMITTED WITH THE PROPOSAL

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

- The proposer's full legal name, principal place of business, and the proposer'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 proposal evaluation.
- Proposal Form (See Attachment A).
- A statement that the proposer has authority to submit the proposal, that the proposal shall remain valid for a period of not less than ninety (90) days from the date of proposal opening, and that the proposer has authority to enter into a contract for the procurement.
- Certificate of Non-Debarment (See Attachment D).
- Lobbying Restriction Certification (See Attachment E).
- Non-Collusion Affidavit (See Attachment F).
- Telecommunications Certification (See Attachment g).
- Affirmative Action Certification (See Attachment h).

Please note the above is not a complete list. Proposers must refer to the RFP and specifications for all information or documentation required to be submitted with the proposal. Proposers are responsible for providing all information or documentation required to be submitted with the proposal.

9. WITHDRAWAL OR MODIFICATION OF PROPOSALS

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

10. FORM OF CONTRACT

The contract between the parties will be in the form of Attachment B: Form of Contract.

11. PROPOSAL OPENING, CONTRACT AWARD, AND EXECUTION

Proposal opening is to take place on June 17th, 2024 immediately after proposals are due at SouthWest Transit, 14405 West 62nd Street, Eden Prairie, MN 55346.

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

During the initial review of proposals, SWT reserves the right to request clarification of minor issues from any proposer 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 proposer and may be confirmed in writing.

Proposals will be evaluated by an evaluation committee composed of members of SWT's staff, which will make a recommendation to the SWT Commission. The evaluation committee will consider the evaluation criteria: Evaluation Criteria and the overall long-term interests of SWT. The SWT Commission will determine the successful proposer based upon the evaluation criteria set forth in Attachment K: Evaluation Criteria and the overall long-term interests of SWT. SWT shall not have any obligation whatsoever until a contract is signed with the successful proposer.

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

B. Warranty against Organizational Conflict of Interest

By submitting a proposal, each proposer warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that could give rise to an organizational conflict of interest on this project with respect to the proposer. Provisions will be included in the contract for this project imposing continuing obligations on the successful proposer 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

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

14. DATA PRACTICES ACT

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

Any information in its response to this RFP for which the Proposer claims protection as trade secret information in accordance with the above provisions must be limited and set apart in the RFP response on separate pages, with a heading that identifies the information as trade secret information. SWT will make the ultimate determination whether the information meets the applicable definition. Any information submitted in response to this RFP which does not meet the legal definition will be considered public information, regardless of the proposer’s identification of it as trade secret information. **Proposers are advised that blanket-type identification by designating whole pages or sections as containing trade secret information**

will not assure protection. The specific information for which the Proposer claims trade secret protection must be clearly identified as such.

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

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 the proposer shall arrange to perform the work itself or shall provide an alternative subcontractor acceptable to SWT.

16. CERTIFICATION OF NON-DEBARMENT

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

17. LOBBYING RESTRICTION CERTIFICATION

Proposers 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 E: Lobbying Restriction Certificate must be completed and submitted with proposals 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 proposer 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

Proposers must sign and submit with their proposals the Non-Collusion Affidavit attached hereto as Attachment F: Non-Collusion Affidavit.

19. TELECOMMUNICATIONS CERTIFICATION

Proposers 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). Proposals that are not accompanied by a completed telecommunications certification will be rejected as nonresponsive. Proposers must submit with their proposal Attachment L: Telecommunications Certification.

20. 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 proposal 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, proposers must submit with their proposal either:

- A. A copy of the proposer'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 M: Affirmative Action Certification with information which indicates that SWT can accept the proposer's proposal.

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

If a proposer submits an Affirmative Action Plan for approval of the Minnesota Commissioner of Human Rights in order to qualify for acceptance of its proposal by SWT and becomes the selected proposer, SWT will not execute the contract until the proposer 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 the proposer has completed the

human rights certification process. It is the sole responsibility of a proposer to apply for and obtain a human rights certificate prior to contract award and execution.

