

September SouthWest Transit Commission Packet

SouthWest Transit Commission Meeting

September 24, 2020

Work Session (Garage Tour) - 5:30 pm

Commission Meeting – 6:30 pm

Eden Prairie Garage

14405 West 62nd St

Eden Prairie MN, 55346



SOUTHWEST TRANSIT COMMISSION AGENDA

Thursday, September 24, 2020

Work Session (In-person Garage Tour)– 5:30pm

Commission Meeting – Approx. 6:30 pm (upon completion of work session)

2nd Floor Eden Prairie Garage Training Room Via
Video or Phone

Using a Computer (allows viewing of presentation and guests)

1. Go to <https://zoom.us/j/91952413747>
2. Meeting Number: 919 5241 3747
3. You can join the meeting 15 mins prior to start time.

Using a Phone (audio only)

1. Call +1 312 626 6799
2. Meeting Number: 919 5241 3747
3. You can join the meeting 15 mins prior to start time.

NOTICE: Governor Walz has declared a peacetime emergency ([Emergency Executive Order 20-01](#)) in response to COVID-19 and the SouthWest Transit Chair has determined it is not practical or prudent to conduct an in-person Commission meeting for reasons stated in the Governor's Emergency Executive Order. Accordingly, Commission members will participate in this meeting via telephone and the Commission meeting will be conducted under Minnesota Statutes section 13D.021 at the location, date, and time stated above. Members of the public may attend the meeting in person or view [online](#). Once you have dialed into the conference, please identify yourself and mute yourself until you would like to comment.

COMMISSION MEMBERS

Brad Aho – City of Eden Prairie
Jerry McDonald – City of Chanhassen
Bob Roepke – City of Chaska
Bethany Tjornhom – City of Chanhassen
Mike Huang – City of Chaska
PG Narayanan – City of Eden Prairie
Jody Bonnevier - At-Large Commissioner
Courtney Johnson – Ex Officio City of Carver

GENERAL COUNSEL

Joshua Dorothy, Attorney

EXECUTIVE STAFF

Len Simich, Chief Executive Officer
Dave Jacobson, Chief Operating Officer
Matt Fyten, Operations and Planning Director
Al Halaas, Director/GM - First Transit
Gary Groen – Acting Administrative Service Director
Tony Kuykendall – Maintenance Director
Souriyong Souriya – Finance Director
Mike Dartt – Facilities Manager, Buildings & Structure
Adam Hegeholz – HR Manager
Jason Kirsch – IT Manager
John Hagenmiller – Public Outreach Manager

AGENDA

Work Session (Tour of Garage Facility)– 5:30pm

Commission Meeting – Approx. 6:30pm (Upon completion of work session)

- I. PUBLIC COMMENT**
- II. APPROVAL OF AGENDA**
- III. PAYMENT OF CLAIMS (Rollcall Vote)**
- IV. CONSENT**
 - A. Approval of Minutes of 8-27-20**
 - B. Approval of Financial Statements**
 - C. Ridership**
 - D. Uniform Contract**
 - E. Director Financial Signing Authority**
 - F. Radiant Heaters**
- V. NEW BUSINESS**
 - A. Attorney's Corner**
 - B. Legislative Services Agreement**
- VI. Updates**
- VII. ADJOURNMENT**

Payment of Claims

SouthWest Transit

8/21/2020 Thru 09/16/2020

Meeting Date: 09/24/2020

Payment of Claims

Check Number	Vendor Name	Description	Check Date	Check Amount
6135	ADVANTAGE COATING	EPG Garage Construction	8/24/20	\$ 206,583.95
6136	ATOMIC RECYCLING	EPG Garage Construction	8/24/20	\$ 5,592.50
6137	AVI SYSTEMS, INC.	EPG Garage Construction	8/24/20	\$ 6,735.84
6138	AXEL H. OHMAN, IMC.	EPG Garage Construction	8/24/20	\$ 38,739.10
6139	BARTLEY SALES COMPANY, INC.	EPG Garage Construction	8/24/20	\$ 9,565.83
6140	BIFFS, INC.	EPG Garage Construction	8/24/20	\$ 48.66
6141	BIG-D CONSTRUCTION MIDWEST LLC	EPG Garage Construction	8/24/20	\$ 96,132.21
6142	BITUMINOUS ROADWAYS, INC.	EPG Garage Construction	8/24/20	\$ 195,256.35
6143	CE CONTRACT	EPG Garage Construction	8/24/20	\$ 1,889.07
6144	CUSTOM CASEWORKS	EPG Garage Construction	8/24/20	\$ 1,370.31
6145	GAGE BROS. CAULKING, INC.	EPG Garage Construction	8/24/20	\$ 4,750.00
6146	INTEGRATED PAINTING SOLUTIONS	EPG Garage Construction	8/24/20	\$ 19,669.95
6147	JACKSON & ASSOCIATES LLC	EPG Garage Construction	8/24/20	\$ 24,484.35
6148	KLOOS ELECTRIC, INC.	EPG Garage Construction	8/24/20	\$ 98,179.88
6149	LAFORCE, INC.	EPG Garage Construction	8/24/20	\$ 5,884.30
6150	LEON'S COUNTERTOPS	EPG Garage Construction	8/24/20	\$ 2,479.50
6151	MINNKOTA ARCHITECTURAL PRODUCTS	EPG Garage Construction	8/24/20	\$ 150,736.50
6152	NORD EXCAVATING, INC.	EPG Garage Construction	8/24/20	\$ 36,251.52
6153	NORTH COUNTRY CONCRETE, INC.	EPG Garage Construction	8/24/20	\$ 16,577.50
6154	NORTHERN GLASS & GLAZING INC.	EPG Garage Construction	8/24/20	\$ 139,317.50
6155	PETERSON SHEET METAL, INC.	EPG Garage Construction	8/24/20	\$ 69,657.67
6156	PUMP AND METER SERVICES, INC	EPG Garage Construction	8/24/20	\$ 73,527.90
6157	RAMSEY EXCAVATING COMPANY INC.	EPG Garage Construction	8/24/20	\$ 5,208.85
6158	RED CEDAR STEEL ERECTORS, INC.	EPG Garage Construction	8/24/20	\$ 19,239.70
6159	RTL CONSTRUCTION, INC	EPG Garage Construction	8/24/20	\$ 107,665.98
6160	SIEMENS INDUSTRY, INC.	EPG Garage Construction	8/24/20	\$ 83,692.12
6161	TOTAL FIRE PROTECTION INC.	EPG Garage Construction	8/24/20	\$ 28,326.41
6162	TWIN CITY ACOUSTICS	EPG Garage Construction	8/24/20	\$ 6,555.00
6163	ALLSTATE PETERBILT	Vehicle Parts	8/26/20	\$ 1,048.79
6164	AVI SYSTEMS, INC.	Customer Service Next Trip Monitors	8/26/20	\$ 6,290.45
6165	CENTERPOINT ENERGY	Heating Payment	8/26/20	\$ 186.73
6166	CHASE	EPG Garage Construction - Debt Payment	8/26/20	\$ 366,165.49
6167	COMCAST BUSINESS	Internet Service Payment	8/26/20	\$ 328.47
6168	FACTORY MOTOR PARTS COMPANY	Vehicle Parts	8/26/20	\$ 398.43
6169	FIDELITY SECURITY LIFE INSURANCE CO.	Life and Benefit Insurance Payment	8/26/20	\$ 694.70
6170	GREGERSON, ROSOW, JOHNSON & NILAN, LTD	Professional Services - Legal Fee	8/26/20	\$ 2,077.50
6171	HEALTHPARTNERS	Health and Dental Insurance Payment	8/26/20	\$ 30,760.82
6172	HENNEPIN COUNTY AR	Radio Fleet Fee	8/26/20	\$ 312.44
6173	IMPERIAL SUPPLIES LLC	Vehicle Parts	8/26/20	\$ 427.21
6174	JOHNSON CONTROLS, INC.	EPG Garage Construction	8/26/20	\$ 1,789.00
6175	MEDIACOM	Internet Service Payment	8/26/20	\$ 575.91
6176	MENARDS	Facility Supplies	8/26/20	\$ 81.25
6177	METROPOLITAN FORD OF EDEN PRAIRIE	Vehicle Parts	8/26/20	\$ 139.65
6178	MINUTEMAN PRESS	Printing Service	8/26/20	\$ 420.00
6179	OFFICE DEPOT	Office Supplies	8/26/20	\$ 368.27
6180	O'REILLY AUTOMOTIVE, INC.	Vehicle Parts	8/26/20	\$ 112.74
6181	PIRTEK PLYMOUTH	Vehicle Parts	8/26/20	\$ 168.29
6182	POPP COMMUNICATIONS	Telephone Payment	8/26/20	\$ 2,312.75
6183	PPG ARCHITECTURAL FINISHES	Facility Supplies	8/26/20	\$ 1,091.40
6184	RICKEY RANDLE	Employee Award	8/26/20	\$ 100.00

SouthWest Transit
8/21/2020 Thru 09/16/2020

Meeting Date: 09/24/2020

Payment of Claims

Check Number	Vendor Name	Description	Check Date	Check Amount
6185	ROYAL TIRE INC.	Vehicle Parts	8/26/20	\$ 1,065.39
6186	RSM US PRODUCT SALES LLC	Professional Services - Server Network	8/26/20	\$ 352.00
6187	SUBURBAN CHEVROLET	Vehicle Parts	8/26/20	\$ 36.34
6188	THE AFTERMARKET PARTS COMPANY	Vehicle Parts	8/26/20	\$ 98.12
6189	TWIN CITIES TRANSPORT & RECOVE	Towing Service	8/26/20	\$ 350.00
6190	US BANK	Office Equipment Lease	8/26/20	\$ 69.90
6191	XCEL ENERGY	Utilities Payment	8/26/20	\$ 6,267.98
6192	COSTCO WHOLESALE	Building Supplies	9/1/20	\$ 500.00
6193	4201, LLP	Bus Parking Lease	9/8/20	\$ 333.33
6194	AVALLO WEB DEVELOPMENT	Web Updates	9/8/20	\$ 1,800.00
6195	MICHAEL DARTT	Employee Reimbursement - Uniform	9/8/20	\$ 100.00
6196	HAY DOBBS P.A.	Professional Services - Garage Expansion	9/8/20	\$ 45,786.60
6197	ISPACE ENVIRONMENTS, INC.	Fitness Equipment's	9/8/20	\$ 28,375.00
6198	TECHSTAR IT SOLUTIONS	IT Services	9/8/20	\$ 9,023.00
6199	WEX BANK	Gasoline for Prime Vehicles	9/8/20	\$ 5,714.47
6200	CENTERPOINT ENERGY	Heating Payment	9/15/20	\$ 33.56
6201	CENTURYLINK	Telephone Payment	9/15/20	\$ 60.71
6202	CITY OF CHASKA UTILITY BILLING	Utilities Payment	9/15/20	\$ 1,839.50
6203	CITY OF EDEN PRAIRIE	Utilities Payment	9/15/20	\$ 748.59
6204	COMCAST BUSINESS	Internet Service	9/15/20	\$ 1,555.53
6205	CUSTOM COMMUNICATIONS INC.	Alarm monitoring Service	9/15/20	\$ 1,627.50
6206	DIRECTV	Cable Tv Payment	9/15/20	\$ 76.99
6207	FIRST TRANSIT, INC.	August Operation Service	9/15/20	\$ 160,410.84
6208	GREGERSON, ROSOW, JOHNSON & NILAN, LTD	Professional Services - Legal Fee	9/15/20	\$ 4,192.98
6209	MEDIACOM	Internet and Cable Payment	9/15/20	\$ 362.40
6210	MINNESOTA CHILD SUPPORT PAYMENT CENTER	Garnishment Payment	9/15/20	\$ 232.11
6211	MVEC, MINNESOTA VALLEY ELECTRIC COOP	Utilities Payment	9/15/20	\$ 1,574.18
6212	OCCUPATIONAL MEDICINE CONSULTS	Drug Testing	9/15/20	\$ 115.00
6213	REPUBLIC SERVICES #894	Trash Removal	9/15/20	\$ 1,026.53
6214	T-MOBILE	Bus Wifi	9/15/20	\$ 3,746.97
6215	VERIZON WIRELESS	Wireless Phone	9/15/20	\$ 271.70
6216	WALKER CONSULTANTS	Professional Service - Garage Expansion	9/15/20	\$ 2,670.00
6217	XCEL ENERGY	Utilities Payment	9/15/20	\$ 1,495.58
			TOTAL	\$ 2,151,881.54
	ACH Withdraws			
	MANSFIELD OIL COMPANY, INC.	Bus Fuel	8/20/20	\$ 8,130.71
	MANSFIELD OIL COMPANY, INC.	Bus Fuel	9/4/20	\$ 15,099.22
	MANSFIELD OIL COMPANY, INC.	Bus Fuel	9/14/20	\$ 5,242.34
	MET COUNCIL RETAILSALe CPOS SW	Go To Card Reimbursement	8/21/20	\$ 190.00
	MET COUNCIL RETAILSALe CPOS SW	Go To Card Reimbursement	8/28/20	\$ 305.00
	MET COUNCIL RETAILSALe CPOS SW	Go To Card Reimbursement	9/4/20	\$ 340.00
	MET COUNCIL RETAILSALe CPOS SW	Go To Card Reimbursement	9/11/20	\$ 40.00
	FLAGSHIP BANK	Monthly Banking Fees	8/31/20	\$ 90.00
	PAYPAL TRANSFER TSHEETS	Payroll Time cards fees	9/14/20	\$ 236.00
	CARDMEMBER SERV WEB PYMT	Credit Card Payment Meetings & Misc.	8/25/20	\$ 35.20
	LISA RADUENZ	Professional Service - Marketing Promotion	9/10/20	\$ 1,500.00
			TOTAL	\$ 31,208.47

SouthWest Transit

8/21/2020 Thru 09/16/2020

Meeting Date: 09/24/2020

Payment of Claims

Check Number	Vendor Name	Description	Check Date	Check Amount
Payroll				
	ADP, INC.	Payroll	9/3/20	\$ 78,390.15
		TOTAL		\$ 78,390.15
Monthly Reimbursement included in payroll totals				
	Jon Christenson	Cell Phone Allowance		\$ 50.00
	Mike Dartt	Cell Phone Allowance		\$ 50.00
	Matt Fyten	Cell Phone Allowance		\$ 50.00
	Dave Jacobson	Cell Phone Allowance		\$ 50.00
	Dave Jacobson	Car Allowance		\$ 175.00
	Jason Kirsch	Cell Phone Allowance		\$ 50.00
	Tony Kuykendall	Cell Phone Allowance		\$ 50.00
	John Haggemiller	Cell Phone Allowance		\$ 50.00
	Ben Schuler	Cell Phone Allowance		\$ 50.00
	Kory Simich	Cell Phone Allowance		\$ 50.00
	Kyle Jackels	Cell Phone Allowance		\$ 50.00
	Len Simich	Cell Phone Allowance		\$ 85.00
	Len Simich	Car Allowance		\$ 712.00
		TOTAL		\$ 1,472.00
		GRAND TOTAL		\$ 2,261,480.16

Consent

SOUTHWEST TRANSIT COMMISSION MINUTES

Thursday, August 27, 2020

Work Session – 5:30pm

Commission Meeting – 6:30 pm, 2nd Floor East Creek Conference Room & Via
Video or Phone

COMMISSION MEMBERS

Brad Aho – City of Eden Prairie
Jerry McDonald – City of Chanhassen
Bob Roepke – City of Chaska
Bethany Tjornhom – City of Chanhassen
Mike Huang – City of Chaska
PG Narayanan – City of Eden Prairie
Jody Bonnevier - At-Large Commissioner
Courtney Johnson – Ex Officio City of Carver

GENERAL COUNSEL

Joshua Dorothy, Attorney

EXECUTIVE STAFF

Len Simich, Chief Executive Officer
Dave Jacobson, Chief Operating Officer
Matt Fyten, Operations and Planning Director
Al Halaas, Director/GM - First Transit
Gary Groen – Acting Administrative Service Director
Tony Kuykendall – Vehicle Maintenance Manager
Souriyong Souriya – Finance Director
Mike Dartt – Facilities Manager, Buildings & Structure
Adam Hegeholz – HR Manager
Jason Kirsch – IT Manager
John Haggemiller – Public Outreach Manager

AGENDA

Commission Meeting

I. CALL TO ORDER

The meeting was called to order by Chair Brad Aho at 6:52 pm.

II. PUBLIC COMMENT

None

III. APPROVAL OF AGENDA

Motion: Narayanan motioned, seconded by Roepke to approve the agenda. The motion carried 6-0-0. **Roll Call Vote:** Aho, Yes; McDonald, Yes; Roepke, Yes; Tjornhom, Yes; Narayanan, Yes; Bonnevier, Yes.

IV. PAYMENT OF CLAIMS

Motion: McDonald motioned, seconded by Roepke to approve the Payment of Claims. The motion carried 6-0-0. **Roll Call Vote:** Aho, Yes; McDonald, Yes; Roepke, Yes; Tjornhom, Yes; Narayanan, Yes; Bonnevier, Yes.

V. CONSENT

- A. Approval of Minutes of 7-30-20
- B. Approval of Financial Statements
- C. Construction Contracts/ Change Orders
- D. Statutory Tort Liability Waiver
- E. 2nd Quarter 2020 Ridership
- F. FHRA Plan Debit Card Addendum

Motion: Tjornhom motioned, seconded by McDonald to approve the Consent items. The motion carried 6-0-0. **Roll Call Vote: Roll Call Vote:** Aho, Yes; McDonald, Yes; Roepke, Yes; Tjornhom, Yes; Narayanan, Yes; Bonnevier, Yes.

VI. NEW BUSINESS

A. Contract to manufacture bus row separators (COVID-19 response plan)

Motion: Roepke motioned, seconded by Narayanan that the SouthWest Transit (SWT) Commission authorize its CEO to enter into an agreement with Acrylic Designs Associates of Minneapolis for the manufacturing of 345 plexiglass shields with ram mounts to equip 15 fixed route revenue coach buses at a cost not to exceed \$39,071.25. The motion carried 6-0-0. **Roll Call Vote: Roll Call Vote:** Aho, Yes; McDonald, Yes; Roepke, Yes; Tjornhom, Yes; Narayanan, Yes; Bonnevier, Yes.

B. 2020 Budget Tracking

Motion: No Action Requested.

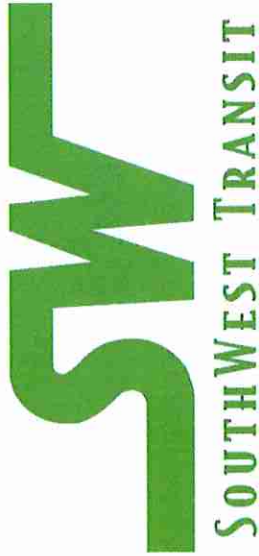
VII. ADJOURNMENT

Narayanan motioned, seconded by McDonald to adjourn the meeting, and start the Work Session. The motion passed 6-0-0. The meeting adjourned at 7:27 pm.

