

REQUEST FOR PROPOSALS

SUPPORT FOR METROPOLITAN TRANSPORTATION PLAN



ISSUE DATE:

November 10, 2022

PROJECT BUDGET:

\$58,500

RESPOND BY:

Noon, December 22, 2022

Late proposals will not be accepted

DBE GOAL:

RACE AND GENDER NEUTRAL

Up to 10 points will be awarded in the evaluation process for the inclusion of a DBE

DELIVER PROPOSALS TO:

gibson@stcloudapo.org

DIRECT QUESTIONS TO:

Brian Gibson

gibson@stcloudapo.org

SUPPORT FOR METROPOLITAN TRANSPORTATION PLAN

BACKGROUND & DESCRIPTION

One of the APO's primary products is the Metropolitan Transportation Plan (MTP)¹. The plan is mostly produced by APO staff, but we need assistance with specific tasks and elements of the plan for which we do not have the time and/or expertise to complete.

The APO has a regional travel demand model (TDM) in CUBE.

In 2022, the TDM was recalibrated to base year 2020; forecasts of population, households, jobs, etc. in the year 2050 were developed; and a 2050 "no build" model was completed using the TDM.

In 2023, we are seeking consultant assistance with the following tasks:

1. Develop planning-level cost estimates for an initial list of surface transportation projects selected for potential inclusion in the MTP. APO staff will use these cost estimates to fiscally constrain the MTP. The list of projects will be provided to the consultant by APO staff. The consultant will only need to develop the planning-level cost estimates.
2. Specifying, running, and analyzing the results of the TDM for the following scenarios:
 - a. 2050 *initial* MTP scenario and comparing the output to the 2050 no-build scenario (completed in 2022).
 - b. 2050 *refined* MTP scenario vs. 2050 no-build scenario.
 - c. 2050 *refined* MTP + beltline corridor scenario vs. 2050 no-build scenario.
 - d. 2050 *refined* MTP + beltline corridor scenario vs. 2050 *refined* MTP scenario (without the segments of the beltline corridor that are within the fiscally constrained *refined* scenario).
3. Estimation of the potential 2050 greenhouse gas (GHG) emissions under the 2050 *refined* MTP scenario at a regional level and compare to the 2020 base-year GHG emissions.
4. Developing and executing a one-day on-site workshop to train the APO staff in the use and operation of the TDM.
 - i. The APO's Technical Advisory Committee (TAC) will review the *initial* MTP scenario model output and the comparison to the 2050 no-build scenario to assess the impacts of the *initial* MTP project list and potentially change the projects. After this set of revisions, the consultant will specify the 2050 *refined* MTP network.

¹ See 23 CFR §450.324

Respondents should budget for at least two presentations of model results to the APO's TAC.

Obviously specifying model scenarios and operating the TDM are a part of many of the tasks specified above, but just as important are the metrics by which the model output will be compared across model runs. Some examples of potential metrics would be vehicle-miles-traveled, number of congested lane miles, volume-to-capacity ratios, travel time reliability, minutes of congested travel, among others.

The purpose of comparing scenarios is to assist technical staff and elected leaders in identifying the optimal set of projects for inclusion in the final MTP. Respondents should clearly specify in their proposal the metrics that they propose to use when comparing TDM scenario output.

To help you specify the most important performance metrics, the themes that have been identified for the MTP are:

1. **System & Environmental Stewardship** – Protecting and preserving our existing infrastructure and environmental assets
2. **Multimodal Connections** – Providing a safe and equitable multimodal transportation network affordable for people of all ages and abilities to travel using their preferred modal choice
3. **Congestion Management** – Mindfully planning, developing, and operating an innovative transportation network to minimize unnecessary travel delays
4. **Transportation Safety** – Reducing fatalities and serious injuries by planning, designing,

and building safe infrastructure and improving driving behavior

5. **Interregional Connections** – Supporting an economically vibrant region through developing and preserving vital connections to other state, national, and global centers of commerce
6. **Technological Advancement** – Understanding and planning for future innovative transportation technologies and encouraging their presence and incorporation into the region's existing transportation network

The consultant will **not** be responsible for any public input tasks or coordination with the APO's jurisdictions as part of this contract. APO staff will conduct all public input and jurisdictional coordination.

OTHER RELATED PLANNING PROCESSES

APO staff will be completing the bulk of the MTP development planning process. The consultant will only be responsible for the tasks listed above. If respondents expect APO staff support for any of the tasks, they should clearly identify those tasks and what specific support they expect from APO staff. Given the budget for this contract, the APO expects this to be a collaborative process with consultant and APO staff supporting each other, but we want all parties to be clear on what the consultant will do and what APO staff will do.