List of Attachments to Proposal Instructions

Attachment #	Document Title	Proposal Instructions Section Reference
A	Proposal Form	1
B	Form of Contract	10
C	Dispute and Protest Procedures	13
D	Certificate of non-debarment	16
E	Lobbying Restriction Certification	17
F	Non-Collusion Affidavit	18
K	Evaluation Criteria	11
L	Telecommunication Certifications	22
M	Affirmative Action Certification	23

ATTACHMENT A: PROPOSAL FORM

To: SouthWest Transit

Project: SWT Electrical Engineer for EV Infrastructure

The undersigned proposer agrees to enter into a contract with SouthWest Transit to engineer, Ev DC fast charging design plans and write a scope of work for electrical infrastructure for (2) 180Kwh Heliox DC fast chargers and (3) 50Kwh with brand to be determined later.

Please include all relevant information and documentation that pertains to the scoring matrix in your proposal so your proposal can be scored.

ALL PRICES MUST BE FOR ENTIRE PROJECT

The undersigned proposer represents and warrants to SWT that the proposer has authority to submit the proposal, that the proposal shall remain valid for a period of not less than ninety (90) days from the date of proposal opening, and that the proposer 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: FORM OF CONTRACT

Contract for Goods and Services

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 _____ ("Vendor") whose business address is _____.

Preliminary Statement

SWT has adopted a policy regarding the selection and hiring of vendors to provide a variety of goods and/or services for SWT. That policy requires that persons, firms or corporations providing such goods and/or services enter into written agreements with SWT. The purpose of this Contract is to set forth the terms and conditions for the provision of goods and/or services by Vendor for _____ ("Work").

SWT and Vendor agree as follows:

18. **Scope of Work.** Vendor 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, consultant or industry proposal, or contract terms attached to, or a part of Exhibit A are declined in full and, accordingly, are deleted and shall not be in effect in any manner.
19. **Term of Contract.** All Work under this Contract shall be provided, performed and/or completed by _____.
20. **Compensation for Services.** SWT agrees to pay Vendor a fixed sum of \$_____ as full and complete payment for the goods, labor, materials and/or services rendered pursuant to this Contract and as described in Exhibit A.
21. **Method of Payment.** Vendor shall prepare and submit to SWT, on a monthly basis, itemized invoices setting forth work performed under this Contract. Invoices submitted shall be paid in the same manner as other claims made to SWT.
22. **Liquidated Damages.** If the Vendor fails to fully provide, perform, and complete the Work by the date set forth in Section 2, then the Vendor shall pay to SWT an amount equal to \$250.00 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 Vendor'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 Vendor's failure to fully provide, perform, and complete the Work by the date set forth in Section 2.

23. **Standard of Care.** Vendors shall exercise the same degree of care, skill and diligence in the performance of their services as is ordinarily exercised by members of the profession under similar circumstances in Hennepin County, Minnesota.

24. **Insurance.**

a. **General Liability.** Prior to starting the Work, Vendor shall procure, maintain and pay for such insurance as will protect against claims or loss which may arise out of operations by Vendor 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 coverage and limits of liability specified in this Section or required by law.

b. Vendor 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
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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
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Comprehensive Automobile Liability ² (shall include coverage for all owned, hired and non-owned vehicles.)	\$1,000,000 combined single limit each accident
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Umbrella or Excess Liability	\$1,000,000
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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. Vendor shall maintain “stop gap” coverage if Vendor 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 Commission” as an additional insured including products and completed operations.