September 5, 2020 SouthWest Transit Commission Minutes Prepared By: Adam Hegeholz

Approved by: _____

Date: _____



Commission Meeting date 9.24.2020

Balance Sheet for All Funds August 2020

Balance Sheet Category	Fund Name							Total
	General Fund	State of Good Repairs/Asset Management	SWS Relocation Capital	Grant Projects	Debt Service	Capital	Total	
Assets								
Cash & Investments	\$ 3,752,654	\$ 4,581,320	\$ 1,606,959	-	\$ 5,434,322	-	\$ 15,375,255	
Accounts Receivable	2,023,442	3,347,221	-	-	116,412	-	5,487,075	
Other Assets	325,960	-	-	-	-	-	325,960	
Total Assets	6,102,057	7,928,541	1,606,959	-	5,550,734	-	21,188,290	
Liabilities								
Accounts Payable	28,775	-	9,499	-	-	-	38,274	
Other Liabilities	1,019	3,364,378	-	-	-	-	3,365,397	
Total Liabilities	29,794	3,364,378	9,499	-	-	-	3,403,671	
Fund Balances								
Beginning Fund Balance-January 2019	4,378,020	10,099,431	1,751,755	-	26,229	-	16,255,435	
Net Change in Fund Balance	1,694,243	(5,535,268)	(154,295)	-	5,524,505	-	1,529,184	
Total Fund Balances	6,072,263	4,564,163	1,597,460	-	5,550,734	-	17,784,619	
Total Liabilities & Fund Balances	\$ 6,102,057	\$ 7,928,541	\$ 1,606,959	\$ -	\$ 5,550,734	\$ -	\$ 21,188,291	



Southwest Transit
 Revenue and Expenditures for All Funds
 Monthly Financial Report
 YTD August 2020

Commission Meeting date 9.24.2020

August=66.7%

General Fund 100	Adopted Budget		Current Month Actual		2020 YTD Actual	2020 YTD Balance	% YTD Budget
Revenues							
Passenger Fares	\$ 3,035,600	\$ 10,429	\$ 598,505	(2,437,095)	19.7%		
Contract Revenue	70,000	2,943	22,248	(47,752)	31.8%		
CMAQ TMA Grant Revenue	-	-	1,730	1,730	0.0%		
CARES ACTS Grant	-	1,303,590	1,303,590	1,303,590	0.0%		
MVST Revenue	7,606,000	687,803	4,815,693	(2,790,307)	63.3%		
RAMVST Revenue	1,406,000	128,410	899,070	(506,930)	63.9%		
Investment Income	10,000	-	11,267	1,267	112.7%		
Other Local Revenues	210,000	640	53,779	(156,221)	25.6%		
	12,337,600	2,133,814	7,705,881	(4,631,719)	62.5%		
Other Sources			38,347	38,347	-		
Insurance Recoveries							
Total Revenue	\$ 12,337,600	\$ 2,133,814	\$ 7,744,228	\$ (4,593,372)	62.8%		
Expenditures							
Administration	\$ 1,470,800	\$ 62,392	\$ 778,724	692,076	52.9%		
Operations	7,427,300	239,961	3,144,308	4,282,992	42.3%		
Vehicle Maintenance	2,189,000	93,550	999,685	1,189,315	45.7%		
Facility Maintenance	1,402,150	79,423	798,916	603,234	57.0%		
Total Expenditures	12,489,250	475,326	5,721,633	6,767,617	45.8%		
Capital Cost Of Operating	376,600	10,808	158,352	218,248	42.0%		
Total Expenditures & Capital Cost of Operating	12,865,850	486,134	5,879,985	6,985,865	45.7%		
Other Financing Sources							
Transfers In	(170,000)	-	(170,000)	-	100.0%		
Transfers (Out)	(170,000)	-	(170,000)	-	100.0%		
Net Change in Fund Balance	\$ (698,250)	\$ 1,647,680	\$ 1,694,243				
Fund Balance, January 1			\$ 4,378,020				
Fund Balance, End of Current Period			\$ 6,072,263				
Months of Operating Expenditures			4				
Fund Balance as a % of the Expenditure Budget			46.6%				



SouthWest Transit
 Revenue and Expenditures for All Funds
 Monthly Financial Report
 YTD August 2020

Commission Meeting date 9.24.2020

August=66.7%

	Adopted			Current		2020 YTD Actual	2020 YTD Balance	% YTD Budget
	Budget	Month Actual	Month Actual	2020 YTD Actual				
All Other Funds								
Capital State of Good Repairs/Asset Management Fund 270								
Revenue	\$ 343,020	\$ 27,335	\$ 27,335	\$ 321,549	\$ (21,471)			93.7%
Expenditures	5,000	-	-	-	5,000			0.0%
Transfer In (Out)	(2,073,182)	-	-	(5,856,817)	3,783,635			0.0%
Net Change in Fund Balance	\$ 2,411,202	\$ 27,335	\$ 27,335	\$ (5,535,268)				
SWS Relocation Capital Projects Fund 338								
Revenue	\$ -	\$ -	\$ -	\$ 4,266,933	\$ 4,266,933			0.0%
Expenditures	2,210,000	541,040	541,040	4,421,228	(2,211,228)			200.1%
Transfer In (Out)	2,210,000	-	-	-	2,210,000			-
Net Change in Fund Balance	\$ -	\$ (541,040)	\$ (541,040)	\$ (154,295)				
Grant Projects Fund 336 & 337 - NTD Grant Funds								
Revenue	\$ -	\$ -	\$ -	\$ 445,455	\$ 445,455			0.0%
Expenditures	-	-	-	445,455	(445,455)			0.0%
Net Change in Fund Balance	\$ -	\$ -	\$ -	\$ -				
Debt Service Fund 407-408								
Revenue	\$ 231,335	\$ -	\$ -	\$ 1,461,444	\$ 1,230,109			631.7%
Expenditures	264,517	366,165	366,165	1,963,756	(1,699,239)			742.4%
Transfer In (Out)	33,182	-	-	6,026,817	(5,993,635)			18162.9%
Net Change in Fund Balance	\$ -	\$ (366,165)	\$ (366,165)	\$ 5,524,505				

SouthWest Transit					
Pledged Securities Accounts - August 2020					
Security Description	Safekeeping Agent	Maturity Date	Pledged Date	Book Value	Pledged Value
Flagship Bank Minnesota					
Treasury	United Bankers Bank	10/8/2020	7/15/2020	\$ 4,999,343.11	\$ 1,400,000.00
FHLMC - FED Home Loan Mortgages	United Bankers Bank	11/1/2021	8/12/2015	\$ 332,544.36	\$ 330,028.43
FNMA - FED NATL MTG ASSN	United Bankers Bank	8/1/2021	10/23/2012	\$ 319,217.70	\$ 317,020.11
MBS-FNMA/FHLMC	United Bankers Bank	9/1/2027	5/26/2020	\$ 237,845.97	\$ 237,845.97
Wells Natl West	United Bankers Bank	1/17/2023	4/2/2020	\$ 249,000.00	\$ 249,000.00
Wells Fargo NA	United Bankers Bank	10/17/2022	1/9/2020	\$ 249,000.00	\$ 249,000.00
Enerbank USA	United Bankers Bank	9/13/2024	9/25/2019	\$ 247,575.66	\$ 249,000.00
HSBC BK	United Bankers Bank	11/4/2024	1/9/2020	\$ 247,000.00	\$ 247,000.00
Morgan Stanley	United Bankers Bank	11/14/2024	1/9/2020	\$ 247,000.00	\$ 247,000.00
3RD FED SVGS	United Bankers Bank	11/25/2024	1/9/2020	\$ 247,000.00	\$ 247,000.00
Barclays Bank CD	United Bankers Bank	9/23/2020	6/21/2016	\$ 245,000.00	\$ 245,000.00
Comenity Capital Bank CD	United Bankers Bank	4/26/2021	5/16/2016	\$ 249,000.00	\$ 249,000.00
Bank of India	United Bankers Bank	11/27/2024	1/9/2020	\$ 247,000.00	\$ 247,000.00
Comenity 2	United Bankers Bank	10/5/2020	7/27/2017	\$ 249,000.00	\$ 249,000.00
Natl COOP	United Bankers Bank	10/30/2020	7/24/2017	\$ 247,000.00	\$ 247,000.00
Barclays Bank CD	United Bankers Bank	9/16/2020	8/14/2018	\$ 247,000.00	\$ 247,000.00
US Treasury Notes	United Bankers Bank	4/30/2021	10/6/2016	\$ 501,642.74	\$ 500,000.00
US Treasury Notes	United Bankers Bank	7/31/2022	10/6/2016	\$ 749,717.29	\$ 750,000.00
FHLB	United Bankers Bank	6/11/2021	5/25/2018	\$ 500,956.72	\$ 500,000.00
FHLB	United Bankers Bank	1/13/2021	6/29/2020	\$ 2,000,000.00	\$ 1,150,000.00
FFCB-FED Credit Bank	United Bankers Bank	9/1/2021	10/6/2016	\$ 501,148.08	\$ 500,000.00
FFCB	United Bankers Bank	10/29/2021	4/2/2020	\$ 499,338.80	\$ 200,000.00
FHLB	United Bankers Bank	9/11/2020	12/14/2018	\$ 500,420.83	\$ 500,000.00
Tax Muni Onamia	United Bankers Bank	2/1/2021	1/10/2020	\$ 235,604.05	\$ 235,000.00
GNMA	United Bankers Bank	1/1/2021	4/2/2020	\$ 179,730.65	\$ 179,562.66
GNMA	United Bankers Bank	8/20/2040	7/20/2018	\$ 158,496.16	\$ 158,496.16
				\$ 14,686,582.12	\$ 9,929,953.33
BankVista					
FDIC	FDIC - State	10/6/2021	6/6/2018	\$ 250,000	\$ 250,000
FDIC	ICS Account	10/6/2021	6/6/2018	\$ 6,409,389	\$ 6,409,389
Tradition Capital Bank					
Fed Farm Credit Bank	BMO Harris Bank N.A	3/14/2022	2/4/2019	\$ 990,850	\$ 990,850
McGregor MN ISD	BMO Harris Bank N.A	2/1/2022	2/4/2019	\$ 208,515	\$ 208,515
Madison Lake MN	BMO Harris Bank N.A	2/1/2025	2/4/2019	\$ 265,864	\$ 265,864
Carver County	BMO Harris Bank N.A	2/1/2026	2/4/2019	\$ 498,907	\$ 498,907
Fed Farm Credit Bank	BMO Harris Bank N.A	2/1/2026	2/4/2019	\$ 990,850	\$ 990,850
Alerus					
FRB Federal Reserve Custody	Bank of North Dakota	9/1/2023	6/22/2016	\$ 631,744	\$ 620,263
Americana Community Bank					
GNMA Pool # MA1119	United Bankers Bank	7/1/2042	8/25/2016	\$ 980,594	\$ 946,966
			Total	\$ 25,913,295	\$ 21,111,557
Summary Total Funds 8/31/2020					
Flagship Bank	\$ 10,962,091				
BankVista	\$ 3,658,922				
Tradition Capital Bank	\$ 2,227,597				
Alerus	\$ 269,303				
Americana Community Bank	\$ 802,333				
Total	\$ 17,920,246				
Difference Extra	\$ 3,191,310.63				

**SouthWest Transit Commission Investments
August 2020**

Broker	Purchase Date	Type	Description	Maturity Date	Type	Purchase Cost	Maturity Amount	Rate	Days to Maturity	Current Market Value	Accrued Interest	Months Term
			8/31/2020									
Tradition Bank	4/16/2019	CD	Tradition Bank CD 13813422	10/16/2020	CD	650,000.00	650,000.00	2.800%	46	672,858.16	3,166	12
Americana	1/8/2018	CD	Americana 10001619	1/8/2021	CD	500,000.00	500,000.00	2.000%	130	534,359.22	7,379	36
Americana	1/8/2018	CD	Americana 10001620	1/8/2021	CD	250,000.00	250,000.00	1.000%	130	267,974.04	3,700	36
Flagship Bank	1/31/2020	CD	Flagship CD 100243	1/24/2021	CD	300,000.00	300,000.00	2.000%	146	300,000.00		12
Tradition Bank	2/5/2020	CD	Tradition Bank CD 13812681	2/5/2021	CD	1,500,000.00	1,500,000.00	1.990%	158	1,562,537.26	3,578	12
Flagship Bank	3/2/2019	CD	Flagship CD 100306	2/28/2021	CD	250,000.00	250,000.00	2.700%	181	250,000.00		24
Flagship Bank	3/11/2020	CD	Flagship CD 100255	3/6/2021	CD	250,000.00	250,000.00	1.450%	187	250,000.00		12
Flagship Bank	3/11/2019	CD	Flagship CD 100309	3/11/2021	CD	500,000.00	500,000.00	2.700%	192	500,000.00		24
Flagship Bank	12/14/2018	CD	Flagship CD 100294	3/14/2021	CD	250,000.00	250,000.00	1.450%	195	250,000.00		12
Alerus Bank	4/7/2019	CD	Alerus CD 53544	4/7/2021	CD	250,000.00	250,000.00	2.400%	219	269,302.74		24
Flagship Bank	4/23/2018	CD	Flagship CD 100241	4/21/2021	CD	300,000.00	300,000.00	2.250%	233	300,000.00		36
Flagship Bank	5/30/2018	CD	Flagship CD 100247	5/25/2021	CD	250,000.00	250,000.00	2.250%	267	250,000.00		36
BankVista	6/6/2018	CD	BankVista CD 3301049	10/6/2021	CD	250,000.00	250,000.00	2.750%	401	256,897.98	1,974	40
			Total			5,500,000.00	5,500,000.00			5,663,929.40	19,796.97	
			<i>Flagship Bank - Nonprofit Checking</i>							<i>1,843,038.02</i>		
			<i>Flagship Bank - Money Market Acct</i>							<i>2,294,386.26</i>		
			<i>BankVista - Money Market ICS Acct</i>							<i>6,409,388.56</i>		
			Subtotal							\$ 10,546,812.84		
			Grand Total							\$ 16,210,742.24		
			Summary by Type (based upon current market value)									
	CD		5,663,929.40				<i>Amount</i>					
	US Govt Agency		-				<i>Americana</i>			802,333.26		
	Money Market/ICS		10,546,812.84				<i>Alerus</i>			269,302.74		
			16,210,742.24				<i>Bank Vista</i>			256,897.98		
							<i>Flagship</i>			2,100,000.00		
							<i>Tradition</i>			2,235,395.42		
			<i>Amount</i>							5,663,929.40		
	Maturity Dates											
	Sep-20		\$ -									
	Oct-20		672,858.16									
	Nov-20		\$ -									
	later		4,991,071.24									
			\$ 5,663,929.40									



SOUTHWEST TRANSIT

MEMORANDUM

TO: SouthWest Transit Commission

FROM: Matt Fyten, Operations and Planning Director
Souriyong Souriya, Finance Director

DATE: September 24, 2020

SUBJECT: 2020 Ridership

REQUESTED ACTION

None required. For information purposes only.

BUDGET IMPACT

Outlined in Background of this memorandum.

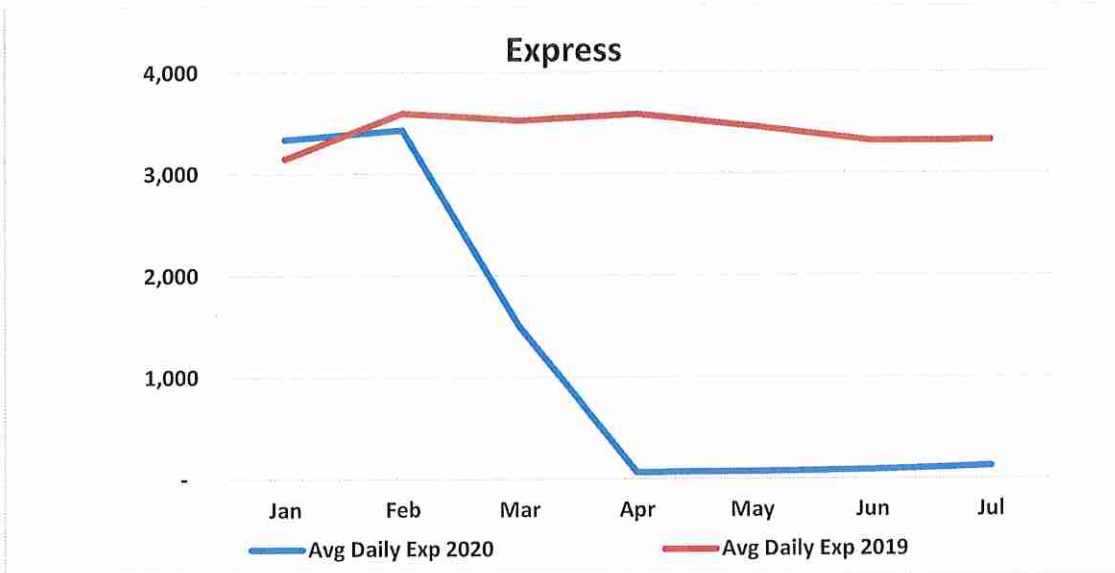
BACKGROUND

Seven months into 2020 ridership was 210,708 (through July 31). The total difference represents a drop of 62.3% ridership from seven months of 2019. Additionally, Prime service dropped 44.5 percent over 2019 for the second quarter.

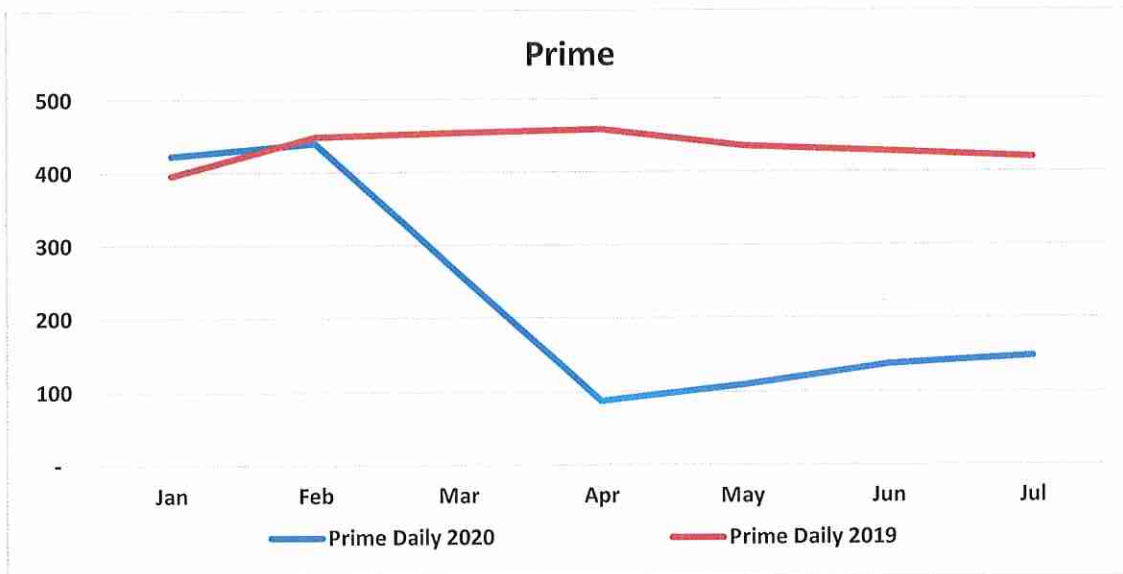
During seven months into 2020 overall ridership experienced a historic drop due to the COVID-19 outbreak. Since April fixed route ridership has seen a slight increase in ridership and Prime ridership has seen a steady increase in ridership, but ridership remains extraordinarily down for both services due to the ongoing COVID-19 pandemic.

