



SOUTHWEST TRANSIT

To: SouthWest Transit Commission

From: Daniel LeGuen-Schmidt, Human Resources Manager

Date: December 9, 2021

Subject: CEO Search Firm Selection – KL2 Connects

REQUESTED ACTION: Approval.

BUDGET IMPACT: Up to \$50,000

BACKGROUND:

The CEO Search Firm selection process has been completed and the Agreement for Professional Services has been created to move forward with KL2 Connects as the selected firm.

RECOMMENDATION: That the commission ratify the Agreement for Professional Services with KL2 Connects.

Agreement for Professional Services

This Agreement (“Agreement”) 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 KL2 Connects LLC, a North Carolina limited liability company (“Consultant”), whose business address is 12 Alabama Avenue, Weaverville, NC 28787.

Preliminary Statement

SWT has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for SWT projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with SWT. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Consultant for the search in finding the next CEO (“Work”).

SWT and Consultant agree as follows:

1. **Scope of Work.** Consultant agrees to provide the professional services shown in Exhibit A in connection with the Work. Exhibit A is intended to be the scope of service for the work of Consultant. Any general or specific conditions, terms, agreements, consultant or industry proposal, or contract terms attached to or a part of Exhibit A are declined in full and, accordingly, are deleted and shall not be in effect in any manner.
2. **Term.** The term of this Agreement shall be from January 1, 2022 through December 31, 2022, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
3. **Compensation for Services.** SWT agrees to pay Consultant in a total amount not to exceed \$43,450 for the services as described in Exhibit A. Consultant will invoice SWT, and SWT will pay Consultant, in four installments upon achievement of the following milestones: (1) \$10,862.50 upon SWT issuing to Consultant a Notice to Proceed; (2) \$10,862.50 upon Consultant’s completion of the initial round of screening interviews; (3) \$10,862.50 upon Consultant’s presentation of candidates via an electronic briefing book; and (4) \$10,862.50 upon SWT’s selection of a candidate and that candidate’s acceptance into the position. If any milestone is not achieved, the corresponding installment shall not be due or payable.
 - a. Any changes in the scope of the work which may result in an increase to the compensation due Consultant shall require prior written approval by an authorized representative of SWT or by the SWT Commission. SWT will not pay additional compensation for services that do not have prior written authorization.
 - b. Special consultants may be utilized by Consultant when required by the complex or specialized nature of the Project and when authorized in writing by SWT.
 - c. If Consultant is delayed in performance due to any cause beyond its reasonable control, including, but not limited to, strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of SWT, the time for performance shall

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

4. **SWT Information.** SWT agrees to provide Consultant with the complete information concerning the Scope of the Work and to perform the following services:
 - a. Access to the Area. Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, SWT shall obtain access to and make all provisions for Consultant to enter upon public and private lands or property as required for Consultant to perform such services necessary to complete the Work.
 - b. Consideration of Consultant's Work. SWT shall give thorough consideration to all reports, sketches, estimates, drawings, and other documents presented by Consultant, and shall inform Consultant of all decisions required of SWT within a reasonable time so as not to delay the work of Consultant.
 - c. Standards. SWT shall furnish Consultant with a copy of any standard or criteria, including but not limited to, design and construction standards that may be required in the preparation of the Work for the Project.
 - d. SWT's Representative. A person shall be appointed to act as SWT's representative with respect to the work to be performed under this Agreement. SWT's representative shall have complete authority to transmit instructions, receive information, interpret, and define SWT's policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement.
5. **Method of Payment.** Consultant shall submit to SWT itemized invoices for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to SWT for:
 - a. Progress Payment. Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, Consultant shall provide an itemized listing and such documentation as reasonably required by SWT. Each invoice shall contain SWT's project number and a progress summary showing the original (or amended) amount of the contract, current billing, past payments and unexpended balance of the contract.
 - b. Suspended Work. If any work performed by Consultant is suspended in whole or in part by SWT, Consultant shall be paid for any services set forth on Exhibit A performed prior to receipt of written notice from SWT of such suspension.
 - c. Payments for Special Consultants. Consultant shall be reimbursed for the work of special consultants, as described herein, and for other items when authorized in writing by SWT.
 - d. Claims. To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."