- f. All policies shall apply on a “per project” basis.
- g. All General Liability policies, Automobile Liability policies and Umbrella policies shall contain a waiver of subrogation in favor of SWT.
- h. All policies, except for the Worker’s Compensation Policy, shall be primary and non-contributory.
- i. All policies, except the Worker’s Compensation Policy, shall insure the defense and indemnity obligations assumed by Vendor under this Agreement.
- j. Vendor agrees to maintain all coverage required herein throughout the term of the Agreement and for a minimum of two (2) years following SWT’s written acceptance of the Work.
- k. It shall be Vendor’s responsibility to pay any retention or deductible for the coverages 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. Vendor shall maintain in effect all insurance coverages required under this Section at Vendor’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 Vendor’s Certificate of Insurance which evidences compliance with this Section must be filed with SWT prior to the start of Vendor’s Work. Upon request, a copy of the Vendor’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 Vendor 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 Vendor of any deficiencies in such documents and receipt thereof shall not relieve Vendor from, nor be deemed a waiver of, SWT’s right to enforce the terms of Vendor’s obligations hereunder. SWT reserves the right to examine any policy provided for under this Section.
- o. Effect of Vendor’s Failure to Provide. Insurance. If Vendor fails to provide the specified insurance, then Vendor 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 Vendor, its subcontractors, agents, employees or delegates. The vendor agrees that this indemnity shall be construed and applied in favor of indemnification. The vendor 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.

- p. If a claim arises within the scope of the stated indemnity, SWT may require Vendor 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 Vendor's insurance company.
 - q. Vendor will take the action required by SWT within fifteen (15) days of receiving notice from SWT.
25. **Indemnification.** Vendor 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 Vendor, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Vendor, its agents, contractors and employees, relative to this Contract. SWT will indemnify and hold Vendor harmless from and against any loss for injuries or damages arising out of the negligent acts of SWT, its officers, agents or employees.
26. **Warranty.** Vendor expressly warrants and guarantees to SWT that all Work performed and all materials furnished shall be in accord with the Contract and shall be free from defects in materials, workmanship, and operation which appear within a period of one year, or within such longer period as may be prescribed by law or in the terms of the Contract, from the date of SWT's written acceptance of the Work. SWT's rights under the Contractor's warranty are not SWT's exclusive remedy. SWT shall have all other remedies available under this Contract, at law or in equity.
27. **Termination.** This Contract may be terminated by either party by seven (7) days' written notice delivered to the other party at the addresses written above. Upon termination under this provision if there is no fault of Vendor, Vendor shall be paid for services rendered until the effective date of termination.
28. **Independent Contractor.** At all times and for all purposes herein, Vendor is an independent contractor and not an employee of SWT. No statement herein shall be construed so as to find Vendor an employee of SWT.
29. **Subcontractors.** Vendor shall not subcontract any part of the services to be provided under this Contract, without the prior written consent of SWT. If SWT grants its written consent to subcontracting, Vendor 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. Vendor shall pay any subcontractor involved in the performance of this Contract within the ten (10) days of Vendor's receipt of payment by SWT for undisputed services provided by the subcontractor. If Vendor fails within that time to pay the subcontractor any undisputed amount for which Vendor has received payment by SWT, Vendor 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, Vendor shall pay the actual interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from Vendor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

30. **Goods or Services Not Provided For.** No claim for goods or services furnished by Vendor not specifically provided for in Exhibit A shall be honored by SWT.
14. **Assignment.** Neither party shall assign this Contract, nor any interest arising herein, without the written consent of the other party.
15. **Compliance with Laws and Regulations.** In providing goods and services hereunder, Vendor shall abide by statutes, ordinances, rules, and regulations pertaining to the provisions of goods and services to be provided. Any violation of statutes, ordinances, rules and regulations pertaining to the goods or services to be provided shall constitute a material breach of this Contract and entitle SWT to immediately terminate this Contract.
16. **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.
17. **Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be considered an original.
18. **Damages.** In the event of a breach of this Contract by SWT, Vendor shall not be entitled to recover punitive, special or consequential damages or damages for loss of business.
19. **Employees.** Vendor agrees not to hire any employee or former employee of SWT and SWT agrees not to hire any employee or former employee of Vendor prior to termination of this Contract and for one (1) year thereafter, without prior written consent of the former employer in each case.
20. **Enforcement.** Vendor 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.
21. **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.