Service 2020	Ridership	Subsidy	Revenue Hours	% of total Revenue Hours	Operation Cost	% of total Operation Cost	Fares Revenue
Express	182,555	\$ 22.94	9,344	36%	\$ 4,693,970	89%	\$ 505,305
SW Prime	34,052	\$ 14.46	16,266	64%	\$ 573,418	11%	\$ 81,127
Totals	216,607	\$ 21.61	25,610	100%	\$ 5,267,388	100%	\$ 586,432
% Changes	-62.3%						

Service 2019	Ridership	Subsidy	Revenue Hours	% of total Revenue Hours	Operation Cost	% of total Operation Cost	Fares Revenue
Express	510,049	\$ 8.25	19,737	51%	\$ 5,581,693	89%	\$ 1,375,128
SW Prime	64,730	\$ 8.44	19,281	49%	\$ 691,678	11%	\$ 145,101
Totals	574,779	\$ 8.27	39,018	100%	\$ 6,273,371	100%	\$ 1,520,229



	Jan	Feb	Mar	Apr	May	Jun
Avg Daily Exp 2020	3,341	3,434	1,501	67	71	83
Avg Daily Exp 2019	3,152	3,597	3,526	3,590	3,464	3,318



	Jan	Feb	Mar	Apr	May	Jun
Prime Daily 2020	423	440	263	87	109	137
Prime Daily 2019	396	449	455	459	436	428

RECOMMENDATION

None required. For information purposes only.



SOUTHWEST TRANSIT

MEMORANDUM

TO: SouthWest Transit Commission

FROM: Dave Jacobson, COO
Tony Kuykendall, Director of Vehicle Maintenance and Facilities

DATE: September 15, 2020

SUBJECT: Operator Uniforms

REQUESTED ACTION:

That the SWT Commission authorize its Chief Executive Officer to expand an existing three-year agreement with Unifirst for vehicle maintenance uniforms to include operator uniforms.

BUDGET IMPACT:

By making the staff recommended switch to Unifirst, SWT stands to save approximately \$8,815.82 in the first year of the agreement, based on a maximum liability method which assumes all uniforms are handled by Unifirst and an estimated 45 operators for 2021. An “apples to apples” comparison was conducted between the vendors based on all of the various expenses and additional fees (attached to this memorandum). The outcome of the two vendors for 2021 is:

Unifirst:	\$18,592.60
Cintas:	\$27,815.82

In years two and three there will be an annual five percent increases. Unifirst, due to being on the State Contract, is locked into their pricing. The previous operator budget for uniforms was part of the First Transit contract. Uniform dollars will be removed from the First contract and placed in the Operations (420) budget, which will be part of the 2021 budget. Operator uniforms will become part of the existing vehicle maintenance uniform agreement for easier management as well.

BACKGROUND:

Periodically, staff conducts cost comparisons of its contracts to ensure SWT is receiving the best price for the services provided. This time it was the operator uniform agreement with Cintas. Cintas has provided uniforms to SWT for the past 7 years. SW staff felt it time to do a cost comparison.

In the search for operator uniform vendors, Unifirst rose to the top of the list for both price and also being on the State of Minnesota contractor. Being on the “State Contract” means that Unifirst has already gone through the competitive procurement process and prices remain constant with that of the State Contract.

Due to the long lead time needed for sizing of the drivers and getting all required uniforms, Unifirst will begin providing uniforms on Wednesday November 25th. Cintas will have final pick-up on Thursday December 3rd.

RECOMMENDATION:

That the SWT Commission authorize its Chief Executive Officer to expand an existing three-year agreement with Unifirst for vehicle maintenance uniforms to include operator uniforms.

2021 Uniform Cost Analysis

	Total '21 Drivers Required	one driver set equals	Total Garments	cost per unit	cost per week	annual weeks	annual cost
2021 Operator Uniform Budget - UniFirst							
Summer Shirts - oxford short sleeve	45	11	495	\$ 0.21	\$ 103.95	52	\$ 5,405.40
Winter Shirts - oxford long sleeve	45	11	495	\$ 0.21	\$ 103.95	52	\$ 5,405.40
Pants	45	11	495	\$ 0.25	\$ 123.75	52	\$ 6,435.00
Soft Shell Jacket	45	1	45	\$ 0.53	\$ 23.85	52	\$ 1,240.20
Weekly delivery, energy, fuel and Enviro fee				\$	2.05	52	\$ 106.60
						Annual Total	\$ 18,592.60

2021 Operator Uniform Budget - Cintas

Summer Shirts - polo	45	11	495	0.253	\$ 125.24	52	\$ 6,512.22
Winter Shirts - oxford	45	11	495	0.273	\$ 135.14	52	\$ 7,027.02
Pants	45	11	495	0.212	\$ 104.94	52	\$ 5,456.88
Soft Shell Jacket	45	1	45	1.515	\$ 68.18	52	\$ 3,545.10
Locker	45	1	45	1.01	\$ 45.45	52	\$ 2,363.40
Laundry lock up	45	1	45	1.01	\$ 45.45	52	\$ 2,363.40
Uniform advantage	45	1	45	0.02	\$ 0.90	52	\$ 46.80
Prep Advantage	45	1	45	0.04	\$ 1.80	52	\$ 93.60
						Annual Total	\$ 27,408.42

Annual Savings \$ 8,815.82



SOUTHWEST TRANSIT

MEMORANDUM

TO: SouthWest Transit (SWT) Commission
FROM: Adam Hegeholz, HR Manager
DATE: September 24, 2020
SUBJECT: Director Financial Signing Authority

REQUESTED ACTION:

That the SouthWest Transit Commission adopts the recommended revised Purchasing Policy for immediate implementation. Allowing Director level employees to authorize purchases up to \$10,000

BUDGET IMPACT:

There are no budget impacts.

BACKGROUND:

The current Purchasing Policy allows manager and director level employees to approve up to \$5,000. With the organization restructuring that has occurred within the past few months. Staff feels it is necessary to revise the current Purchasing Policy to increase the director level employees signature authorization level from \$5,000 to \$10,000.

RECOMMENDATION:

That the SouthWest Transit Commission adopts the recommended revised Purchasing Policy for immediate implementation. Allowing Director level employees to authorize purchases up to \$10,000

Purchasing Policy for SouthWest Transit

1.0 GENERAL DISCUSSION

SouthWest Transit (SWT), through its Board (Board), adopts this purchasing policy. In the event that this policy conflicts with state law, the Joint Powers Agreement (JPA), and/or SWT's Bylaws, then state law, the JPA, and Bylaws govern, in that order.

1.1 Purpose

The purpose of this policy is to establish a process for the procurement of goods and services that is:

- (a) Open and competitive.
- (b) Consistent with state law, the JPA, and SWT's Bylaws.
- (c) Efficient.
- (d) Understandable to all users.

1.2 Ethics and Conflicts of Interest

- (a) All purchases must be conducted in a manner that fosters public confidence in the integrity of SWT's procurement system and provides open and free competition among prospective suppliers.
- (b) No employee, officer, or agent may participate in the selection, award, or administration of a contract if there is a conflict of interest, real or apparent. A conflict of interest arises when a participating individual has a direct or indirect financial interest, including employment or prospective employment, with reference to the contract.
- (c) All elected or appointed officials of SWT shall comply with Minnesota Statutes section 471.895 (prohibiting certain gifts by interested persons).

1.3 Quick Reference Guide to Purchasing Methods and Approvals

Value of Purchase	Purchase or Payment Process	Approval Required
Less than \$100 <u>\$5,000</u>	Invoice, check request, or petty cash (if < \$50)	Department Manager
\$100 <u>\$5,000</u> – \$4,999 <u>\$10,000</u>	Invoice, check request, or purchase order	Department Director
\$5,000 <u>\$10,000</u> – \$25,000	Purchase order or contract	CEO
\$25,000.01–\$175,000	Purchase order or contract	SWT Board
Greater than \$175,000	Contract	SWT Board

1.4 Purchasing Methods

- (a) Purchasing can be accomplished in a variety of ways:
- (i) **Standard Purchase:** A Standard Purchase Order is not required for items under \$5,000 and is not recommended for items under \$100. An approved invoice payment completes the payment process if the purchase is within the approved budget for that category of purchase.
 - (ii) **Standard Purchase Order:** A Standard Purchase Order must be created by the originating department for purchases over \$5,000 or when required by a vendor.
 - (iii) **Blanket Purchase Orders:** Blanket Purchase Orders are similar to Standard Purchase Orders but are generally (though not always) created at the beginning of the year following approval by the Chief Executive Officer (CEO) or by the Chief Operations Officer (COO), in the absence of the CEO. Blanket Purchase Orders are used primarily for items, such as fuel, that are consistently purchased throughout the year. Every Blanket Purchase Order should document which SWT staff members have authority to use it and should set out any purchasing limitations, which may include monthly or annual maximums.
 - (iv) **Contracts:** Contracts must be used for purchases exceeding \$175,000 and may be used, instead of a Standard Purchase Order, for any purchase over \$5,000.

1.5 Payment Processes

Payment for purchases can be made in several ways:

- (a) **Direct Payment:** The Finance Department pays vendors directly if that department has received an approved Standard Purchase Order within budget for the category of purchase.
- (b) **Prepaid Costco Card:** SWT maintains a prepaid card for maintenance and administrative purchases that are required on an immediate basis. This card may be used only with Standard Purchase Orders and requires the same documentation and approvals.
- (c) **Menards House Accounts:** SWT maintains a “house accounts” at Menards for maintenance and administrative purchases that are required on an immediate basis. This account may be used only with Standard Purchase Orders and requires the same documentation and approvals.
- (d) **Home Depot and Northern Tool Credit Cards:** SWT maintains credit cards at Home Depot and Northern Tool for maintenance and administrative purchases that are required on an immediate basis. These cards may be used only with Standard Purchase Orders and require the same documentation and approvals.
- (e) **Corporate Credit Card:** SWT maintains a corporate credit card through Flagship Bank for a variety of purchases, including approved employee travel expenses, conference registrations, and online purchases. The corporate credit card may be used only upon request to the Finance Department and with the supporting documentation

and approvals required under this Policy. All purchases using the corporate credit card shall be made by the Finance Department. The Finance Department shall maintain a log of who has requested to use the corporate credit card and the purpose for which it was requested.

- (f) **Check-Requests Forms:** Check-request forms are used when the Standard Purchase Order process is not applicable. The payment process is completed with an approved check request within the approved budget.
- (g) **Employee-Expense Reports:** Employee-expense reports are used by employees for all travel-related expenses, such as when an employee attends a conference. The purposes of this form are to explain the expenses and to reimburse the employee for out-of-pocket expenses or to pay expenses in advance. The employee travel-related expenses may include either actual receipts or amounts at accepted per diem rates as provided by the United States General Services Administration at www.GSA.gov/portal/category/100120 www.GSA.gov/portal/category/100120.
- (h) **Petty Cash Vouchers:** Petty cash vouchers are used for reimbursement to an employee for items of \$50 or less purchased on behalf of SWT. The Finance Manager is the custodian of the Petty Cash fund. A petty cash form must include an explanation, account code, and authorized signature. Petty cash purchases shall be used only when other payment methods are unavailable.
- (i) **Open Charge Accounts:** It will be advantageous in certain cases to open charge accounts with businesses and vendors for SWT purchases. Establishing an open charge account requires the approval of the CEO. The names of all SWT staff members authorized to purchase through the open charge account will be on file in the Finance Department and will also be provided to the vendor along with the purchasing limitations. Under no circumstances may aggregate purchases from any one vendor under an open charge account exceed \$5,000 in any one month without prior CEO approval. The procedures used to make purchases through an open charge account shall conform with SWT purchasing policy.

1.6 Supporting Documentation

Supporting documentation must accompany any request for payment. If signed by the SWT staff member accepting the goods or services, the receiving copy of the Standard Purchase Order or the receiving document is proof that the goods or services were provided to SWT, documents the approval for payment, and documents that the cost incurred is correct. For items under \$5,000, the Department Manager must sign the invoice or check request to document his or her approval and must assign the budget code. Any other required approvals must also be documented.

1.7 Decentralized Purchasing

The majority of SWT purchases are decentralized, meaning each department negotiates with the vendor and processes the request for payments.

The Finance Department is responsible for processing Standard Purchase Orders and for ensuring compliance with SWT policies and procedures. The Finance Department generally serves as a resource to other departments to help with purchases and maintains information on State purchasing contracts, approved vendors, past purchases, and other related information. As each department meets its own purchasing needs, the Finance Department is available to answer questions and assist with locating purchasing options but does not call for quotations or place the actual orders with vendors.

1.8 Emergency Purchases

Emergencies may preclude the normal bidding or request-for-proposal processes. In cases in which the emergency purchase exceeds \$20,000, Board approval must be obtained prior to payment.

An emergency is a situation arising suddenly and unexpectedly which requires speedy action essential to health, safety, and welfare of the community. A mere inconvenience is not an emergency. By way of example, an emergency exists when a breakdown in machinery occurs and a dangerous condition develops or when any unforeseen circumstances arise that cause or threaten curtailment of an essential service.

1.9 Deliveries

Please be as explicit as possible when arranging deliveries with a vendor. Give detailed instructions as to delivery location and contact person. Use both first and last name in your arrangements with vendors to aid in ensuring delivery. A name should be referenced on an invoice.

1.10 Purchase of SWT Vehicles

The sales tax and licensing of vehicles is not done at the point of purchase, but rather through Deputy Registrar. All costs associated with getting a vehicle out on the road shall be considered part of its total cost. Thus, licenses, radios, and customizing (signs, interior additions, special shelving in vans, hand railings, etc.) are all considered part of the total cost.

1.11 Out-of-State Purchases

Sales tax is part of the total cost. Even though some purchases are made from an out of state vendor, SWT is required to submit to the State of Minnesota a use tax for items invoiced without the tax.

1.12 Bond requirements

If a contract is over \$175,000 and involves doing a public work, as set forth in Minnesota Statutes Section 574.26, the contractor must provide a performance bond and a payment bond. Minn. Stat. § 574.26, subd. 2 (referencing Minn. Stat. § 471.345, subd. 3, for the amount triggering these bond requirements). In this case, a bid bond should also be required. Failure to obtain required statutory bonds will render the contract invalid. *Id.* Failure to obtain a required payment bond may also make SWT liable to subcontractors and suppliers whom the contractor fails to pay. Minn. Stat. § 574.29.

1.13 1099 information

SWT is obligated to report to the Internal Revenue Service payments to an individual or partnership for services rendered that exceed \$600 in a calendar year. To do so, SWT needs the recipient's business tax identification number or social security number. This tax information should be provided to the Finance Department.

2.0 SIGNING AND APPROVAL AUTHORITY

All purchases are subject to approval as set forth in this section. Under no condition shall an order be divided into two or more smaller orders in an attempt to circumvent the necessity to obtain the appropriate approval.

2.1 Authorized Approval

All purchases under \$5,000 must be approved by the Department Manager. Any purchase made by the Department Manager is subject to approval by the Finance Director.

All purchases between \$5,000 and \$10,000 must be approved by the Department Director. Any purchase made by the Department Director is subject to approval by the Finance Director.

All purchases of ~~\$105,000~~ to \$25,000 must be approved by the Department ~~Manager~~ Director, Finance Director, and the CEO. In the absence of the CEO, the COO may approve purchases as the CEO's designee. If the Department ~~Manager~~ Director does not approve a purchase, the Finance Director need not review the purchase for approval. Likewise, if the Finance Director declines to approve a purchase, it need not be submitted to the CEO.

All purchases of more than \$25,000 must be approved by the Department ~~Director~~ Manager, Finance Director, the CEO, and the Board, in that order. SWT approves payments monthly at the regular scheduled Board meetings. The CEO may also request that legal counsel review and approve any purchase, contract, or request for proposals.

2.2 Original Contract

When a proposed contract is \$25,000 or less, the CEO may approve and sign the contract on behalf of SWT.

When a proposed contract exceeds \$25,000, the contract must be approved by the Board. Once authorized, the CEO will execute the contract.

2.3 Contract Amendments

If the original contract is more than \$25,000, then any contract amendment for more than \$25,000 must be submitted to the Board for approval. The CEO may sign any other amendment to the contract.

If the original contract was \$25,000 or less, then any contract amendment that will bring the proposed amended contract to more than \$25,000 must be submitted to the Board for approval. The CEO may sign any other amendment to the contract.

For change orders to construction contracts and other contracts that provide for payment as work is performed, the Commission may grant the CEO authority to approve change orders prior to submission to the Commission. Such approval shall specify a particular percentage of the original contract or up to a specific amount per change order, subject to a total maximum of changes order that can be approved by the CEO without prior Commission approval.

2.4 Sole Source Procurement

Sole source procurements of \$25,000 or less must be approved by the CEO or his/her designee. Sole source procurements of more than \$25,000 must be approved by the Board.

3.0 BUDGET-RELATED MATTERS

3.1 Budget

The responsibility to adhere to a departmental budget lies with that department's manager. The Finance Department will provide an itemized Board-approved budget to each department to follow when coding expenditures. Expenditures shall be coded to the correct account number based on the type of expenditure, not on the amount of budget remaining. Failure to code properly skews actual expenses and provides inaccurate historical data for future budgeting. Budget amounts should not be exceeded without authorization. It is the responsibility of each department to anticipate budget overages and present this information to the CEO, who may ask the Board for approval to transfer funds to that department's budget or ask for approval to move items within the department's budget. Internal budget meetings may, as necessary, be held periodically throughout the year to monitor the current-year activity and anticipate any significant budget issues.

3.2 Capital Assets (Capital Outlays)

An item is considered a capital asset or capital outlay when it is a tangible asset, has a useful life of more than one year, has a value of at least \$5,000, and will be capitalized in accordance with SWT Capital Asset Policy. Items that cost less than \$5,000 and add value to an existing capital asset may also be considered capital assets and capitalized in accordance with the policy. (e.g., items used to refurbish a bus).

It is in the best interest of SWT to maintain capital asset records for financial reporting, as well as for general accountability to our taxpayers. Any item meeting all of the criteria identified above should therefore be coded as a capital outlay when purchased. One-time capital-outlay purchases of less than \$5,000 may also be coded to capital outlay, so that they will not be charged against annual operating subsidy calculations.

3.3 Inventory Assets

Certain items are tangible assets and have a useful life of more than five years but nonetheless do not meet the requirements for a capital asset. These assets must be recorded and maintained in the equipment inventory system. Examples of inventory assets include computers, wireless phones, copiers, faxes, small tools, etc.

Vehicle maintenance inventory and parts must be recorded and maintained in the vehicle maintenance system by the Vehicle Maintenance Manager.

3.4 Credits or Returns

Any department that returns an item must provide information to the Finance Department referencing the original purchase-order number and an account number so that credit can be applied to the proper account. In some cases, the refund will not be credited to the expense account but rather to a general refund-and-reimbursement account, such as if the refund occurs after the year that the expense was incurred.