6. **Project Manager and Staffing.** Consultant shall designate a Project Manager and notify SWT in writing of the identity of the Project Manager before starting work on the Project. The Project Manager shall be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace the Project Manager without the approval of SWT.
7. **Standard of Care.** Consultant shall exercise the same degree of care, skill and diligence in the performance of its services as is ordinarily exercised by members of the profession under similar circumstances in Hennepin County, Minnesota. Consultant shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by Consultant's breach of this standard of care. Consultant shall put forth reasonable efforts to complete its duties in a timely manner. Consultant shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Agreement. Consultant shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
8. **Termination.** This Agreement may be terminated by either party by ten (10) days' written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of Consultant, Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, SWT terminates the Agreement because Consultant has failed to perform in accordance with this Agreement, no further payment shall be made to Consultant, and SWT may retain another consultant to undertake or complete the Work identified herein.
9. **Subcontractor.** Consultant shall not enter into subcontracts for services provided under this Agreement except as noted in the Scope of Work, without the express written consent of SWT. Consultant shall pay any subcontractor involved in the performance of this Agreement within ten (10) days of Consultant's receipt of payment by SWT for undisputed services provided by the subcontractor. If Consultant fails within that time to pay the subcontractor any undisputed amount for which Consultant has received payment by SWT, Consultant shall pay interest to the subcontractor on the unpaid amount at the rate of 1.5 percent per month or any part of a month. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, Consultant shall pay the actual interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from Consultant shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.
10. **Independent Contractor Relationship.** Consultant is an independent contractor engaged by SWT to perform the services described herein and as such (i) shall employ such persons as it shall deem necessary and appropriate for the performance of its obligations pursuant to this Agreement, who shall be employees, and under the direction, of Consultant and in no respect employees of SWT, and (ii) shall have no authority to employ persons, or make purchases of equipment on behalf of SWT, or otherwise bind or obligate SWT. No statement herein shall be construed so as to find Consultant an employee of SWT.
11. **Insurance.**
 - a. **General Liability.** Prior to starting the Work, Consultant shall procure, maintain and pay for such insurance as will protect against claims or loss which may arise out of operations

by Consultant or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law.

- b. Consultant shall procure and maintain the following minimum insurance coverages and limits of liability for the Work:

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

- c. Commercial General Liability. The Commercial General Liability Policy shall be on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.
- d. Professional Liability Insurance. In addition to the coverages listed above, Consultant shall maintain a professional liability insurance policy in the amount of \$2,000,000. Said policy need not name SWT as an additional insured. It shall be Consultant's responsibility to pay any retention or deductible for the professional liability insurance. Consultant agrees to maintain the professional liability insurance for a minimum of two (2) years following termination of this Agreement.
- e. Consultant shall maintain "stop gap" coverage if Consultant obtains Workers' Compensation coverage from any state fund if Employer's liability coverage is not available.

- f. All policies, except the Worker's Compensation Policy, Automobile Policy, and Professional Liability Policy, shall name the "SouthWest Transit Commission" as an additional insured including products and completed operations.
- g. All policies, except the Professional Liability Policy, shall apply on a "per project" basis.
- h. All General Liability policies, Automobile Liability policies and Umbrella policies shall contain a waiver of subrogation in favor of SWT.
- i. All policies, except for the Worker's Compensation Policy and the Professional Liability Policy, shall be primary and non-contributory.
- j. All policies, except the Worker's Compensation Policy, shall insure the defense and indemnity obligations assumed by Consultant under this Agreement. The Professional Liability policy shall insure the defense and indemnity obligations assumed by Consultant under this Agreement except with respect to the liability for loss or damage resulting from the negligence or fault of anyone other than Consultant or others for whom Consultant is legally liable.
- k. Consultant agrees to maintain all coverage required herein throughout the term of the Agreement and for a minimum of two (2) years following SWT's written acceptance of the Work.
- l. It shall be Consultant's responsibility to pay any retention or deductible for the coverages required herein.
- m. All policies shall contain a provision or endorsement that coverages afforded thereunder shall not be cancelled or non-renewed or restrictive modifications added, without thirty (30) days' prior notice to SWT, except that if the cancellation or non-renewal is due to non-payment, the coverages may not be terminated or non-renewed without ten (10) days' prior notice to SWT.
- n. Consultant shall maintain in effect all insurance coverages required under this Paragraph at Consultant's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by SWT in writing.
- o. **A copy of Consultant's Certificate of Insurance which evidences the compliance with this Paragraph, must be filed with SWT prior to the start of Consultant's Work.** Upon request a copy of Consultant's insurance declaration page, Rider and/or Endorsement, as applicable shall be provided. Such documents evidencing Insurance shall be in a form acceptable to SWT and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to SWT prior to the expiration date of any of the required policies. SWT will not be obligated, however, to review such Certificate of Insurance, declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, SWT's right to enforce the terms of Consultant's obligations hereunder. SWT reserves the right to examine any policy provided for under this paragraph.