22. **Governing Law.** This Contract shall be controlled by the laws of the State of Minnesota.
23. **Non-Discrimination.** During the performance of this Contract, Vendor 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. Vendors 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. Vendor shall incorporate the foregoing requirements of this Section in all of its subcontracts for program work will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. Vendor 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.
24. **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 specified above, 10 days prior to the effective date of such change.
25. **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.
26. **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.
27. **Statutory Provisions.**
 - a. **Audit Disclosure.** The books, records, documents and accounting procedures and practices of Vendor 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 Vendor 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,

Exhibit A

SCOPE OF WORK

Scope of work for Battery Electric Transit Vehicle DC Fast Charging Infrastructure.

SouthWest Transit has been awarded a Federal Transit Administration Lo/No Emissions Grant to add 4 MCI D45 CRT LE Charge battery electric coaches and 6 battery electric cutaway style buses to be named later to its existing fleet of Diesel and gas vehicles. The addition of these electric vehicles will require upgrades to SouthWest Transit's current electrical infrastructure. SouthWest Transit will be purchasing (2) Heliox flex 180 kW DC fast chargers with (4) total dispensers, and (3) 50 kW DC fast chargers with (6) total dispensers to meet EV charging needs. In 2023 Xcel Energy installed a larger 750 kVA transformer to accommodate power needs for EV charging and building systems. Under the scope of work set forth below, a qualified experienced electrical engineer will draw up plans for EV charging infrastructure, which plans will be used to release an RFP for infrastructure construction.

1. Winning Engineer will design plans and specifications for needed EV electrical infrastructure to add 2 (180 kWh) Heliox DC fast chargers and 3 (50kWh) still to be named DC fast chargers at the SouthWest Transit garage facility located at 14405 West 62nd St. Eden Prairie Mn 55346.
2. The engineer shall provide installation specifications needed for the general contractor to coordinate all civil and electrical work within 30 days of contract execution. This includes electrical requirements for switchgear, conduit to switchgear, conduit to the chargers, and any concrete groundwork or civil engineering designs to support the charger installation.
3. The Engineer's plans and specifications must include all needed components, and measurements to bring required power from our current 750kVA transformer to the 5 above-mentioned DC fast chargers located in various locations of our bus parking storage area.
4. The plans and specifications must comply with all local, state, and federal codes and requirements, and be cost effective.

5. The plans and specifications must be complete, and use only industry accepted wording, measurements, and symbols.
6. The plans and specifications must account for total electrical loads and usage including the facility, EV chargers, and ensure adequate power is available to operate EV charger and facility simultaneously.
7. The plan and specifications must offer an option to tie the new infrastructure into our existing 500 kW generator in the event of electrical power loss from the grid.
8. The plans and specifications must be designed with quality, feasibility, and longevity. The infrastructure must last a minimum of 40 years in Minnesota's climate.
9. The plans and specifications must be written to only use readily available products that either meet Buy America, Build America, or have current Federal Buy America, Build America exemptions.
10. All final Plans and specifications must be approved by SouthWest Transit to ensure plans meet all needs of the project. All plans will become property of SouthWest Transit upon payment of services rendered.
11. Final approved plans and specifications must be completed within 30 days of signing of contract with SouthWest Transit.
12. The winning Engineer will assist SouthWest Transit in assembling a scope of work and a will attend virtual meetings to answer questions and provide clarification for potential bidders of the infrastructure construction RFP to immediately follow this RFP for Electrical Engineering plans.
13. The engineering provider under this scope of work, and its affiliates, will be disqualified from bidding on the future Infrastructure construction project as per Federal rules.

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 Agreement, 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 - RESERVED

ARTICLE FTA-4. CARGO PREFERENCE

- 4.1 **Cargo Preference—Use of United States-Flag Vessels.** Reserved.
- 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 - RESERVED

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.** Reserved.

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) – NO GOAL

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

14.2.5 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 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 proposal. 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 Document 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 proposal.

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 - RESERVED

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

ARTICLE FTA-17. INTELLECTUAL PROPERTY RIGHTS

The requirements of this Article apply to all contracts for experimental, developmental, or research work purposes. Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant SWT intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

17.1 The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

17.1.1 Any subject data developed under the Contract, whether or not a copyright has been obtained; and

17.1.2 Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

17.2 Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, develops not completed for any reason whatsoever, all data developed under the Contract shall

become subject data as defined herein and shall be delivered as the Federal Government may direct.