3.5 Authorizing Payment of Certain Claims by CEO Without Prior Commission Approval

The Commission may from time to time adopt a Resolution authorizing the payment of certain claims by the CEO without prior Commission approval. Such claims may include contracted items (utilities, rent, **land**, conference and **related** travel expenses, construction, etc.); payroll liabilities; postage; petty cash, licenses and fees; tickets paid by registration fees; employee expenses; amounts due to other government agencies; refunds; programed professional performances; invoices which offer discounts or have interest added; payments to vendors not allowing charge accounts; motor vehicle registrations; insurance; and payments to comply with agreements, purchases, or invoices which contain a fixed time for payment.

4.0 CONTRACTS FOR PURCHASE OF SUPPLIES, MATERIALS, AND EQUIPMENT, RENTAL OF EQUIPMENT, AND CONSTRUCTION, ALTERATION, REPAIR, AND MAINTENANCE

SWT's contracts and purchases must conform to requirements applicable a party to the JPA. Minn. Stat. § 471.59, subd. 3. SWT is therefore subject to Minnesota Statutes section 471.345, which governs "Contracts" entered into by municipalities. Section 471.345, subdivision 2, defines a "Contract" as an agreement to sell or purchase supplies, materials, or equipment, to rent equipment, or to construct, alter, repair, or maintain real or personal property.

Under no condition shall an order be divided into two or more smaller orders in an attempt to circumvent solicitation and selection requirements.

Note that the dollar amounts mentioned below **exclude** the tax on such items.

4.1 Quick Reference Guide to Contracts Governed by Section 471.345

Value of Contract	Solicitation Process
Less than \$5,000	Open market (quotations not required)
\$5,000–\$25,000	Written quotations required

\$25,000.01–\$175,000	Two written quotations or sealed bids required
Greater than \$175,000	Sealed bids required

Note: The CEO's approval authority extends to contracts up to \$25,000. Any contract over \$25,000 must be approved by the board. Approval authority is distinct from the required selection process under section 471.345, which allows all Contracts of \$25,000 or less to be made by quotation or on the open market.

4.2 Contracts on the Open Market

- (a) Contracts of less than \$5,000 may be made on the open market without quotations.
- (b) For purchases of \$5,000 to \$25,000, written quotations are required. Verbal quotations are acceptable only with the prior approval of the CEO. When the quotations are verbal, they should be documented in a writing that lists the contact person and phone number, the amount of quotation, and any other pertinent information.

4.3 Contracts Requiring Quotations or Sealed Bids

If contracts are estimated to exceed \$25,000 but not to exceed \$175,000, the contract may be made either upon sealed bids or by direct negotiation based on quotations. Minn. Stat. § 471.345, subd. 4. If direct negotiation is used, SWT must obtain at least two quotations. These quotations should generally be in writing, and a requestor who receives a verbal quotation must document the quotation in writing and on the requisite purchase order. All such quotations, along with the purchasing documents, must be forwarded to the Finance Department to keep on file for one year from the date of purchase. The quotations shall be kept with the payment voucher.

4.4 Contracts Requiring Sealed Bids

- (a) For contracts over \$175,000, SWT shall advertise for sealed bids. The originating department must ensure that the following steps are taken:
 - (i) Make sure that funds have been appropriated for this contract.
 - (ii) Make proper publication in the official SWT newspaper(s).
 - (iii) Distribute terms, conditions, and specifications, and answer any bidder questions.
 - (iv) Open sealed bids at an appropriate time and place, and then tabulate.
 - (v) Award the contract to the lowest responsible bidder. Minn. Stat. § 412.311, subd. 1.
 - (vi) In the event a low bidder is not recommended, fully document the reason(s).
 - (vii) Prepare and present to the Board a request for approval of the award. The contract shall be signed by the CEO and a Board Chairperson. The signed resolution must be maintained.

- (b) SWT has a legal mandate to award contracts to the lowest responsible bidder. Submitted bids are deemed an offer to contract and are not subject to negotiation.
 - (i) Responsiveness means that the bidder offered to provide the product or service requested in the specification. A bid that offers something other than what the specifications described may be considered “nonresponsive.” A bid may also be considered “nonresponsive” if the vendor has failed to follow the specified procedures (e.g., by not including a requested bond or by submitting the bid after the deadline). Small deviations, such as a typographical error, would not always be sufficient reason to declare a bid “nonresponsive.” However a typo on the statement of the amount should be referred to the CEO for a determination.
 - (ii) Responsibility depends on whether the bidder is capable of performing the work or delivering the product or service requested. A determination of responsibility requires findings that they have the necessary equipment or facilities needed and that they have a track record of sound performance. One way to determine the track record of sound performance is to ask bidders to provide references for similar work or customers.
 - (iii) If the contract is for construction, the contractor must adhere to any responsibility requirements set out in the solicitation document and must satisfy statutory “minimum criteria.” Minn. Stat. § 16C.285, subs. 2(a), (3).
- (c) Data submitted by a business in response to a request for bids is private until the time that bids are due, at which time the name of the bidder and the bid amount becomes public. Minn. Stat. § 13.591, subd. 3(a). All other data in the bid, except trade secret data as classified in Minnesota Statutes section 13.37, becomes public after completion of the selection process. *Id.*

4.5 “Best Value” Selection for Construction, Improvement, Repair, or Maintenance Contracts

- (a) For construction, improvement, repair, or maintenance contracts of any amount, a request for proposals may be used instead of quotations or sealed bids and the contract may be awarded to the contractor offering the “best value.” Minn. Stat. §§ 412.311, subd. 2, 471.345, subs. 3a, 4a, 5.
- (b) If the contract is for construction, the contractor must satisfy the “minimum criteria” set out in Minnesota Statutes section 16C.285, subdivision 3, defining “responsible contractor.”
- (c) To use the best-value selection method, SWT’s request for proposals must explain the relative weight of price and other selection criteria (including any interview), and SWT must apply these weighted selection criteria in making its award. Minn. Stat. § 16C.28, subd. 1(a)(c).
- (d) Data submitted by a business in response to a request for proposals is private until the time that proposals are due, at which time the name of the responder becomes public. Minn. Stat. § 13.591, subd. 3(b). All other data in the proposal, except trade secret

data classified in Minnesota Statutes section 13.37, becomes public after completion of the selection process. *Id.*

4.6 Sourcing through the Cooperative Purchasing Venture

Under Minnesota Statutes section 471.59, governmental agencies may jointly exercise powers that they have individually. Pursuant to the statute, SWT maintains a membership with the State's Cooperative Purchasing Venture (CPV). As a member of the CPV, SWT can purchase from vendors under State contracts. The advantages of participating in joint ventures are that the bid process is already completed and the prices are often more competitive.

For contracts estimated to exceed \$25,000, SWT must *consider* the availability, price, and quantity of supplies, material, and equipment available through the CPV before purchasing through another source. Minn. Stat. § 471.345, subd. 15.

5.0 CONTRACTING FOR PROFESSIONAL SERVICES

The purpose of this section is to provide guidance in the procurement of professional services for SWT.

5.1 General requirements

This procedure applies to professional services sought to be obtained for more than \$25,000, including:

- (a) Professional services for planning, analysis, and feasibility studies.
- (b) Legal, financial, auditing, advertising, personnel, training, and other advisory services.
- (c) Engineering services and other similar services.

5.2 Statement of Work

The single most important document of a professional services contract is the Statement of Work (SOW), as it:

- Provides management with an outline of the project, the work to be done in-house, and the work to be done by the consultant.
- Provides the basis for soliciting proposals.
- Provides the basis for the administration and management of the resulting contract.

The SOW must:

- (a) Outline the nature of the work and level of effort that will be required of the consultant.
- (b) Identify the goals, objectives, criteria, and issues associated with the project. If the plans and objectives are to be developed as part of the project, describe how they are to be finalized and by whom.

- (c) Describe tasks to be accomplished, describe services and information that will be provided by the consultant, SWT staff, or other parties during the conduct of the project, and provide a time schedule for completion of each task.
- (d) Describe the proposed budget and consultant hours required to complete each work task.
- (e) Ensure that all proposals can be prepared on a common basis so as to allow open and free competition between responders.
- (f) Identify the project manager.

5.3 Solicitation

(a) ***General***

The Request for Proposals (RFP), together with the SOW, should provide all of the information that a prospective responder needs to submit a proposal. A RFP need not set out all detailed requirements, and responses may be negotiated to achieve best value.

(b) ***Prospective Responders***

While solicitation may be sent to a minimum of two prospective responders, it is highly recommended that the RFP be sent to any metropolitan area firms or individuals capable of providing the needed services. When special expertise is necessary, national firms or individuals should also be invited to submit proposals.

(c) ***Advertisement***

While not required per se, it is recommended that the solicitation of proposals be advertised in an appropriate publication, such as the State Register, trade journals, and/or the official newspaper when there are only a limited number of known consultants or when the cost of the proposed services represents an appreciable expenditure.

5.4 Ethics

Should SWT use a consultant or firm to prepare or assist in the preparation of a SOW or RFP, that consultant should not be permitted to submit a proposal in response to the SOW/RFP since it would be or would have the appearance of unfair competition. Deviation from this policy requires the approval of the CEO.

5.5 Evaluation of Proposals

(a) ***General***

The need to positively demonstrate that a particular responder should be awarded the contract is a difficult proposition because the evaluation must be based on qualitative data. Accordingly, the guidelines herein attempt to provide a systematic approach to the selection of the most deserving responder.

(b) **Competency**

Contracts shall be made only with responsible consultants who have the capability to successfully fulfill the contractual requirements. Consideration shall be given to their past performance and experience related to technical resources, their financial capacity to complete the project, the availability of the specified personnel during the contractual period, and other appropriate criteria.

(c) **Selection Team**

- (1) Proposals for services costing over \$25,000 should always be evaluated by a selection team.
- (2) Proposals for services costing \$25,000 or less do not require the use of a selection team, but a selection team is nonetheless advisable.
- (3) The selection team should consist of the project manager, specified in the SOW, as team chair and at least one other member, who may be drawn from:
 - (i) Representatives of other SWT functions who have a direct interest in the project.
 - (ii) SWT staff members whose expertise will have value in the selection of the responder.
 - (iii) Peers from other communities with special expertise.
- (4) The project manager is responsible for:
 - (i) Organizing the selection team.
 - (ii) Providing its members with copies of the RFP, proposals, evaluation forms, and other needed data.
 - (iii) Scheduling of meetings.
 - (iv) Scheduling responder interviews, should the selection team desire.
 - (v) Including the consensus of the evaluation team in the recommendation memorandum.

(d) **Recommendation**

Upon completion of the evaluation process, the project manager shall prepare a recommendation for approval in accordance with the procedures in this section.

(e) **Data Privacy**

Data submitted by a business in response to a request for proposals is private until the time that proposals are due, at which time the name of the responder becomes public. Minn. Stat. § 13.591, subd. 3(b). All other data in the proposal, except trade secret data as classified in Minnesota Statutes section 13.37, becomes public after completion of the selection process. *Id.*

5.6 Long-Term Contracts

When dealing with service providers with whom SWT may wish to establish a long-term relationship, the formal RFP process for that service must be initiated at least every five years. Review at that point in time shall not preclude a current service provider from resubmitting for consideration. Examples of service providers with long-term relationships would include legal services and audit services.

6.0 TRAVEL POLICY

The Commission has adopted a separate Meals and Travel Policy.

7.0 DISPOSAL OF PROPERTY

- (a) SWT may dispose of equipment or excess materials in a variety of ways:
- (1) The CEO is authorized to scrap used parts and equipment which are being replaced and deemed of no value. If the item has a capital-asset record, the Finance Department must be notified to remove the item from the system.
 - (2) Sale of all other surplus SWT personal property must be handled in conformance with the Municipal Contracting Law Minn. Stat. § 471.35. Surplus Property with a Total Estimated Value of Less than \$25,000.
 - (a) If the value of the surplus property is estimated to be \$25,000 or less, the CEO may sell it either upon quotation or in the open market. If the surplus property is sold based upon quotation, the CEO shall obtain, so far as practicable, at least two quotations which shall be kept on file for a period of at least one year after their receipt.
 - (b) Surplus Property with a Total Estimated Value between \$25,000 and \$175,000. If the value of the surplus property is estimated to exceed \$25,000 but not to exceed \$175,000, the CEO may sell the surplus property upon sealed bids or by direct negotiation, by obtaining two or more quotations for the sale when possible. All quotations obtained shall be kept on file for a period of at least one year after their receipt.
 - (c) Surplus Property with a Total Estimated Value over \$175,000. If the value of the surplus property is estimated to exceed \$175,000, the CEO shall solicit sealed bids by public notice in the manner and subject to the requirements of the law governing contracts by the Commission.
 - (d) Notwithstanding any other requirement of this section, the Commission may contract to sell supplies, materials, and equipment which is surplus, obsolete, or unused using an electronic selling process in which purchasers compete to purchase the surplus supplies, materials, or equipment at the highest purchase price in an open and interactive environment pursuant to Minnesota Statutes § 471.345 Subd. 17.

- (3) SWT may transfer personal property to another public corporation for public use, regardless of whether SWT receives value in exchange. Minn. Stat. § 471.85.
- (b) Employees are normally not eligible to purchase SWT property. However, Minnesota Statutes section 15.054 allows property or materials owned by SWT and not needed for public purposes to be sold to an employee of SWT after reasonable public notice at public auction or by sealed bid if the employee is not directly involved in the auction or sealed-bid process. An employee may purchase no more than one vehicle at a single SWT auction.
- (c) Disposal of a capital asset requires Board approval.

8.0 DISPUTE AND PROTEST PROCEDURES

The following dispute and protest procedure is available if required by law, if required by any grant providing funds (including FTA funds) associated with a disputed solicitation or award, or if provided for in a disputed solicitation or the solicitation related to a disputed award. SWT will endeavor to fairly resolve protests that conform to the requirements of these procedures but will not allow protesters to exploit protest procedures to obtain a competitive advantage or obstruct procurement.

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

8.1 Review of Protests

A protester must exhaust all administrative remedies with SWT before pursuing a protest with the FTA or other funding entity if such process is available. Reviews of protests will be limited to:

- (a) SWT's failure to have or follow its protest procedures, or its failure to review a complaint or protest;
- (b) violations of Federal law or regulation; and
- (c) violations of State or local law or regulation.

If the purchase is funded by the FTA, an appeal to the 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 the FTA.

8.2 Definitions

The words defined in this section shall have the following meanings:

- (a) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term includes all functions that pertain to obtaining 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 the responder 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 responder 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.

8.3 Initial Protest Procedures

An interested person desiring to protest must file a written protest, by certified mail, with the SWT contact person designated in SWT's solicitation, with a copy to the COO. If the contact person cannot be identified in the solicitation or is otherwise unavailable, the protest should be filed with the COO at 13500 Technology Drive, Eden Prairie, MN 55344.

The written protest must include the following information:

- (a) The protester's name, company name, address, telephone and fax numbers, and, if available, email address.
- (b) The project name and number (if any), as well as the contract name and number (if any) or other solicitation identifiers.
- (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.

8.4 Consideration by the COO

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

8.5 Review by the CEO

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

The CEO shall not be required to hold any hearing and may take action on the basis of such review and investigation as he or she deems appropriate in his or her discretion. The CEO may, as he or she sees fit, accept further written submissions, take testimony, or make a transcript of hearings or proceedings. The CEO will issue a written decision no later than fourteen (14) working days after receipt of the request for review.

8.6 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 opening of bids or before the closing date for the receipt of proposals. If a solicitation-phase protest is not filed before these dates, a protester's right to bring a protest is waived.
- (c) A request for CEO review of the COO's decision must be filed within three (3) working days after the protester's receipt of the COO's decision.
- (d) Failure to file a protest or request CEO review within the time periods indicated shall result in a waiver of the protest.

8.7 Deviations

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

8.8 Duties of the Designated Contact Person

Upon receiving a written protest, the designated contact person will give the protest to the COO for review and consideration.

In the case of a timely solicitation-phase protest, the designated contact person initially will determine if the scheduled bid opening or proposal due date should be extended pending resolution of the protest and, if so, will issue a notification to all bidders or responder. The designated contact person will notify funding authorities (such as the FTA) upon protest filing and as required by rule or regulation. Notification to the 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.

8.9 Suspension of Procurement

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

8.10 Records Retention

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



SOUTHWEST TRANSIT

MEMORANDUM

To: SouthWest Transit (SWT) Commission
From: Mike Dartt, Facility Maintenance Manager
Date: September 16, 2020
Subject: Eden Prairie Garage Radiant Heater Repairs and Replacements:

REQUESTED ACTION

That the SWT Commission authorize its Chief Executive Officer to execute an agreement with UHL Company in the amount not to exceed \$54,826 for the Eden Prairie Garage Radiant Heater Repairs and Replacements.

BUDGET IMPACT

Staff recommends that funding for this project come from NTD funds that were going to be used for Chanhassen Transit Station (CTS)PM repairs. Walker Consultants suggest that the heaters at the EPG need replacement this year and the PM at CTS can wait until 2021.

BACKGROUND

The garage has many radiant heaters throughout the building, many are 25 plus years old. They are a great efficient way to heat the facility. There are many that have outlived their useful life, started rusting thru and have become a safety concern. Others we will be able to repair with new venting and heat shields and prolong their life.

SWT invited four mechanical contractors to bid the project and advertised it on our website. We have received 2 bids:

<u>Contractor</u>	
Guardian Mechanical	\$64,980.00
UHL	\$54,826.00
MMC	No Bid
Gilbert Mechanical	No Bid

RECOMMENDATION

That the SWT Commission authorize its Chief Executive Officer to execute an agreement with UHL Company in the amount not to exceed \$54,826 for the Eden Prairie Garage Radiant Heater Repairs and Replacements.

New Business



SOUTHWEST TRANSIT

To: SouthWest Transit Commission
From: Joshua A. Dorothy, General Counsel
Date: September 16, 2020
Subject: Conflicts of Interest, Gift Ban, Open Meetings, and Data Practices

REQUESTED ACTION:
None. For information only.

BUDGET IMPACT:
None. For information only.

BACKGROUND:
Enclosed is a document for your later reference regarding conflicts of interests, gift ban, and open meetings. At the September 25, 2020 meeting, we will review these three topics, as well as data practices, as they relate to Commission members as well as staff and SouthWest Transit as an organization.

RECOMMENDATION:
None. For information only.

I. Conflicts of Interest

A. PROHIBITED CONTRACTS

1. **A public officer who is authorized to take part in making a contract may not voluntarily have a personal financial benefit or personally benefit financially from the contract.**

Minn. Stat. § 471.87

Except as authorized in section 123B.195 or 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.

- “Public officer” is not defined by the statute. Caselaw and attorney general opinions provide that a mayor, councilmember, or other elected official is a “public officer.” A “public officer” may also include appointed officers and employees who are able to influence the decision-making process.
 - To be prohibited, the public officer must simply be authorized to take part in making the contract in his or her official capacity, which includes discussing and deliberating on the contract. It does not matter whether the officer abstains from voting—the contract is still prohibited if the other requirements of the statute are met. Minn. Op. Atty. Gen. 90e-6 (June 15, 1988).
 - A contract made in violation of section 471.87 is void.
2. **A councilmember may not have a direct or indirect interest in a contract made by the council.**

Minn. Stat. § 412.311

Subd. 1. Except as provided in sections 471.87 to 471.89, no member of a council shall be directly or indirectly interested in any contract made by the council.