GENERAL NOTES

APO staff are not modeling experts. We expect respondents to utilize their knowledge and experience to propose a process which they feel is best suited to

complete the tasks identified herein as efficiently and effectively as possible.

We prefer not to be prescriptive in our RFPs, but rather allow you the freedom to propose tools, processes, strategies, and methods that in your experience are most appropriate for this study and will best help us achieve our goals, as stated below:

GOALS

The goals of this effort are to:

1. Develop planning-level cost estimates for roadway projects (both new construction and re-construction projects) that could be potentially included in the final MTP which APO staff can use to fiscally-constrain the final MTP.
2. Compare various TDM scenarios in a meaningful way that helps highlight any shortcomings or benefits of the network scenarios.
3. Run an *initial* 2050 MTP scenario and compare the output to the 2050 no-build model output.
4. Run a *refined* 2050 MTP scenario and compare the output to the 2050 no-build model output.
5. Evaluate the impact of the beltline corridor on future traffic operations. Basically, what is our best estimate of future traffic operations with and without the beltline corridor?
6. Estimate future GHG emissions as compared to current GHG emissions. How will building the projects in the MTP impact future GHG emissions?
7. Improve APO staff's technical abilities to perform simple TDM model runs as needed.

DELIVERABLE(S)

The final deliverables of this effort will be:

1. Planning-level project cost estimates for potential MTP projects.
2. A series of TDM outputs that are informative and comparable/contrastable against one another.
3. An estimate of current and future GHG emissions within the APO planning area.
4. A one-day workshop to help APO staff improve their TDM operation skills.
5. A minimum of two presentations to the TAC.

STUDY BUDGET AND TIMELINE

The total project budget is \$58,500.

Federal funding assistance provided by the Federal Highway Administration for this project is expected to be \$46,800 (CFDA 20.205). The budget includes \$11,700 local funds. Consultants should consider \$58,500 to be the maximum amount for the corridor study.

It is anticipated that work described in this RFP will begin on or about January 23, 2023 and be completed by no later than December 31, 2023. (See Evaluation and Selection Timeline starting on page 6).

PROPOSAL CONTENT

Respondents are asked to describe in detail:

1. How they intend to achieve the goals and deliverables of this project, including specific tasks, expected outcomes, and both interim and final deliverables

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2. The qualifications and experience of staff who will work on this project
 3. Their firm's qualifications and experience related to the overall goals of the study.

Proposed staff hours must be broken down by person(s) assigned to each task/subtask. Overhead rate and expense, cost plus fixed fee, and any direct non-salary expense must be itemized and shown separately from individual staff hourly billing rates and expenses. Hour detail by task and assigned staff person must be provided in the proposal document in table format with assumed costs. See "Sample Price Plan" (Exhibit B) for an example. Fiscal value is a factor in the proposal evaluation (20%).

The Proposal shall be submitted on 8.5" x 11" paper in no less than 10-point font, and shall not exceed **35 pages** in length, including cover letter and all exhibits and appendices (not including required certifications and affidavits). Graphic illustrations may be included on 11" x 17" paper if necessary for clarity. Pursuant to Section 6002 of the Solid Waste Disposal Act, all proposal materials shall be bound in a single submission by a single staple in the top left corner. Plastic binders, covers, section dividers, etc. are prohibited. Paper shall have a minimum of 30% post-consumer fiber.

The following will be considered minimum contents of the proposal and must be submitted in the order listed:

1. Respondent's company name, business address, the contact person's name, telephone number, fax number and email address.
2. A general overview of the project objectives, goals, proposed tasks and deliverables to show or

demonstrate the Respondent's understanding of the study.

3. A description of the proposed approach and methodology to be utilized, deliverables to be provided by the Respondent, and a description of the proposed management techniques.
 - a. Because visualization, analysis, and understanding of the various TDM scenarios is an important component of this process, respondents should include examples of how they propose to analyze and show the differences between TDM model runs. Examples can be from other geographic areas but should reasonably reflect the product that the APO can expect.
4. A detailed description of the Respondent's background and experience with similar work. This should include examples of similar work indicating the Respondent's level of involvement in the study, and the key personnel involved with the study.
5. A list of the key personnel who will be assigned to the study and their area of responsibility. Provide statements for each of the key personnel detailing their training, work experience and qualifications relevant to the proposed work. No change in personnel assigned to the study will be permitted without the written approval of the APO.
6. A work plan identifying the major tasks to be accomplished. The work plan must present the

Respondent's approach, task breakdown, and deliverable due dates.