- 17.3 Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 17.4 Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 17.5 Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- 17.6 The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

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 proposer.

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

3. Specific Procedures

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

An interested person desiring to protest must file a written protest, by certified mail, with the SWT contact person designated in the solicitation issued by SWT, with a copy to the Director of Operations. If the contact person cannot be identified in the solicitation or is otherwise unavailable, the complaint 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 Proposals. If a solicitation phase protest is not filed before the bid opening or the closing date for the receipt of Proposals, 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 Fleets 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 proposal opening or Proposal 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 Fleets written decision, a protester may request that the Director of Operations review the Director of Facilities and Fleets 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 Fleets 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 D: CERTIFICATE OF NON-DEBARMENT

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Proposer Company Name: _____

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

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

- 1. By signing and submitting this proposal, the proposer 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 proposer 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 proposer shall provide immediate written notice to SWT if at any time the proposer 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 proposer agrees by submitting this proposal 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 proposer further agrees by submitting this proposal 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 proposer certifies, by submission of this proposal, 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 proposer is unable to certify the statements in this certification, such prospective proposer shall attach an explanation to this certification.

Proposer Name: ☐

By: ☐ _____ Date: ☐

Name: _____

Title: ☐

ATTACHMENT E: LOBBYING RESTRICTION CERTIFICATION

Proposer Company Name: _____

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

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

Proposer Name: ☐

By: ☐ _____ Date: ☐

Name: _____

Title: ☐

ATTACHMENT F: NON-COLLUSION AFFIDAVIT

NON-COLLUSION AFFIDAVIT

Proposer Company Name: _____

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

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

1. That I am the proposer (if the proposer is an individual), a partner of the proposer (if the proposer is a partnership), or an officer or employee of the proposing corporation (if the proposer 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 proposer 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 Proposals, designed to limit independent proposing or competition;
3. That the contents of the bid or proposals have not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer 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 G: SPECIFICATIONS

SEE BELOW AND SWT WEBSITE AS DETAILED IN SECTION 1

ATTACHMENT H: EVALUATION CRITERIA and scoring

Electrical Engineering design plans for EV DC fast charging infrastructure scoring.

All proposers that submit on time completed proposals, that meet all requirements this RFP will be scored using the following scoring matrix. A total score will be given to all accepted proposals. Price negotiations will commence with the highest-scoring proposer, or if negotiations are unsuccessful, with each of the next highest-scoring proposers (in order) until staff can recommend a contract award to Southwest Transit's commission.

Relevant Experience designing EV DC fast charger infrastructure up to 30 points.

Completed EV DC fast charging projects using your company's design plans up to 30 points.

Qualifications relevant to this type of project Up to 25 points.

Previous experience with Federally funded EV infrastructure design project up to 15 points.

ATTACHMENT I: 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”), Proposer 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 Proposer responds “will,” Proposer 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) After conducting a reasonable inquiry, for purposes of this representation, Proposer 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 Proposer responds “does,” Proposer 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 J: AFFIRMATIVE ACTION CERTIFICATION

Proposer Company Name: _____

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

Instructions: If a proposal is in an amount greater than \$100,000, SWT cannot accept the proposal unless the proposer can affirm either Statement #1 or Statement #2 below. The proposer 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 proposer should carefully bear in mind the post-submittal requirements noted in connection with each statement. After submitting the proposal SWT reserves the right to request documentation from the proposer supporting the certification or to otherwise verify the accuracy of the certification. **If neither statement can be affirmed, no proposal 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 proposal 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 proposer 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 proposal is due.

Note: Prior to execution of any agreement arising out of this procurement, the proposer 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 proposal, in the state where the business has its primary place of business.

CERTIFICATION

On behalf of the proposer, 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.

Proposer Name: _____

By: _____ Date: _____

Name: _____ Title: _____