- Ownership Interest. An impermissible direct or indirect interest may arise when a councilmember is:
 - An officer, director, or shareholder of a corporation with which the council makes a contract;
 - A partner in a partnership with which the council makes a contract;

- A member of an association or joint venture with which the council makes a contract; or
- A member of a family membership with which the council makes a contract.
- Employment. An impermissible conflict of interest does not exist in every instance in which a voting councilmember has an employment relationship with the contracting party. Minn. Op. Atty. Gen., 90b-7 (Oct. 7, 1976). The situation must be addressed by the city council on a case-by-case basis. A conflict may not exist when the following factors are present:
 - The councilmember has no ownership interest in the company;
 - The councilmember is neither an officer nor a director of the company;
 - The councilmember is compensated on a salary or hourly wage basis and receives no commission, bonus, or other remuneration; and
 - The councilmember is not involved in supervising the performance of the contract on behalf of his employer and has no other interest in the contract.
- Section 412.311 bars participation in council action “by one directly interested in the contemplated contract, regardless of his good faith and notwithstanding the fairness or reasonableness of the agreement involved.” *Singewald v. Minneapolis Gas Co.*, 142 N.W.2d 739 (Minn. 1966).
- A contract made in violation of section 412.311 is not necessarily void in all cases. The Minnesota Supreme Court has suggested that a contract is not void where the interested councilmember’s vote is not necessary to approve the contract: “We do not subscribe to the principle that council action should be vitiated in situations such as this if the vote of the councilman directly or indirectly interested in the contract would not be determinative of the action taken.” *Singewald v. Minneapolis Gas Co.*, 142 N.W.2d 739 (Minn. 1966).

3. Minn. Stat. § 471.88 provides several exceptions to the prohibitions in Sections 471.87 and 412.311. Relevant exceptions are discussed below.

Minn. Stat. § 471.88

Subd. 1. The governing body of any . . . city, by unanimous vote, may contract for goods or services with an interested officer of the governmental unit in any of the following cases.

Subd. 5: A contract for which competitive bids are not required by law.

- Minn. Stat. § 471.345, the Uniform Municipal Contracting Law, requires competitive bids if the amount of a contract is estimated to exceed \$175,000.

- For purposes of this law, a “contract” is “an agreement entered into by a municipality for the sale or purchase of supplies, materials, equipment or rental thereof, or the construction, alteration, repair, or maintenance of real or personal property.” Minn. Stat. § 471.345, subd. 2.
- Under Minn. Stat. § 471.89, a contract with an interested officer made under this exception is void unless the city complies with the following procedure:
 - Resolution. The council must authorize the contract in advance “by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere.” If there is an emergency and the contract cannot be authorized in advance, the council must later authorize the payment of claims under the contract by a resolution that also states the facts of the emergency. Minn. Stat. § 471.89, subd. 2.
 - Affidavit. Before a claim is paid under such a contract, the interested officer must file an affidavit with the city clerk stating the following:
 - (a) the name of the officer and the office held by the officer;
 - (b) an itemization of the commodity or services furnished;
 - (c) the contract price;
 - (d) the reasonable value;
 - (e) the interest of the officer in the contract; and
 - (f) that to the best of the officer’s knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources.

Minn. Stat. § 471.89, subd. 3.

Subd. 2: The designation of a bank as an authorized depository for public funds, or as a source of borrowing, upon certain conditions.

Subd. 3: The designation of an official newspaper, or publication of official matters therein, when it is the only newspaper complying with statutory requirements relating to the designation or publication.

Subd. 4: A contract with a cooperative association of which the officer is a shareholder.

Subd. 6: A contract with a volunteer fire department for the payment of compensation to its members or for the payment of their retirement benefits.

Subd. 13: Rental of space in a public facility at a rate commensurate with that paid by other members of the public.

Subd. 15: An employee of a utility is not precluded from continuing to serve as a city councilmember during the term of a franchise agreement or contract between the utility and the city of the councilmember abstains from voting on official action relating to the franchise agreement or contract and discloses the reason for the abstention in the minutes.

B. CONFLICT OF INTEREST IN NON-CONTRACT SITUATIONS

1. **Common law provides that public officials are disqualified from participating in proceedings in a decision-making capacity when they have a direct interest in the outcome.**

- To determine whether an official is disqualified, courts look to the specific facts of each case. In *Lenz v. Coon Creek Watershed District*, 153 N.W.2d 209 (Minn. 1967), the Minnesota Supreme Court identified five factors to consider in determining whether an interested official is disqualified:
 1. The nature of the decision being made;
 2. The nature of the interested person's financial interest;
 3. The number of interested officials;
 4. The need, if any, for the interested person to make the decision; and
 5. The other means available, if any, such as the opportunity for review, that serve to insure that the officials will not act arbitrarily to further their selfish interests.
- Unlike the statutory prohibitions against interests in contracts, discussed above, a disqualifying interest under common law does not affect the result if the requisite majority, without the interested official, takes action. Actions for which for which a disqualified member votes are void where the vote of that member is necessary to make up the number of votes required to take action.
- Councilmembers who have a disqualifying interest in any matter generally are excluded in counting a quorum. Matters of this nature can be approved if a quorum is present without counting the disqualified member and those who are not disqualified provide sufficient votes to approve action, e.g., a majority of a quorum, or four votes in the case of zoning.
- Caselaw and Attorney General opinions:
 - *Lenz v. Coon Creek Watershed District*, 153 N.W.2d 209 (Minn. 1967): An order to improve a creek channel was not invalid, even though four out of five managers of the watershed district owned land affected and benefited by the improvement. The court noted that the managers must be residents

of the watershed district over which they have jurisdiction and that a large improvement would probably benefit land owned by some or all of the managers. The court also noted that there were adequate procedures for review of decisions made by them.

- *E.T.O., Inc. v. Town of Marion*, 375 N.W.2d 815 (Minn. 1985): A town supervisor was disqualified from eligibility to vote on the question of the renewal of a liquor license where the supervisor had stated prior to his election to the town board that land which he owned across from the bar had been de-valued by \$100,000 since the bar opened. In applying the *Lenz* factors, the court noted that the supervisor's interest was large, he was the only supervisor with a conflict of interest, and there was no reason requiring him to make a decision. The court also noted that the supervisor's interest was much greater than that of the officials in *Lenz*.

Establishment of Roads

- *Twp. Bd. of Lake Valley Twp., Traverse Cnty. v. Lewis*, 234 N.W.2d 815 (Minn. 1975): A town board supervisor's sending to another a petition to circulate establishing a town road did not disqualify the town supervisor from voting on the matter. There was no evidence that any supervisor had an interest in the establishment of the road.
- *Webster v. Bd. of Cnty. Comm'rs of Cnty of Washington*, 2 N.W. 697 (Minn. 1897): A county board member who owned land adjoining a proposed county highway was not disqualified from voting on the establishment of the highway.

Church Affiliation

- *Rowell v. Bd. of Adjustment*, 446 N.W.2d 917 (Minn. App. 1989): A member of a board of adjustment was not disqualified from voting on the grant of a variance to a church of which he was a member. The court recognized that the board member had a non-pecuniary interest in the general welfare of the church not likely to be contrary to the interests of the general public, and the nature of the member's pecuniary interest in the church was such that it could not reasonably have influenced his vote.

Family Interests

- *Nolan v. City of Eden Prairie*, 610 N.W.2d 697 (Minn. App. 2000): A city councilmember who voted to approve variances did not have a disqualifying conflict of interest. The fact that the councilmember's brother represented the landowner petitioning for the plat was not a direct interest in the plat approval, and even if he did have a direct interest, application of the *Lenz*

factors leads to a conclusion that the councilmember was not disqualified, as he had no pecuniary interest and was not involved in any contractual way.

- The Attorney General has opined that a mayor, who, upon election, sold his interest in a limited partnership to his adult child, could participate in a council vote to purchase a building owned by that limited partnership. The facts demonstrated that the mayor's sale to his adult child removed any direct personal financial interest or benefit that the mayor had in connection to the property. Further, there was no evidence that the child would forward any benefit from the sale to the mayor. Accordingly, the Attorney General concluded that "the mayor, as a member of the city council, would, in our view, be authorized to take part in making this contract in his official capacity[.]"
- Where a contract was made with the spouse of a councilmember, and the financial proceeds of the contract benefitted the entire family, including the councilmember, the Attorney General has opined that an impermissible conflict of interest exists.

Street Vacation

- The Minnesota Attorney General has opined that a councilmember who had an interest in property abutting a street proposed to be vacated was disqualified from participating in the street vacation proceedings.

Zoning

- Whether a councilmember has a disqualifying interest in a council's zoning decision depends on the facts and circumstances of the situation, including whether the action is general (covering a large area of the city), or specific to a councilmember's property.
- The Attorney General has stated that a councilmember may not participate in council proceedings involving zoning of the councilmember's property. On the other hand, the Attorney General has also opined that a councilmember is not disqualified from voting on a rezoning of the member's father's property, which was being sold to the rezoning applicant on a contract for deed.

CUP Decision – Councilmember Bias

- *Cont'l Prop. Grp., Inc. v. City of Minneapolis* (Minn. App. 2011) (unpublished): City council action denying a CUP application was arbitrary and capricious where a voting councilmember had publicly taken a position and adopted an advocacy role in opposition to the project, which was proposed in her ward. The court noted that "the opinion of the

councilmember in whose ward a project is proposed is given substantial weight” by the other members of the council. The council’s decision would not necessarily have been arbitrary and capricious if the biased councilmember had not been allowed to participate in the decision.

C. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Minn. Stat. § 10A.07

Subd. 1. (a) A . . . local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official’s financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official’s business classification, profession, or occupation, must take the following actions:

- (1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;
- (2) deliver copies of the statement to the official’s immediate superior, if any; and
- (3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the . . . local official must orally inform the superior or the official body of service or committee of the body of the potential conflict.

- If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official must file a statement describing the potential conflict and the action taken. The official must file the statement with the council within a week of the action taken. Minn. Stat. § 10A.07, subd. 2(d).
- A “local official” is “a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.” Minn. Stat. § 10A.01, subd. 22.
- A “financial interest” means “any ownership or control in an asset which has the potential to produce a monetary return.” Minn. Stat. § 10A.07, subd. 1(b).
- An “associated business” means any organized legal entity “from which the individual receives compensation in excess of \$250, except for actual and reasonable expenses, in any month as a director, officer, owner, member, partner, employer or employee, or whose securities the individual holds worth more than \$10,000 at fair market value.” Minn. Stat. § 10A.01, subd. 5.

II. Gift Ban

A. WHAT IS PROHIBITED?

1. **Minn. Stat. § 471.895 prohibits “local officials” from receiving gifts from “interested persons.”**

Minn. Stat. § 471.895, subd. 2

An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

- A “local official” includes “an elected or appointed official of a county or city or of an agency, authority, or instrumentality of a county or city.” Minn. Stat. § 471.895, subd. 1(d).
- An “interested person” is “a person or a representative of a person or association that has a direct financial interest in a decision that the local official is authorized to make.” Minn. Stat. § 471.895, subd. 1(c).
 - The following would likely be considered “interested persons”:
 - Providers of goods and services to the city
 - Developers or owners of land subject to a land-use decision, such as zoning, platting, vacations, land alterations, local improvements, or assessments
 - Licensees (i.e., the holder of or applicant for a liquor license)
 - Director, officer, stockholder, or employee of corporation with a matter before the city
 - Partner or partnership
 - Family members
- “Direct financial interest” is not defined by the statute.
 - A rezoning of a person’s land probably would constitute a direct financial interest. Does rezoning of another’s land which increases or diminishes the value of the person’s property constitute a decision in which a person has a direct financial interest? Granting a license to a person probably constitutes a direct financial interest. Does granting a license to a competitor which affects a person’s business constitute such an interest?
 - One question not answered by the definition of interested person is that of timing. When must a person have a direct financial interest in a decision that a local official is authorized to make to be an interested person? It does not tax the imagination to foresee circumstances under which that question might be raised. For example: A person might take a local official who is a friend to lunch without ever contemplating that the person will be appearing before the local official in a

decision-making capacity. What if later, that person becomes the subject of a proceeding, such as a special assessment, which comes before a local official for a decision. Does that make the lunch a violation of the law? What if the lunch occurs one year after the decision has been made? One month?

2. Minn. Stat. § 10A.071 prohibits gifts from lobbyists or principals.

Minn. Stat. § 10A.071, subd. 2

A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.

- An “official” is defined to include “a local official of a metropolitan governmental unit.” Minn. Stat. § 10A.071, subd. 1(c). “Local official” means “a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.” Minn. Stat. § 10A.01, subd. 22.
- A “lobbyist” is defined to include an individual who is paid more than \$3,000 per year for, or spends more than \$250 per year on, attempting to influence “the official action of a metropolitan government unit, by communicating or urging others to communicate with public or local officials.” A “lobbyist” does not include an elected local official or a nonelected local official or employee of a city acting in an official capacity, with certain exceptions. Minn. Stat. § 10A.01, subd. 21.
- A “principal” is a person who spends more than \$500 per year to engage a lobbyist, or spends at least \$50,000 per year on efforts to influence “legislative action, administrative action, or the official action of metropolitan governmental units.” Minn. Stat. § 10A.01, subd. 33.

B. WHAT IS A GIFT?

- 1. For purposes of both Minn. Stat. §§ 10A.071 and 471.895, “gift” is defined as follows:**

Minn. Stat. § 10A.071, subd. 1(b)

“Gift” means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

- 2. The statutes provide several exceptions:**

- Political contributions

- Services to assist an official in the performance of official duties, such as advice, consultation, information, and communication in connection with legislation, and services to constituents. This exception seems to be more confusing than clarifying, and has been interpreted by the Ethical Practices Board to allow the giving of educational items, such as newspapers, as well as services.
- Services of insignificant monetary value.
- A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause. Section 10A.071 states simply “a plaque with a resale value of \$5 or less” and defines “plaque” as “a decorative item with an inscription recognizing an individual for an accomplishment.” Section 471.895 does not specify an amount.
- A trinket or memento costing \$5 or less.
- Informational materials of unexceptional value (specified in section 10A.071 as having a resale value of \$5 or less; section 471.895 does not specify an amount).
- Food and beverages given at a reception, meal, or meeting away from the official’s usual place of work by an organization when the official appears for a speech or to answer questions as part of a program.
- Gifts given to the members of a group, a majority of whom are not local officials, of which the official is a member.
- Gifts from family members.

3. Other than these exceptions, all gifts, including meals and beverages, are prohibited.

- The gift prohibition laws raise many questions concerning their application that are yet unanswered. Until “what is a violation” is better defined, the prudent course of action is to decline acceptance of anything that is a gift from whomever is suspected to be an interested person, a lobbyist or principal.

III. Open Meeting Law

A. GENERAL RULE

Minn. Stat. § 13D.01

All meetings, including executive sessions, must be open to the public. This includes meetings of the governing body of a statutory city and any committee, subcommittee, board, department, or commission of the city.

1. Availability of Written Materials – Minn. Stat. § 13D.01, subd. 6

- At least one copy of printed materials relating to the agenda items of a meeting prepared or distributed by or at the direction of the governing body or its employees, and (1) distributed at the meeting to all members; (2) distributed before the meeting to all members; or (3) available in the meeting room to all members, shall be available in the meeting room for inspection by the public.
- This does not include non-public data or materials relating to closed meetings.

2. Notice of Meetings – Minn. Stat. § 13D.04

- A schedule of regular meetings must be kept on file at City offices.
- If a regular meeting is held at a time or place different from that stated in the schedule of regular meetings the same notice as required for a special meeting must be given.
- Notice of the date, time, place and purpose of special meetings must be given three (3) days before the date of the meeting. A special meeting notice must provide detail about the purpose of the meeting, and the discussion at the special meeting is then confined to the purpose stated on the notice.
- Emergency meetings (requiring immediate consideration of a matter) may be held upon good faith efforts to provide notice, including the subject of the meeting, to each news medium that has filed a written request for notice.
- Notice requirements apply to closed meetings.

3. Meetings by Telephone or other Electronic Means – Minn. Stat. § 13D.021

- A meeting that is governed by the Open Meeting Law may be conducted by telephone or other electronic means so long as the following conditions are met:

(1) the presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines that an in-person meeting is not practical or prudent because of a health pandemic or a declared emergency;

(2) all members of the body participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;

(3) members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration;

(4) at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration; and

(5) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

- If it is determined that the above conditions are met, the meeting may be so conducted. To the extent practical, the City should allow a person to monitor the meeting electronically from a remote location.
- If telephone or another electronic means are used to conduct a regular, special, or emergency meeting, the City must still:
 - provide notice of the regular meeting location,
 - provide notice the fact that some members may participate by telephone or other electronic means, and
 - to the extent possible that the meeting may be monitored electronically from a remote location, must provide notice of how to do so.

4. Meetings by Interactive TV – Minn. Stat. § 13D.02

- A meeting that is governed by the Open Meeting Law may be conducted by interactive television so long as the following conditions are met:

(1) all members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;

(2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;

(3) at least one member of the body is physically present at the regular meeting location;

(4) all votes are conducted by roll call so each member's vote on each issue can be identified and recorded; and

(5) each location at which a member of the body is present is open and accessible to the public.

- A meeting conducted by interactive television will still satisfy the requirements if a member participates from a location that is not open or accessible to the public if the member has not participated more than three times in a calendar year from a location that is not open or accessible to the public, and that member is serving in the military and is at required drill, deployed, or on active duty or the member has been advised by a health care professional against being in a public place for personal or family medical reasons, which only applies when a state of emergency has been declared under section 12.31, and expires 60 days after the removal of the state of emergency.
- Note that a meeting by interactive television does not require the determination that “an in-person meeting is not practical or prudent because of a health pandemic or a declared emergency.” This is different than a meeting conducted by telephone.
- If interactive television is used to conduct a regular, special, or emergency meeting, the City must still:
 - provide notice of the regular meeting location,
 - provide notice of the location of any site where a member of the public body will be participating by interactive television, and
 - to the extent possible that the meeting may be monitored electronically from a remote location, must provide notice of how to do so.
- The minutes for a meeting conducted by interactive television must reflect the names of any members appearing by interactive television and state the reason or reasons for the appearance by interactive television.
- In a recent advisory opinion, IPAD determined that Skype was analogous to interactive television for purposes of the Open Meeting Law. A meeting where a member attended via Skype from a remote location did not violate the Open Meeting Law where all the requirements applicable to interactive television were met.

5. **Non-Public Data – Minn. Stat. § 13D.05**

- Non-public data may be discussed at an open meeting if it relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the business before the public body.

- Exception: A meeting must be closed if expressly required by other law or if the following types of data are discussed:
 - Identification of alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
 - Active investigative data and internal affairs data relating to law enforcement personnel.
 - Educational, health, medical, welfare and mental health data that are not public data.
 - An individual's medical records.