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

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

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

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

12. **Indemnification.** Consultant will defend and indemnify SWT, its officers, agents, and employees and hold them harmless from and against all judgments, claims, damages, costs and expenses, including a reasonable amount as and for its attorney's fees paid, incurred or for which it may be liable resulting from any breach of this Agreement by Consultant, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Consultant, its agents, contractors and employees, relative to this Agreement. SWT will indemnify and hold Consultant harmless from and against any loss for injuries or damages arising out of the negligent acts of SWT, its officers, agents or employees.
13. **Ownership of Documents.** All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement ("Information") shall become the property of SWT, but Consultant may retain copies of such documents as records of the services provided. SWT may use the Information for its purposes and Consultant also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement ("Project") does not relieve any liability on the part of Consultant, but any use of the Information by SWT or Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.
14. **Mediation.** Each dispute, claim or controversy arising from or related to this agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in

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

15. **Assignment.** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.
16. **Compliance with Laws and Regulations.** In providing services hereunder, Consultant shall abide by statutes, ordinances, rules, and regulations pertaining to the provisions of services to be provided. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle SWT to immediately terminate this Agreement.
17. **Conflicts.** No salaried officer or employee of SWT and no member of the Commission shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision renders the Agreement void.
18. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.
19. **Damages.** In the event of a breach of this Agreement by SWT, Consultant shall not be entitled to recover punitive, special or consequential damages or damages for loss of business.
20. **Employees.** Consultant agrees not to hire any employee or former employee of SWT and SWT agrees not to hire any employee or former employee of Consultant prior to termination of this Agreement and for one (1) year thereafter, without prior written consent of the former employer in each case.
21. **Enforcement.** Consultant shall reimburse SWT for all costs and expenses, including without limitation, attorneys' fees paid or incurred by SWT in connection with the enforcement by SWT during the term of this Agreement or thereafter of any of the rights or remedies of SWT under this Agreement.
22. **Entire Agreement, Construction, Application and Interpretation.** This Agreement is in furtherance of SWT's public purpose mission and shall be construed, interpreted, and applied pursuant to and in conformance with SWT's public purpose mission. The entire agreement of the parties is contained herein. This Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Contract shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

23. **Governing Law.** This Agreement shall be controlled by the laws of the State of Minnesota.
24. **Non-Discrimination.** During the performance of this Agreement, Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. Consultant shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
25. **Notice.** Any notice required or permitted to be given by a party upon the other is given in accordance with this Agreement if it is directed to either party by delivering it personally to an officer of the party, or if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed to the address listed on page 1 hereof. Notices shall be deemed effective on the earlier of the date of receipt or the date of mailing or deposit as aforesaid, provided, however, that if notice is given by mail or deposit, that the time for response to any notice by the other party shall commence to run one business day after any such mailing or deposit. A party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.
26. **Rights and Remedies.** The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
27. **Services Not Provided For.** No claim for services furnished by Consultant not specifically provided for herein shall be honored by SWT.
28. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
29. **Statutory Provisions.**
- a. **Audit Disclosure.** The books, records, documents and accounting procedures and practices of Consultant or other parties relevant to this Agreement are subject to examination by SWT and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement.
- b. **Data Practices.** Any reports, information, or data in any form given to, or prepared or assembled by Consultant under this Agreement which SWT requests to be kept confidential, shall not be made available to any individual or organization without SWT's prior written approval. This Agreement is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 ("Data Practices Act"). All government data, as defined in the Data Practices Act, which is created, collected, received, stored, used, maintained, or

disseminated by Consultant in performing any of the functions of SWT during performance of this Agreement is subject to the requirements of the Data Practices Act and Consultant shall comply with those requirements as if it were a government entity. All subcontracts entered into by Consultant in relation to this Agreement shall contain similar Data Practices Act compliance language.

30. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.
31. **Warranty.** If SWT hires an individual referred by Consultant under this Agreement, and within one calendar year of such individual's first day of employment with SWT, such individual is terminated by SWT for cause (other than a reduction in the scope of duties) or such individual voluntarily terminates the employment for any reason (other than family emergency, illness, or death), Consultant will repeat the recruitment at no cost to SWT except for any Consultant travel and candidate travel/relocation as approved by SWT. SWT acknowledges that Consultant will not be responsible for repeating the search at no cost due to the emergence of information that was legally undiscoverable by Consultant.
32. **Other Hires.** If within one year after the termination of this Agreement, SWT elects to hire into any other position any individual from any list of candidates referred to SWT by Consultant, Consultant shall be entitled to a 15% fee based upon such individual's first-year salary.
33. **SWT Employees.** During the term of this Agreement and for 12 months following the termination of this Agreement, Consultant agrees to refrain from actively recruiting any SWT employees on behalf of other clients of Consultant. SWT acknowledges that if, as a result of Consultant's advertising or marketing of another client's position via its standard advertising or communications, Consultant is approached by any SWT employee on his or her own (without direct solicitation by Consultant), Consultant will be ethically and legally obligated to consider that employee's application as it would any other.

Executed as of the day and year first written above.

SOUTHWEST TRANSIT

By: _____
Len Simich, Its Chief Executive Officer

KL2 CONNECTS LLC

By: _____
Its: _____

EXHIBIT A

SCOPE OF SERVICES REQUESTED

The selected Firm will provide executive search services to SWT and the services will be coordinated through SWT's Commission, with respect to recruitment of the new CEO. The services shall include, but are not limited to, the following:

1. Meet with the Commission to obtain information regarding expectations, requirement, and responsibilities of the position.
2. Develop detailed position specifics reflecting ideal candidate profile, job requirements, experience, education, knowledge, skills, and abilities required for the position, including creating the recruitment flyer and brochure.
3. Develop strategy to obtain a diverse and highly qualified candidate pool for consideration by the Commission.
4. Prepare recruitment plan with timelines reflecting key milestones.
5. Spearhead a direct networking campaign to attract top talent, including personal outreach and executing an active advertising plan which may include national, regional, in-state, and local advertising elements as determined through initial meetings with the Commission.
6. Review resumes and screen applicants, evaluate candidates' qualifications and confirm information through individual interviews.
7. Provide periodic status reports and weekly telephone conference updates with the Commission. This includes providing assessments and insights of candidates to assist the Commission in determining recruitment progress and quality of candidate pool.
8. Verify finalists' education and background checks.
9. Prepare written in-depth profiles on highly qualified candidates referred for consideration.
10. Provide a candidate pool of four (4) to eight (8) highly qualified, diverse candidates for the position. Candidates should be pre-qualified as to acceptance of the Commission's compensation/benefits parameters, receptive to relocation to the Twin Cities Metropolitan area, and possess a desire for the position.
11. In conjunction with the Commission, develop and participate in the final interview process, including questions, panelists, scheduling, and related matters.
12. Review interview results with the Commission and consider additional candidates, if required.
13. Provide advice and counsel to the Commission to ensure that a successful candidate emerges from the group of highly qualified professionals identified for consideration.
14. Conduct in-depth reference checks to verify candidate's employment qualifications, attitude, and individual strengths.
15. Assist with the development of the Employment Offer and compensation negotiations, as needed.
16. Notify prospective candidates who were not selected.
17. Attend and participate in meetings of the Commission, as requested, to successfully complete the engagement.
18. Assist in final negotiations and communications with the successful candidate, as requested.