6. Other Closed Meetings – Minn. Stat. § 13D.05

- Labor negotiations (meetings are subject to certain procedures, including tape recording).
- Preliminary consideration of allegations or charges against an individual subject to the public body's authority must be closed, unless the subject of the inquiry requests an open meeting. If discipline may be warranted, further meetings relating to the matter must be open.
- Evaluation of the performance of an individual who is subject to the body's authority may be closed unless the individual requests the meeting be kept open.
 - The meeting can only be closed to the extent necessary for the performance evaluation. IPAD has recently stated that "once a public body has determined that the employee will remain employed with a possible change in pay based on his performance, and the discussion logically turns to the specifics about the employment agreement, the council is no longer evaluating the performance of an individual per section 13D.05, subd. 3(a). In these circumstances, contract negotiations must be done in an open meeting." (IPAD Op. 15-002).
- To determine the asking price for real or personal property to be sold by the government entity; to review confidential or nonpublic appraisal data under section 13.44, subdivision 3; and to develop or consider offers or counteroffers for the purchase or sale of real or personal property. The closed session under 4, 5 and 6 must be tape recorded by the city and preserved for eight years. The property subject to the discussion under this paragraph must be specifically identified prior to the closed session. Any agreement reached under a meeting closed under 4, 5 and 6 is contingent on approval by the council at an open meeting. The actual purchase or sale must be approved in an open session.
- To receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public

safety or compromise security procedures or responses. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting. Before closing a meeting under this paragraph, the public body, in describing the subject to be discussed, must refer to the facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting. A closed meeting must be tape recorded at the expense of the governing body, and the recording must be preserved for at least four years.

- If permitted by the attorney-client privilege.
 - The Minnesota Supreme Court in *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002) required that there be a need for absolute confidentiality in order to close a meeting under the attorney-client privilege. In *Prior Lake*, the applicant for a conditional use permit stated in writing that it “may seek legal action to ensure proper handling and compliance of this matter, as well as legal action to recover lost revenues and/or costs incurred as a result of the action taken by the City of Prior Lake.” The Supreme Court, in balancing the policies behind the Open Meeting Law and the attorney-client privilege, determined that such balancing did not dictate the need for absolute confidentiality in this case. The mayor and councilmembers who met in closed session to seek legal advice were determined to have violated the Open Meeting Law. Even if the council is seeking legal advice, the matters to be discussed in closed session must require absolute confidentiality, such as trial strategy or settlement discussions.
 - In *Brainerd Daily Dispatch vs. Jim Dehnen, et al.*, 693 N.W.2d 435 (Minn. App. 2005), the court of appeals applied the *Prior Lake* case and held that a meeting may be closed pursuant to the attorney-client privilege if the council is seeking legal advice for a threatened lawsuit and the need for confidentiality exists. In that case, the newspaper filed suit seeking a court order requiring the Brainerd City Council to comply with the Open Meeting Law. The Brainerd Area Coalition for Peace (BACP) had filed for a permit to participate in 4th of July parade. Brainerd denied the permit, and BACP threatened litigation a number of times in writing. The City Council met in closed session for a private consultation with an attorney appointed by its insurer. Following the Supreme Court’s ruling in *Prior Lake* that the attorney-client privilege should be determined on a case-by-case basis, the court of appeals weighed the interests of the city’s need for the confidentiality of the attorney-client privilege against the purposes of the Open Meeting Law. The court relied on the analysis in *Prior Lake* where the Supreme Court held that threatened litigation does not automatically equal a need for absolute confidentiality; rather, the need for absolute confidentiality is the justification for closing an otherwise open meeting and must be demonstrated. One factor the *Brainerd* court looked at was whether the private meeting would contribute to litigation strategy. Based on this analysis the court held that “the need to have confidential discussions with specially appointed counsel and to discuss strategies to defend against potential claims and avoid financial damages outweighs the purposes of the Minnesota

Open Meeting Law in this case.” The court concluded that the City properly “invoked the attorney-client privilege in good faith and not to thwart the purpose of the Minnesota Open Meeting Law.”

7. State Reasons for Closing a Meeting – Minn. Stat. § 13D.01, subd. 3

- Before a meeting is closed, a statement must be made on the record as to the specific grounds permitting the meeting to be closed and describing the subject to be discussed.
- Assertion of the attorney-client privilege is not sufficient, by itself, as a statement for a closed meeting. In *Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. App. 2004), the court of appeals held that a county’s statement that the meeting was closed “under the attorney-client privilege to discuss pending litigation” was not sufficiently particularized to meet this requirement of the Open Meeting Law.

8. Penalties – Minn. Stat. § 13D.06

- A person who intentionally violates the law is subject to personal liability in an amount not to exceed \$300 for a single occurrence. This personal liability may not be paid by the City.
- A person who has been found to have intentionally violated the law in three or more actions forfeits any further right to serve on the governing body or in any other capacity with the public body for a period of time equal to the term of office such person was then serving. An “action” means any proceeding in any court of Minnesota.
- In addition to the above, the court may award reasonable costs, disbursements and attorneys’ fees of up to \$13,000 to any party in an action. The City may pay the costs, disbursements or attorneys’ fees incurred by or awarded against any of its members in an action under the law.
- No monetary penalties or attorneys’ fees may be awarded against a member of a public body unless the court finds that there was an intent to violate the Open Meeting Law.

B. WHAT IS A MEETING?

1. In general

- *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983): Seminar-type meetings or discussions were attended by the school board and various administrators of the school system. The presentations were made by school administrators to provide information on topics relating to school

administration. On appeal, the Supreme Court addressed whether gatherings of members of a school board and administrators for the purpose of providing the board with background information concerning issues facing the educational system in general and the school district in particular, where the board took no official action to resolve specific problems of the school district, were meetings for purposes of the Open Meeting Law. The Supreme Court held that the gatherings were meetings for purposes of the Open Meeting Law because discussions were held concerning matters which could foreseeably require final action by the board. According to the court, “meetings” include those gatherings at which information is received which may influence later decisions. The Open Meeting Law does not apply to chance or social gatherings.

- *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983): The school board was considering closing of one of three schools. In determining which school to close, individual board members gathered in private on many occasions and discussed the closing issue. They also had telephone conversations and one board member sent a letter to several board members attempting to persuade them to change their votes. The court held that meetings are those gatherings of a quorum or more of members of the governing body or of a committee, subcommittee, board, or commission at which members discuss, decide or receive information as a group on issues relating to the official business of the governing body. The court cautioned that serial meetings in groups of less than a quorum for the purpose of avoiding public hearings or fashioning agreement on an issue may be found to be a violation of the statute, depending upon the facts of the individual case.
- *Mankato Free Press v. City of North Mankato*, 563 N.W.2d 291 (Minn. App. 1997): In searching for a new city administrator, councilmembers held serial, one-on-one interviews of applicants. The court of appeals affirmed the district court’s determination that the private interviews did not violate the Open Meeting Law because they were not “designed to avoid public hearings.”
- In a 2016 advisory opinion from the Department of Administration, the commissioner found that a township Board of Supervisors did not comply with the Open Meeting Law when two members of the Board (a quorum) attended a county planning commission meeting and heard and discussed matters also before the Board. (IPAD Op. 16-005).

2. **Casual Discussions**

- Engaging in casual discussions can be a trap for the unwary. In *Thuma v. Kroschel*, 506 N.W.2d 14 (Minn. App. 1993), the mayor and two councilmembers attended a meeting of the Afton Planning Commission. Although the evidence was conflicting, there was evidence that the mayor and councilmembers went to a coffee area outside of the chambers and returned eight minutes later; and that they were speaking together in the coffee area and looking at a document. Upon returning, the

mayor addressed the Planning Commission, indicating that he had signed a contract for an emergency well repair which was the subject of the Planning Commission's discussion and that it would not matter what the Planning Commission decided. One witness testified that the document she saw the mayor and the councilmembers looking at in the coffee room was seen by her when the mayor addressed the Planning Commission. Although the mayor and the councilmembers denied they had met to discuss the well contract during the Planning Commission meeting, the trial court found that there had been a meeting, and found the mayor and councilmembers in violation of the Open Meeting Law.

- In a 2017 advisory opinion, the Commissioner of the Department of Administration cautioned about discussing official business prior to the actual start of a meeting. A township Board of Supervisors was seated in the meeting room approximately 10 minutes before the scheduled start of the meeting and talking amongst themselves. Although the Commissioner could not resolve the factual dispute about whether they were “discussing board business” or merely “exchanging pleasantries,” he made clear that “once a quorum of the Township board has assembled, it cannot discuss official business prior to convening the meeting. If in this case, the Board engaged in any discussion of the conditional use permits—other than perhaps clerical matters such as whether it had copies prepared—it violated the OML.” (IPAD Op. 17-006).

3. Social Gatherings

- *Berglund v. City of Maplewood*, 173 F.Supp.2d 935 (D.Minn. 2001): Absent evidence that members of a city council who attend an event discuss, decide, or receive information as a group on issues relating to the official business of that governing body, a chance or social gathering will not be deemed a “meeting” under the Open Meeting Law.

4. Bodies to which the Open Meeting Law applies

- Council, Commissions, Boards, Committees, Subcommittees
- *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993): The mayor and a member of the Lake Elmo Council attended a meeting with the Oakdale City Council and other meetings concerning the annexation of a portion of Lake Elmo to Oakdale. One of the questions presented to the court was whether the mayor and councilmember constituted a “committee.” (Attendance at a meeting by both members of a committee of two would require an open meeting.) The court held that the mayor and the member of the council did not constitute a committee of the council. The facts on which the court reached this conclusion were that: (1) No resolution or ordinance was adopted or other formal action taken to name the members of the delegation or to establish a committee; (2) No special instructions or charges were given to the representatives and no authority was specified or given, except to exchange views and alternatives with Oakdale representatives and

report back to the council; and (3) No recommendation of the delegation had any legal standing and any proposed agreement coming from the delegation would have to be acted on after full deliberation by the full city council at an open meeting. The court held that a gathering of public officials is not a committee, subcommittee, board or commission unless the group is capable of exercising decision making powers over the governing body. The capacity to act on behalf of the governing body is presumed where members of the group comprise a quorum of the body. The presumption could also arise where there has been a delegation of power from the governing body.

5. Seminars, Planning, Training Sessions, Neighborhood Meetings, etc.

- *Moberg* holds, if a group is less than a quorum, there is no problem. A quorum or more of a council should not attend neighborhood meetings in which development, zoning, local improvement or assessment procedures or other matters affecting the city are the subject of discussion. Attendance by a quorum or greater of training-type sessions is probably permissible, however, members should refrain from discussing specific local issues.
- An opinion of the Attorney General, pre-dating *St. Cloud Newspapers*, states that the planning sessions for mayors, councils, and managers provided by the League of Minnesota Municipalities, which emphasize communication between the council and community, responsibilities of the council, mayor and staff, and development of skills in decision making and planning do not constitute a meeting within the open meeting law. The opinion went on to state, “[t]he facts present in this opinion do indicate, however, that specific municipal matters may also be discussed at the described training sessions. Examples are provided where councilmembers exchange views on the policy of granting of liquor licenses and the approach to take in making sidewalk assessments. Discussions of this nature would constitute deliberations on a matter within the official duties or powers of the council and would therefore be deemed to be a ‘meeting.’” Thus, while participation in a non-public training program is not inconsistent with the language or purposes of the open meeting law, discussions of matters within the council’s official duties or powers, such as those dealing with liquor licenses and sidewalk assessments, must be avoided.
- Meetings must be held within the legal boundaries of the City. In a 2018 advisory opinion, the Commissioner found that the longstanding practice of a city council to hold an annual “Goal Setting Session” at a hotel in a nearby city violated the Open Meeting Law. According to the Commissioner, this practice undermines the public policy behind the Open Meeting Law: “The OML seeks to facilitate open, public access to these types of Council discussions in a manner accessible to its constituents. By holding the meetings outside of the Council’s jurisdiction, the Council effectively removed themselves from the people that they serve, thus undermining the public policy intent of the OML.” (IPAD Op. 18-003).

6. Email Communications

- In *O’Keefe v. Carter*, No. A12-0811, 2012 WL 6734463 (Minn. App. Dec. 31, 2012), the Minnesota Court of Appeals addressed the issue of email communications under the Open Meeting Law. O’Keefe, Carter, and Cupit were all members of the township board of Fish Lake Township in Chisago County. The township held a meeting at which approved the purchase of 500 gallons of fuel for purposes of maintaining township roads. A few weeks later, Carter sent an email to O’Keefe and Cupit concerning the amount of fuel the City had on hand and stating “in the next few days and before the next meeting [staff member] Gary will order more fuel.” Cupit responded about 90 minutes later with the following email to Carter and O’Keefe: “Thanks for the update. Good plan. . . . I’m confident in Gary’s judgment.” O’Keefe did not respond to either email.

After losing his bid for re-election, O’Keefe sued Carter and Cupit, alleging that the email exchange violated the Open Meeting Law. The Court of Appeals disagreed, finding that: (1) neither the statute nor caselaw suggest that the exchange of email messages constitutes a “meeting” under the Open Meeting Law, and that “it is apparent that the legislature has assumed that a “meeting” occurs only when office-holders communicate orally”; and (2) even if the email exchange does constitute a “meeting,” the substance of the emails did not contain the type of discussion that is required for a meeting. The court said the purpose of the Open Meeting Law is to “prevent secret discussions on important but controversial matters.” Here, the discussion about fuel was neither important nor controversial. The court quoted the Supreme Court’s statement in *Moberg* that, in determining whether a meeting is required to be open, “the public’s right to be informed must be balanced against the public’s right to the effective and efficient administration of public bodies.”

- However, an advisory opinion from the Department of Administration (IPAD), issued about one year after the *O’Keefe* decision, stated that email exchanges can lead to an Open Meeting Law violation. (IPAD Op. 13-015). IPAD acknowledged that Minnesota courts had not ruled definitively on the issue, but stated that “the exchange of emails can lead to a violation of the OML.” In that opinion, the commissioner of a township parks commission sent an email to all other commission members, chairs of the other commissions, a Board supervisor, and several members of the public, encouraging the recipients to attend upcoming meetings and providing “information about the possible sale of certain property within the Township and arguments for opposing the sale.”

The opinion noted that the record was unclear as to whether the commissioner received any response to the email or whether he engaged in any further discussion with a quorum or more of his colleagues. IPAD opined that “to the extent [the email] was a one-way communication, it did not violate the OML.” However, the opinion went on to “remind public bodies to be cautious in their use of email as a tool to conduct public business.”

- In light of this advisory opinion, and the fact that *O’Keefe* is unpublished and therefore non-binding on future courts, council and commission members should exercise extreme caution when communicating via email with fellow council or commission members. Emails should not be used to discuss official business, especially where a quorum is involved or where the communication(s) may be construed as a serial meeting.

7. Use of Social Media – Minn. Stat. § 13D.065

- A member of a public body does not violate the Open Meeting Law by using social media to communicate with all members of the general public. For purposes of this section, however, email is not considered “social media.”

8. Recent Case Finding OML Violations – City of Victoria Case

- Several residents of the City of Victoria sued four Victoria City Councilmembers, alleging violations of the Open Meeting Law relating to proceedings surrounding a controversial decision to build a new public works building, city hall building, and library. The district court found several violations of the Open Meeting Law. The district court’s decision contains several important learning points:
 - Public officials are assumed to be aware of the requirements of the Open Meeting Law despite their level of public experience.
 - The intent to violate the Open Meeting Law refers only to the intent to participate in the meeting – not the specific intent to violate the law.
 - Testimony regarding the councilmembers’ lack of training on the Open Meeting Law was irrelevant. The councilmembers had the opportunity to be trained and to ask questions.
 - Reliance on staff and city attorney was reasonable, but not a complete insulation from a finding of a violation.
 - Penalties were imposed for the following: failing to identify the grounds for a closed meeting; discussing items at a closed meeting beyond the announced topic; discussing impermissible topics at a closed meeting; and engaging in serial meetings.

8. Conclusion

- While all of the nuances of the Open Meeting Law are yet to be developed by the courts, the safest and most prudent course of action is to avoid the appearance at meetings of a quorum or more of the councilmembers at which discussions of city issues or business will occur even though it is not expected that the members of the

council would take any action as to those issues at the meeting.

- It is difficult to apply the rather sterile rule laid down by the Supreme Court in *Moberg* characterizing as meetings those “at which members discuss, decide or receive information as a group on issues relating to the official business of that governing body.” Nevertheless, we believe distinctions can be made by considering the following:
 - Who is the sponsor of the meeting?
 - How general is the subject matter which is being discussed?
 - Is the matter being presented in a lecture format?
 - Does the meeting require the views or opinions of the several councilmembers present on issues which the council may need to decide in the future?
 - How closely related is the item being discussed to specific issues that may be official business of the council?

- A distinction can be made between conferences sponsored by an umbrella organization at which a number of public officials may be present, including a quorum or more of the council and, at which, for example, a state aid formula is discussed, which of course may impact upon a future budget to be adopted by the council, and a more local meeting with more limited audience sponsored by a city organization in which councilmembers are expected to actively participate and present their views on a specific issue, such as the budget itself. While the statement from the *Moberg* opinion quoted above relative to receiving information in issues relating to official business theoretically could apply to the receipt of state aid information as it relates to a budget, we do not believe a court, if faced with a real case involving such a remote connection, would construe such a meeting as one within the Open Meeting Law.

- Where a quorum or greater number of the council is present, we believe a reasonable course of action permits attendance at those meetings which are of general interest with more than a local or limited audience and do not deal with matters which are the subject of the council’s decision-making authority. Even in those instances, councilmembers should refrain from situations in which they participate in discussions indicating views or opinions on issues and situations which may require future council decisions or actions.



SOUTHWEST TRANSIT

To: SouthWest Transit Commission
From: Len Simich, CEO
Date: September 16, 2020
Subject: Agreement with Winthrop & Weinstine, P.A.

REQUESTED ACTION:

That the Commission authorize its CEO to enter into an agreement with the legal firm Winthrop & Weinstine to provide counsel and advocacy during the 2021 Minnesota Legislative session at a cost not to exceed \$48,000.

BUDGET IMPACT:

The \$48,000 will come from SouthWest Transit funding derived from non-federal or state revenue sources (advertising, real-estate, interest revenue).

BACKGROUND:

With the pending election, impact/fall-out related to Covid-19, the reduction in both operating and capital revenue SouthWest Transit has been forced to deal with over the past number of years, and the looming threat of elimination, the 2021 Legislative session shaping up to be a critical year in determining the future of our agency.

The law firm of Winthrop & Weinstine, specifically Joe Bagnoli and Tom Hanson, come highly recommended and have proven they are able to work on both sides of the aisle representing clients needs. Attached is an overview of Winthrop & Weinstine, and bios of the two attorneys who would represent SouthWest Transit during the 2021 Legislative session.

Commissioner's McDonald and Huang, along with Dave Jacobson, Matt Fyten and myself interviewed Mr. Bagnoli and Hanson on September 16. We are all recommend brining Winthrop & Weinstine on to assist in our 2021 legislative initiatives.

RECOMMENDATION:

That the Commission authorize its CEO to enter into an agreement with the legal firm Winthrop & Weinstine to provide counsel and advocacy during the 2021 Minnesota Legislative session at a cost not to exceed \$48,000.



SOUTHWEST TRANSIT

JULY 30, 2020

SHAREHOLDER

**JOSEPH T.
BAGNOLI**

P / 612.604.6732

E / jbagnoli@winthrop.com



THE WINTHROP WAY

A CULTURE OF FRESH THINKING.

Primary Practice Areas:

BUSINESS & COMMERCIAL LITIGATION

CORPORATE & TRANSACTIONS

BANKING & FINANCE

EMPLOYMENT

HEALTH LAW

INTELLECTUAL PROPERTY

REGULATORY & GOVERNMENT RELATIONS

REAL ESTATE DEVELOPMENT & FINANCE

TRUSTS & ESTATES

ABOUT US

Winthrop is a mid-size, entrepreneurial commercial law firm putting the law to work for you. We live in the details to outthrust the opponent and help you achieve your goals. Everything we do ladders up to your business needs.

At Winthrop, there is no standard process. We think creatively and execute effectively, infusing our approach with insight-driven strategies that disrupt convention and generate positive outcomes to fuel your business.

We are advocates for people, businesses and ideas. We leverage our experience, wide breadth of expertise and entrepreneurial spirit to find innovative ways to make the law work harder for clients across the country.

We turn energy into outcomes, generating momentum for your business. At Winthrop, expect nothing less.



REGULATORY & GOVERNMENT RELATIONS

ADVOCACY & LOBBYING

We represent clients as they interact with government, regulatory agencies, the legislature, local units of government or courts, working on your behalf to make sure your voice is heard in shaping public policy.

OUR APPROACH

Our team of lobbyists relies on experience gained having served in high-level government positions and decades of experience representing clients before the state legislature and regulatory bodies. We know the decision-makers, the politics and the process, and the nuances state and local government. We help guide clients through the process of drafting, changing, and influencing legislation, and have extensive relationships with members of all levels of government.

OUR FOCUS

Winthrop & Weinstine offers a full range of legislative services. The scope of those services includes the following:

STRATEGY DEVELOPMENT

Working closely with our clients, we help to define the client's legislative objectives and develop a strategy to obtain those legislative objectives.

LEGISLATIVE ADVOCACY & MONITORING

We monitor legislation identified by the client as of interest to them; as well as legislation which we believe may potentially impact the client. At the client's direction, we actively lobby the client's position with members of the Legislature and legislative staffs either with the client or separately, as circumstances dictate. We review all bill introductions, committee schedules and floor calendars and notify the client of all relevant activity.

OUR FOCUS, CONT'D

BILL DRAFTING

If requested, we will prepare legislation and, if necessary, amendments to accomplish a client's objectives.

TESTIMONY

We assist our clients in preparing testimony and handouts, and attend committee hearings and floor sessions to provide legal and legislative support.

COMMUNICATIONS

Every effective government relations program must have a clearly defined message targeted to its audience. We assist clients in preparing position papers, opinion editorial pieces and press releases that would serve to enhance lobbying efforts.

ETHICS AND ELECTION LAWS

The laws in Minnesota regarding lobbying, campaign finance, ethics, and corporate political activity are complex. We recognize the importance of avoiding violations of these laws and we work closely with clients to assure compliance with these laws, identify potential pitfalls, and avoid violations.

GRASSROOTS

An effective grassroots network can be critical for legislative effectiveness in Minnesota. We work with clients to identify opportunities for grassroots involvement and then facilitate grassroots contacts with legislators.



REGULATORY & GOVERNMENT RELATIONS

WHY WINTHROP & WEINSTINE

We believe that Winthrop & Weinstine brings two distinct advantages to our proposed representation of SouthWest Transit.

First and foremost, the team approach that we bring allows us to deploy the relationships that they have developed over years of work at the Capitol. Minnesota has one of the larger legislatures in the United States, with 201 legislators. While it is difficult to know every legislator, using a team approach we believe we are unmatched in our relationships with legislative committee chairs, and legislative leadership. We regularly participate in fundraisers and other non-legislative activities that put us in front of legislators in a variety of settings throughout the year.

Second, SouthWest Transit has very specific legislative needs that center on transit funding, a relationship with the Metropolitan Council, and evolving legislative representation as demographics change. We believe that we are able to address each of these items. Since his experience in the Ventura Administration, Mr. Bagnoli has worked with every Metropolitan Council chair, as well as leadership staff, and understands transit funding. Currently, Mr. Bagnoli counts Chair Charlie Zelle, Regional Administrator, Meredith Vadis, Metro Transit General Manager Wes Koistra, and Legislative Director, Judd Schetnan as close contacts, whom he has known in some cases for twenty years. Additionally, when Tom Hanson served as the Commissioner of Minnesota Management and Budget under Governor Pawlenty, he served on the Central Corridor Light Rail coordinating board with Saint Paul Mayor Coleman, Minneapolis Mayor Rybak, and county commissioners from Ramsey and Hennepin County. In that capacity, he interacted with staff and policy makers involved in funding transit capital and operations.

These relationships, as well as strong relationships on both sides of the aisle with the transportation committee leadership in both bodies, will allow Winthrop & Weinstine to hit the ground running to advance SouthWest Transit's legislative agenda.

Finally, we recognize that our clients are seldom one-dimensional, and neither are their issues. It is this premise that makes our team perspective so successful. While we have attempted to provide a brief overview and introduction to our services in this response, we encourage you to also visit our website, which provides even more information (www.winthrop.com). Perhaps more importantly than reading any of our written words, in the end, we feel that the testimonials from our clients are most persuasive. Therefore, we strongly encourage you to contact others about our performance.

If there is any additional information that we can provide, please let us know.



REGULATORY & GOVERNMENT RELATIONS

ADVOCACY & LOBBYING

RECENT ACCOMPLISHMENTS

BONDING

STURGEON LAKE ROAD

Working on behalf of the Prairie Island Indian Community, we secured \$14.762 million in funding to build an overpass on Sturgeon Lake Road over a dangerous railroad track.

SECOND HARVEST HEARTLAND

We worked on behalf of Second Harvest Heartland to secure \$18 million in general obligation bond funds to purchase and renovate a new facility. The new and expanded facility includes headquarters, a distribution center, and volunteer facilities for the food bank, which will significantly enhance Second Harvest Heartland's ability to provide healthy food to low-income Minnesotans in all counties of the state.

HENNEPIN COUNTY MEDICAL EXAMINERS FACILITY

On behalf of Hennepin County, we secured \$15.073 million for a new state-of-the-art medical examiner facility.

ECONOMIC DEVELOPMENT

DESTINATION MEDICAL CENTER

We worked on behalf of the Mayo Clinic to pass legislation early in the 2015 session to modify the computation of State aid for the Destination Medical Center (DMC) project in the City of Rochester, enacted by the 2013 Legislature. An Attorney General's opinion had raised serious questions about a portion of the original legislation. As passed, the bill modifies the statutory language to make it clear that the computation of State aid is to be based on the cumulative qualifying expenditures thereby reducing substantially the minimum required private investment before the public funds become available.

COMMERCE

SURVIVAL OR CONTINUATION OF CIVIL ACTIONS AFTER DEATH OR DISABILITY OF A PARTY

On behalf of health care and insurance clients, Winthrop & Weinstine worked to defeat legislation which would allow maintenance of a legal action after the death of a claimant. The bill contained no caps on damages and expanded liability to include awards for pain and suffering.

INCREASED FINES FOR TEXTING WHILE DRIVING

Representing automobile insurance and traffic safety clients, we worked successfully to increase the fine for second and subsequent violations of texting while driving.

BULLION COIN DEALER REGULATION

On behalf of Asset Marketing Services, we worked with the Department of Commerce and the Minnesota Attorney General to design a first-of-its-kind statute regulating bullion and collectable coin dealers.

INSURANCE SURCHARGE

Representing insurer clients, we worked with the Insurance Federation of Minnesota to defeat legislation which would have added a \$5.00 surcharge to every automobile and homeowner's insurance policy in order to fund police and fire fighter pensions.

NATURAL RESOURCES

COPY PAPER

On behalf of a major Minnesota paper manufacturer, Winthrop & Weinstine was successful in passing legislation requiring State and local governments to purchase copy paper manufactured in Minnesota whenever feasible.

SCHOOL TRUST LAND

On behalf of The Conservation Fund (TCF), we collaborated with the Minnesota Department of Natural Resources and the Minnesota School Board Association to pass legislation authorizing the exchange of land held by TCF for public lands.

TAX

HISTORIC TAX CREDIT

Winthrop & Weinstine worked on behalf of the Preservation Alliance of Minnesota (now known as Rethos) and in collaboration with the Minnesota Historical Society to extend the sunset date of the historic tax credit from June 30, 2015 to June 30, 2021. We worked on behalf of Sand Company to clarify the effective date of the historic tax credit and establish that a specific Sand Company project is eligible for the credit.

TAX, CONT'D

ALCOHOL TAXES

On behalf of the Distilled Spirits Council of the United States (DISCUS), we worked with a coalition of stakeholders to successfully oppose a proposed tax increase on wine, beer, and spirits.

APPROPRIATIONS

FUNDING FOR PUBLIC BROADCASTING

On behalf of the Association of Minnesota Public Educational Radio Stations (AMPERS), Winthrop & Weinstine successfully secured \$1.268 million in funding, which represented a 25% increase in funding, for FY 2016 and 2017 General Fund community service and equipment grants. We also secured \$3.2 million in Legacy Funds for AMPERS.

BANKING

FORECLOSURE LEGISLATION

On behalf of a major national financial institution, Winthrop & Weinstine worked closely with a coalition of lenders, lawyers, title companies and representatives from Legal Aid, to both craft good foreclosure legislation and to prevent harmful foreclosure legislation.

GAMING

LOTTERY

On behalf of the Prairie Island Indian Community, Winthrop & Weinstine worked to reverse an attempt by the Minnesota Lottery to continue online gaming without specific statutory authorization. In 2014, Governor Mark Dayton vetoed similar legislation, but in 2015, in the face of hard-earned bipartisan legislative support, he allowed the bill to become law without his signature.

REPRESENTATIVE CLIENTS

- > American Property Casualty Insurance Association
- > Association of Minnesota Public Educational Radio Stations
- > Bank of America Corp.
- > Baxter Healthcare Corp.
- > CenterPoint Energy
- > Coalition of Minnesota Businesses, Inc.
- > Concrete Paving Association of Minnesota
- > Dakota Electric Association
- > Distilled Spirits Council of the United States
- > Dominion Development & Acquisition LLC
- > Enbridge Energy Partners
- > Encore Energy Services, Inc.
- > Hennepin County
- > Hubbard Broadcasting, Inc.
- > Liberty Mutual Insurance Company
- > MARRCH-Minnesota Association of Resources for Recovery and Chemical Health
- > Manitoba Hydro
- > Marvin Windows & Doors
- > Mayo Clinic

REPRESENTATIVE CLIENTS, CONT'D

- > Metropolitan Airports Commission
- > Midwest Bonding, LLC
- > Minnesota Association of Community Telecommunications Administrators
- > Minnesota Broadcasters Association
- > Minnesota Institute of Public Finance
- > Minnesota Power (ALLETE)
- > Minnesota Rural Electric Association
- > Minnesota State Agricultural Society
- > Packaging Corporation of America
- > Prairie Island Dakota Community
- > Rethos
- > SCA Properties
- > Second Harvest Heartland
- > St. Cloud Hospital-CentraCare Health System
- > The Conservation Fund
- > United States Bench Corp.
- > Verde Environmental
- > Visit Saint Paul
- > Xcel Energy



FEE PROPOSAL

Winthrop & Weinstine proposes to represent SouthWest Transit on a fixed fee basis. The amount of the fixed fee would, of course, depend on the scope of the representation and the amount of time expected to be devoted to it.

We understand that SouthWest Transit is looking for a strategic and operational partner for ongoing support of its government relations and public policy advocacy work, to provide government relations, lobbying and advocacy services during the legislative session. Based on these requirements, we would propose a flat fee of \$48,000 for the 2021 Legislative Session.

In addition, we bill clients for actual out-of-pocket disbursements incurred in connection with our representation as well as photocopy services, mileage and other similar services at our standard rates. Of course, all expenses are kept to a minimum, and are incurred with prior approval. We bill our clients on a monthly basis, unless requested otherwise, and expect payment within thirty days after receipt of our statement.

We would be happy to further discuss and refine a fee proposal to meet your needs.



OUR TEAM



SHAREHOLDER
JOSEPH T. BAGNOLI

CONTACT:

P / 612.604.6732

E / jbagnoli@winthrop.com

|| THERE IS NO GREATER FEELING THAN WHEN MY
CLIENT WINS.

Practice Areas:

ADVOCACY & LOBBYING
REGULATORY & GOVERNMENT RELATIONS
**REAL ESTATE DEVELOPMENT &
TRANSACTIONS**
CAMPAIGN FINANCE & ELECTION LAW

EDUCATION

William Mitchell College of Law, J.D., *cum
laude*, 1993

> Associate Editor, *William Mitchell Law
Review*

Bowdoin College, B.A., History

BAR ADMISSIONS

Minnesota, 1993

MY APPROACH

For me, working with the legislature is about as close as you can get to influencing public policy without being an elected official. I love working with my clients to move their businesses forward through a deep understanding of the makeup of the legislature and the politics that go into policy decisions, and making sure each variable is thought through in a tactical way.

I thrive on the competitive aspect of working as a lobbyist, and am tenacious about my representation of my clients. Whether winning to them means defeating a bill or passing one, I use all my experience and planning to bring about a solution.

Outside of work, I play hockey – where my competitive nature helps, too – and attend my three kids' various sporting events.

MY EXPERIENCE — ADVOCACY & LOBBYING

I represent clients before the Minnesota legislature, state administrative agencies, and local government. I have experience working on a number of issues, including transportation, energy, telecommunications, environment, economic development and tax policy.



SHAREHOLDER
JOSEPH T. BAGNOLI

REPRESENTATIVE MATTERS

- > Represented a real estate developer in successfully having a piece of land in Loring Park rezoned to allow for a building, including working with the city council, city planning and zoning staff, the property commission, and ultimately getting all approvals necessary.
- > Successfully represented a circus on a contentious issue related to the treatment of animals.
- > Represented a company that owned bus shelters with advertising in successfully obtaining franchises in Roseville and Bloomington.
- > Successfully blocked legislation that attempted to stop sales of 2-for-1 alcoholic beverages at bars and restaurants.
- > Successfully achieved legislation allowing bars to remain open until 2am; under previous law, the limit had been 1am. In addition, further attempts to implement the law would have restricted the 2am closing time to downtown Minneapolis; successfully blocked this, allowing the law to apply to all bars and restaurants in Minneapolis.

MY EXPERIENCE — REGULATORY & GOVERNMENT RELATIONS

I help clients work through the legislative and regulatory process, both before an issue arises and after there is a change that impacts their business. Whether that means lobbying the legislative branch, or representing them before regulatory and licensing agencies, I work with clients to help them do business with and meet their goals.

BOLD PERSPECTIVES

PUBLISHED ARTICLES

“Breaking the Ice: Lobbyist helps shape policy including school start.” // Profiled. *Minnesota Lawyer*. 02.19.2020

CLIENT ALERTS

COVID-19 Legislative Report. 04.09.2020

ASSOCIATIONS & MEMBERSHIPS

- > Catholic Charities
 - Former Board Member
- > Highland Hockey Association
 - Former Board Member
- > Friends of the St. Paul Library
 - Former Board Chair

For my website bio, please visit WINTHROP.COM/J-BAGNOLI



SHAREHOLDER

THOMAS J. HANSON

CONTACT:

P / 612.604.6414

E / thanson@winthrop.com

“ IF A CLIENT WANTS SOMETHING, IT HAS TO BE A PRETTY BIG HILL FOR ME NOT TO CLIMB IT.

Practice Areas:

- ADVOCACY & LOBBYING
- REGULATORY & GOVERNMENT RELATIONS
- HEALTH LAW
- REGULATED INDUSTRIES
- STATE & FEDERAL REGULATORY COMPLIANCE
- NATIVE AMERICAN LAW
- ENERGY LEGISLATIVE & REGULATORY
- ENVIRONMENTAL

EDUCATION

George Mason University School of Law, J.D., 1993

Concordia College, B.A., History & Business Administration, 1985

BAR ADMISSIONS

Minnesota, 1994

MY APPROACH

My goal is to help clients do business as efficiently as possible. When legislators or regulators add to the cost of doing business, or get in the way of my clients' ability to bring their product or service to the market, I work to make sure their concerns are heard. The law is more than just words on a page; it's about how those words are applied, and about the people who make those decisions. With a career of service in the government, I have developed relationships in all levels and branches, but more importantly, I have developed an understanding of how those people make decisions, which I use to protect the interests of my clients.

Especially in regulated industries such as health care, insurance, and energy, I represent clients who have joint regulatory and legislative issues, with the true belief that any law can be changed with creative problem solving and persuasion.

A GROUNDBREAKING MOMENT IN MY CAREER

During the depths of the Great Recession, I was Commissioner of Minnesota Management and Budget and responsible for managing the entire state's finances. I had to take a step from my former role behind the scenes, into someone who made decisions and dealt with crises in front of every camera in town. Throughout that whole time, I managed to creatively figure out a way to avoid raising taxes or otherwise impair our state, and we were able to



SHAREHOLDER
THOMAS J. HANSON

bounce back from it. I got the tar beat out of me every day, fighting to keep the budget in order, but emerged on the other side knowing that whatever the problem, I'm able to think it through and find a solution.

MY EXPERIENCE — ADVOCACY & LOBBYING, REGULATORY & GOVERNMENT RELATIONS

I represent clients before the legislature and regulatory bodies, and have a special focus on clients who have joint regulatory and legislative issues. I help clients work through the process so they can focus on doing business, whether that means lobbying the legislative branch or representing them before regulatory and licensing agencies.

MY EXPERIENCE — HEALTH LAW

I represent health care providers, including in the behavioral health, home care and assisted living, nursing home, dental, and other industries in a range of issues, including representation before the Minnesota Department of Health, Department of Human Services and licensing boards.

BOLD PERSPECTIVES

ARTICLES

"As Governors Battle Trump Over Pandemic, Walz Plays Minnesota Nice." // Quoted. *StarTribune*. 04.20.2020

"Mentor-Mentee: Conjuring the Dream Job Into Reality." // Quoted. *University of St. Thomas*. 10.22.2018

"The 2018 Legislative Wrap-Up: Much Ado About Nothing." // *Minnesota Physician*. 07.2018.

"Find most efficient route for insurance relief in Minnesota." // Quoted. *StarTribune*. 01.12.2017

"PoliGraph: Dayton claim leaves out key details." // Quoted. *MPR News Capitol View*. 03.20.2015

"Education, health care make up two-thirds of Minnesota's budget." // Quoted. *TwinCities.com*. 01.17.2015

"Stadium authority fights back." // Quoted. *Finance & Commerce*. 01.13.2014

"Stinson's retirement ends 26-year tenure." // Quoted. *Politics in Minnesota*. 06.05.2013

"Tom Bakk standing firm on clothing tax as budget solution." // Quoted. *StarTribune*. 05.04.2013

"Dayton faces political minefield as he tackles state tax system." // Quoted. *Pioneer Press*. 01.21.2013

"Minnesota state budget fixers urged to avoid gimmicks." // Quoted. *Pioneer Press*. 12.05.2012

"Bonding bill chatter heats up at Capitol." // Quoted. *Finance & Commerce*. 12.03.2012



SHAREHOLDER
THOMAS J. HANSON

"Poligraph: Daudt's numbers correct, but there's more to the story." // Quoted. MPR News. 11.30.2012

"Dayton: Campaigner in chief." // Quoted. 09.14.2012

"The Influencer: Former MMB head Hanson carves out a new niche as corporate lobbyist." // Featured. Capitol Report. 04.12.2012

"Supermajority rules don't lower taxes." // Winona Daily News. 03.16.2012

"Supermajority rules don't lower taxes." // Grand Forks Herald. 03.14.2012

"Legislative notebook: GOP tax cut bill draws heated debate." // Quoted. Capitol Notebook. 03.13.2012

"Editorial: Minnesota's recession lessons." // Quoted. Pioneer Press. 02.18.2012

"Ramsey County revises Vikings stadium financing plan." // Quoted. Pioneer Press. 02.10.2012

LIVE EVENTS

"Minnesota State Budget: Saying Goodbye to the Surplus." // Panelist. St. Paul Area Chamber of Commerce. Webinar. 06.16.2020

"The Impact of the Coronavirus Shutdown." // Panelist. Turnaround Management Associations. Webinar. 04.16.2019

"The Federal-State Relationship in Times of Recession: Insights from the Front Lines of the Federal-State Response." // Panelist. The PEW Charitable Trusts, Washington, D.C. 09.13.2019

"Legislative Preview: 2018 Key Health Care Issues." // Presenter. Minnesota State Bar Association. 02.16.2018

"Radio interview." // Guest. Morning Edition, MPR. Radio. 05.17.2017

"\$1B Surplus: How Do Taxpayers Benefit?" // Guest. KMSP-TV Fox News. 12.05.2013

"BUDGET BILLS: Conference committee to merge plans." // Guest. KMSP-TV Fox News. 05.05.2013

"Economic Forecast and Its Implications." // Panelist. University of Minnesota Humphrey School of Public Affairs. 03.01.2013

"Fox at 9." // Guest. KMSP-TV Fox News. 12.02.2012

"Polls are Closed: What Happened and What it Means for 2013." // Speaker. Minnesota Council of Nonprofits. 11.07.2012

"Newswatch." // Guest. KVSC Radio, St. Cloud State University. 08.30.2012

"Identifying high risk areas: Regulatory and Litigation Trends" // Speaker. Minnesota CLE. 07.31.2012

"The 2012 In-House Counsel Crash Course." // Speaker. Minnesota CLE. 07.31.2012



SHAREHOLDER
THOMAS J. HANSON

"Legislative Preview/Discussion of State Budget." // Speaker. Ramsey County Bar Association. 01.18.2012

"The Legislative Process: Behind the Curtain at the State Capitol." // Speaker. Minnesota State Bar Association. 01.17.2012

HONORS & AWARDS
#8, "Top 10 Best Political Persons in Minnesota for 2009"
mnpACT!, 2009

CLIENT ALERTS

Families First Coronavirus Response Act. 03.20.2020

COVID-19 Minnesota Update. 03.17.2020

ASSOCIATIONS & MEMBERSHIPS

- > University of Saint Thomas
 - Mentor Externship Program, 2016
- > Minnesota Center for Fiscal Excellence, 2010-present
- > Minnesota State Bar Association
 - LawPAC Board of Trustees, 2010-2013
- > Governor's Health Care Cabinet, 2007-2010
- > Governor's Drive to Excellence Technology Cabinet, 2007-2010
- > Minnesota State Retirement System
 - Board Member, 2007-2010
- > Teachers Retirement Association
 - Board Member, 2007-2010
- > Public Finance Authority
 - Board Member, 2007-2010
- > Minnesota Science and Technology Authority
 - Board Member, 2010
- > National Association of State Budget Officers, 2007-2010
 - Executive Board, 2007-2008
- > National Association of State Auditors, Controllers, and Treasurers, 2007-2010
- > Presidential Advisory Council on Historic Preservation
 - Governor Pawlenty's Representative, 2003-2006
- > National Governor's Association
 - Staff Member, 2003-2006
- > National Conference of State Legislatures
 - Active in various committees, 1998-2003

For my full bio, please visit WINTHROP.COM/T-HANSON



DIRECTOR OF GOVERNMENT RELATIONS

JOHN C. REICH

CONTACT:

P / 612.604.6706

E / jreich@winthrop.com

“ OUR GOVERNMENT IS DESIGNED SO THAT YOU HAVE
A VOICE. I MAKE SURE MY CLIENTS ARE HEARD. ”

Practice Areas:

ADVOCACY & LOBBYING
REGULATORY & GOVERNMENT RELATIONS
ENERGY LEGISLATIVE & REGULATORY

EDUCATION

University of Minnesota, B.A., 2004

MY APPROACH

As issues before the legislature and regulators become more complex, and issues and crises arise faster than ever, it's critical for businesses and individuals to be ready and willing to engage with their government. Regardless of political stripe, people should have the right to advocate for their interests. I have been actively involved with government since 2005, and offer my clients representation that takes advantage of the legislative process through and strategic thinking, in order to use time and political capital efficiently.

In my free time, I like to hang out with my wife and two kids at our home in St. Paul, play music, and play ice hockey, even though I'm old and slow.

A GROUNDBREAKING MOMENT IN MY CAREER

In 2016, our team represented the Mayo Clinic to amend state law to allow a world-renowned fetal surgeon to join Mayo's staff. We worked with our client to draft legislation providing for a new form of licensure in Minnesota, which allows highly skilled, foreign-trained physicians to practice in Minnesota under certain circumstances. The legislation was brought forward with 10 days remaining in the 2016 legislative session and passed on the final day of the session. This doctor is an amazing individual, working miracles and



DIRECTOR OF GOVERNMENT RELATIONS
JOHN C. REICH

giving expectant mothers hope when they have been told there are no other options. I'm proud of the work I did giving him, and others like him, the ability to practice in our country.

MY EXPERIENCE — ADVOCACY & LOBBYING

Prior to joining Winthrop and Weinstine, I served as staff in both the Minnesota Legislature and Governor Mark Dayton's Administration.

I started my career in public policy on staff at the Minnesota House of Representatives, where I worked as a legislative assistant and as the Committee Administrator for the House Commerce and Labor Committee. The Commerce and Labor Committee oversaw the insurance industry, financial services industry, telecommunications, and consumer protection.

I left the Minnesota House of Representatives in 2011 to serve as the Director of Government Relations for the Minnesota Department of Commerce. I and my team monitored, influenced, and testified as needed on all legislative matters related to the Department's regulatory jurisdiction including insurance, financial institutions, energy, telecommunications, and other regulatory matters. I also worked extensively with the Department's communications staff on media inquiries.

In 2013, I moved to MNsure, where I served as the Public Relations Officer and the Director of Government Relations for MNsure, the state's health insurance exchange. In these roles, I managed media communications, legislation relations, and stakeholder engagement during the implementation of historic health care reform in Minnesota. I was the lead lobbyist during the passage of legislation authorizing a state-based marketplace and was involved in the passage of Affordable Care Act conformity legislation.

Since joining Winthrop and Weinstine in 2014, I have lobbied for clients on health care issues, business regulation, energy policy, and Native American issues.

BOLD PERSPECTIVES

ARTICLES

"The 2018 Legislative Wrap-Up: Much Ado About Nothing." // *Minnesota Physician*. 07.2018.

"The 5 things you'll want to know if you're thinking about caucusing in Minnesota." // Quoted. *Minnpost*. 02.23.2016

"MNsure to offer more plans in Steele County, still faces challenges in rural MN." // Quoted. *Owatonna People's Press*. 11.10.2014



DIRECTOR OF GOVERNMENT RELATIONS
JOHN C. REICH

"MNsure's latest concern: Will taxpayer money be needed to shore up future costs." // Quoted. Pioneer Press. 01.09.2014

"Having trouble with MNsure? Here are some tips for consumers." // Quoted. StarTribune. 12.23.2013

"MNsure foes and backers alike use personal stories as spin." // Quoted. Pioneer Press. 12.08.2013

"MNsure outperforms other state exchanges — on Twitter." // Quoted. Watchdog Minnesota. 11.29.2013

"MNsure glitches prompt state to double check more than 30,000 applications." // Quoted. Pioneer Press. 11.26.2013

"MNsure reports more than 12,000 accounts created." // Quoted. StarTribune. 10.17.2013

"Health beat: MNsure's deep thought security questions." // Quoted. StarTribune. 10.05.2013

"MNsure debuts to heavy traffic, could appeal to students." // Quoted. Minnesota Daily. 10.02.2013

"MNsure: Basic Questions Answered." // Quoted. CBS Minnesota. 09.23.2013

"So, how do I buy insurance? A Q&A on MNsure: Minnesota's new health care marketplace." // Quoted. Winona Daily News. 09.22.2013

"MNsure criticized for lack of outreach contracts to black groups." // Quoted. Pioneer Press. 09.10.2013

"MNsure outreach grants stir backlash." // Quoted. Politics in Minnesota. 09.06.2013

"MNsure health exchange's call center opens." // Quoted. Pioneer Press. 09.03.2013

"MNsure introduces Minnesotans to insurance marketplace." // Quoted. Duluth News Tribune. 09.01.2013

"MNsure introduces Minnesotans to insurance marketplace." // Quoted. The Bemidji Pioneer. 08.31.2013

"State: MNsure must make its marketing themes public." // Quoted. StarTribune. 08.22.2013

"Paul Bunyan and Babe's welcome MNsure pitch." // Quoted. StarTribune. 08.21.2013

"Aug. 10: Health care debate hits State Fair." // Quoted. StarTribune. 08.15.2013

"Health exchange 'navigators' to help people find insurance." // Quoted. StarTribune. 07.27.2013

"'Boggled' by deadlines, charts, eligibility, Duluth woman loses out on insurance." // Quoted. Twin Cities Daily Planet. 04.23.2013

LIVE EVENTS

"MNsure Overview." // Speaker. 18th Annual Health Law Conference. Minnesota CLE. 07.17.2014



DIRECTOR OF GOVERNMENT RELATIONS
JOHN C. REICH

ASSOCIATIONS & MEMBERSHIPS

- > Saint Paul Planning Commission, St. Paul, MN
 - Member, 2017-2018
- > Neighborhood Sales Tax Revitalization (STAR) Board, City of St. Paul
 - Member, 2010-2014
- > St. Paul Chamber of Commerce Public Policy Committee
 - Member

For my website bio, please visit WINTHROP.COM/J-REICH



GOVERNMENT RELATIONS MANAGER

ANDREA L. RAU

CONTACT:

P / 612.604.6526

E / arau@winthrop.com

“ WE HAVE MORE IN COMMON THAN NOT; I START FROM THERE TO CREATE POLICY WE CAN ALL AGREE WITH.

Practice Areas:

ADVOCACY & LOBBYING

EDUCATION

University of St. Thomas, B.S., Political Science, 1999

MY APPROACH

Government can serve an important role in helping people and businesses, but it can also get in the way and impose unexpected or unintentional difficulties. I see my role as being someone who can help clients navigate their way through the politics, process, and relationships to achieve good policy for my clients.

I have always had an interest in politics and a passion for helping, and throughout my career, I have been fortunate to be able to work on issues including health and human services, campaign finance reform, among others.

A GROUNDBREAKING MOMENT IN MY CAREER

On my very first day in my career, as an intern, I was told: “The only thing you have of value in this job is your integrity. If you lose that, you may as well go home now.” I think about that and strive to bring it forward every day, in how I treat people and in how I build relationships. I always seek ways to work with people even when we’re at odds, to work out policies that benefit my clients and our communities.



GOVERNMENT RELATIONS MANAGER
ANDREA L. RAU

MY EXPERIENCE — ADVOCACY & LOBBYING

I represent clients in working through the entirety of the legislative process to guide them towards success. For more than two decades, I have led public policy agendas, including drafting legislation, educating legislators and staff, and ushering legislation through the legislative process. This includes finding authors, securing hearings and floor votes, testifying, and using my understanding of the legislative process to benefit my clients, using innovative strategies when needed.

REPRESENTATIVE EXPERIENCE

- > Proven success getting initiatives signed into law
- > Policy research and analysis
- > Direct Lobbying
- > Political Strategy
- > Bill tracking
- > Strategic communications
- > Preparing and delivering testimony
- > State and Federal PACs
- > Lobbyist reporting
- > Public speaking

BOLD PERSPECTIVES

LIVE EVENTS

“Legislative Update.” // Co-presenter. *MARCH 2020 State of the State Addiction Summit.* 01.10.2020

CLIENT ALERTS

H.F. 4531: Minnesota’s Response to COVID-19. 04.03.2020

Walz Executive Order 20-20: Stay At Home. 03.25.2020

Walz Executive Orders: Price Gouging, DHS Waivers. 03.20.2020

For my website bio, please visit WINTHROP.COM/A-RAU

Updates

Administrative Updates

2020 and 2021 Budget – MVST continues to perform better than we anticipated. To date we are running just under 5% of our estimate. Farebox is still 78% lower than our original budget. With the cost savings measures first put in effect in March, and with the \$2.5 million in CARES Act funding we are scheduled to receive (see next bullet), we should end the year with a balanced budget and have the ability to put unspent reserves towards our 2021 needs. The 2021 draft budget will be presented to the Commission at the October meeting.

CARES ACT Funding – Congress acted swiftly in April passing the CARES Act which was aimed at providing funding to help States deal with the fallout related to COVID 19. SouthWest Transit is slated to receive a little over \$2.5 million in CARES funding. Even though Congress acted fast, there was a delay with the FTA getting the funding to the States. What was supposed to be in place by late June, the Metropolitan Council informed us that Minnesota did not receive its funding until early August. SouthWest submitted its operating costs to the Metropolitan Council over a month ago, but to date have not received any reimbursement. Even though State Statute requires the Council is to make payment within 35 days, upon inquiring, the Council now indicates there have been issues with our submittal, and each time a correction or clarification was provided the clock restarted. With this being the first time any of us have gone through this, one would think the Council would have worked with systems like ours, instead of again being a road block and making it difficult to access what's rightfully ours. I am sure our political leaders who worked very hard to put this funding package together would be very disappointed to hear we still have not received one cent in CARES Act Funding.

Construction – The Garage construction being completed by outside contractors has been completed except for a few minor punch list items. Note there will be a tour of the garage prior to the Commission meeting on September 24th starting at 5:30pm. The other construction we have going on at SouthWest Village (pedestrian bridge between the ramp and the station) should be finished by the end of the month.

Blue Ribbon Committee – The Governor's Blue-Ribbon Committee held its first meeting on Monday, September 14. The Committee will meet every other Monday through the end of the year. To assist with our effort to educate and inform the Commission on the role suburban transit plays, why we were formed, and the value we bring not only to our communities but the entire region, we have brought Winthrop and Weinstine on-board prior to the 2021 Legislative Session to assist with our efforts. Attached are the transit related questions from the first Blue Ribbon Committee meeting.

Operations, Planning, IT, Marketing, Vehicle Maintenance and Facility Maintenance, September 2020

Tungsten AP Workflow software – staff completed the training for implementation of the workflow software. The Accounts Payable process will become a paperless process beginning on September 28. The system will allow all invoices to move through the organization with greater efficiency. All staff included in the payment approval process attended implementation training on Tuesday, September 22. The system also eliminates much of the manual Laserfiche process for records storage.

Build Your Dream (BYD) electric buses – BYD visited the EP Garage on September 8th. Two buses were demonstrated, a 40 foot and a 26-foot bus. Staff rode in the 40-foot bus to get a feel from a customer perspective. SWT is interested in an electric bus at some point in the near future. Current mileage ranges for the different sized BYD buses are:

- 30-foot low floor: 185 miles
- 35-foot low floor: 145 miles
- 40-foot low floor: 177 miles

Mileage depends on temperature and taurine. Information discussions will continue with BYD and other electric bus manufacturers.

A draft **Scope of Work for driver compartment barriers** has been developed. This scope will be part of a request for proposals (RFP) which will be released soon.

Passenger Separators – The shop is expected to receive a first shipment of passenger seat barriers by September 28th. As soon as they arrive, the Vehicle Maintenance department will begin installing them on the current revenue fleet.

Automated announcements – are one step closer for SWT buses. Staff has been working closely with Metro Transit staff to make the final adjustments to ensure the accuracy and timing of stop announcements. After another round of testing, the system will be pushed live to the fleet.

SWT is finalizing a **scope of work for Managed Services** for our Tier 2 and Tier 3 IT support. The scope adds support for our current IT staff to ensure our systems are patched and protected from cyber security events.

New Operations Intern – The Operations Department welcomed a new Operations/Planning Intern in September - Hassen Jama. In addition to driving for SouthWest for several years, Hassen is pursuing his Bachelor's in Industrial Systems Engineering from the University of Minnesota. We are excited to have Hassen join our team as he will bring a unique perspective given his driver experience and educational background.

New Service/Increasing Ridership – As the Commission is aware, a new service schedule was implemented on 9/8 that added trips to the system, While we have seen gains in ridership, overall ridership still lags far behind "normal" ridership due to the ongoing COVID-19 pandemic. Staff is monitoring trips closely to ensure no single bus has more than 20 passengers on board in order to ensure safe social distancing. Thus far, the largest single trip loads are around 15 passengers.

Airport/494/Shakopee Services – Planning continues for a launch in August for scheduled SW Prime service along the 494 corridor and select areas of Shakopee. Staff is in the process of acquiring MTRAC transponders that will allow our vehicles to access the Mall of America Transit Station. We expect to have the transponders for both Mall of America and the Airport installed by the end of September, which will allow us to meet our planned launch date of 10/12.

Decommissioning of eight buses – The shop has recently decommissioned eight buses that were past their useful life, the buses were State Fair reserve/ready for sale non-revenue buses. These buses have been sent off to auction. The shop has now removed all buses from the Norex facility. These buses are being moved to the new holding lot courtesy of First Transit located in Burnsville.

The shop has **started our yearly cold weather service** – this process ensures the buses are ready for the cold Minnesota winter.

Bus/Prime services have gone 156 consecutive days without an accident. If there is anything positive coming out of COVID, it is this. Fewer cars on the road and fewer people around to distract operators.

Construction at Eden Prairie Garage – is about 99 percent complete. Currently staff and the contractor are going through the final punch list. As for landscaping, staff is in the process of reviewing different options as well as who will be doing the work. One of the options includes SW staff performing the landscaping.

Weight/exercise room construction – is almost complete as well. Exercise equipment and electric outlets have been located. The floor and walls have been painted. It is looking pretty good.

Gift Baskets for Seniors – Staff is working on putting together a nice fall gift bag for 250 seniors in Eden Prairie, Chaska, and Chanhassen. SWT is providing a cloth shopping bag along with other health items (face masks, hand sanitizer, a free transit pass, SWT Literature and other miscellaneous items). Staff is also working with local businesses and have confirmed donations from Cub Foods, Kowalski's, Lund's & Byerly's. Menard's has also been contacted and we hope they will contribute as well.

Minnesota Public Transit Association (MPTA) Award – One of SWT's very own is the winner of this year's **Distinguished Career** award. MPTA was established in 1975 and is an advocate for transit systems and transit riders across the State of Minnesota. Each year they present this award to someone who has gone above and beyond not only for their transit systems but also for their community. The recipient of the 2020 MPTA Distinguished Career Award is Dave Jacobson.