- a. Where appropriate, the work plan should clearly identify those tasks which the Respondent will complete and those tasks that the Respondent assumes APO staff will complete in support of the Respondent's work.
7. A price plan including the hourly rates and fringe rates for all key personnel who will perform the tasks outlined above, as well as the agency's indirect rate.
8. Three references from clients within the past three years for whom the Respondent has performed similar work. Ideally, the references will have worked with the key personnel assigned to this study.
9. Completed forms and documents required under any other section of this RFP.

PROPOSAL SUBMITTAL

All proposals must be sent to:

*Brian Gibson, PTP
Executive Director
St. Cloud Area Planning Organization
1040 County Road 4
St. Cloud, MN 56303*

All responses must be received no later than noon Central time on December 21, 2022.

If proposals are mailed, submit the original and two copies of the proposal. A principal member of the firm must sign the original proposal and any required certifications or affidavits in [blue](#) ink (see Exhibit E for more details).

Proposals may be emailed to gibson@stcloudapo.org. However, by doing so, respondents are indicating their understanding that the APO will print the proposal as it is received on standard 8.5" x 11" paper and makes no guarantees that large format maps, graphics, or other formatting issues will be printed as intended. **Fax responses will not be considered.**

PROPOSAL EVALUATION

A "Best Value Selection" method will be used to evaluate and rank proposals submitted in response to this RFP.

Representatives of the APO will evaluate all proposals received by the deadline and rank them in order of preference. A 100-point scale will be used in to aid the evaluation and prioritization process.

The factors on which proposals will be judged are:

1. **Project understanding and proposed scope-of-work**, as demonstrated by the Respondent's ability to meet the goals of the study

effectively and efficiently. Factors considered here include coordination with the APO, project management techniques, visualizations, QA/QC, and other tasks that result in a concise process that maximizes the quality of the final deliverables. (40 points max.)

2. **Specialized expertise and experience of key staff members**, as demonstrated by the experience and qualifications of key staff members assigned to the project. (20 points max.)
3. The Respondent's **record of past performance**, including quality of work, demonstrated ability to control costs and successfully complete a study within the approved budget, and demonstrated ability to meet deadlines. (10 points max.)
4. The inclusion of a MnDOT-registered **Disadvantaged Business Enterprise (DBE)** for at least 5% of the total study budget. DBEs that play a more significant role in the study may be awarded more points, while DBEs that play only a minor role may be awarded fewer points (10 points max.)
5. **Overall Value** when compared to other proposals, as demonstrated by the proposed budget, staff time dedicated to the project, the dedication of other resources that add value, and maximizing the overall quality of the final product given time and budgetary constraints. Note that the highest value proposal is not necessarily the proposal with the lowest proposed budget. (20 points max.)

The contract award may be made based only on submitted proposals.

APO reserves the right to award the contract without further discussion, presentation, or negotiation. If additional dialogue is determined to be necessary, successful firms determined to be in the “Competitive Range” will be notified by December 29, 2022 for further negotiations.

The evaluation team will base their determination of “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors noted in the proposals. The evaluation team may determine that negotiations with the next highest ranked proposer are warranted if negotiations with the preferred proposer do not satisfactorily meet the needs of this project.

REQUEST FOR CLARIFICATION

In the event the evaluation team believes that additional clarification of a proposal is needed in order to properly evaluate and rank the proposal, the APO shall submit a request for clarification by email to the Respondent. The Respondent will have two working days to respond via email to provide the additional requested information.

PROPOSAL QUESTIONS

No interpretation of the meaning of the RFP will be made to any Respondent verbally. Respondents are encouraged to promptly notify APO of any apparent major inconsistencies, problems or ambiguities in this RFP. Any questions regarding this RFP must be submitted by email only to:

*Brian Gibson, PTP
APO Executive Director
gibson@stcloudapo.org*

For the benefit of all potential respondents, all proposal questions and responses will be posted on the

St. Cloud Area Planning Organization website:

<https://stcloudapo.org/current-plans/current-upwp/support-for-metropolitan-transportation-plan/>

No other project personnel are allowed to discuss the RFP before the proposal submission deadline. Contact regarding this RFP with any personnel not listed above could result in disqualification.

To be given consideration, all questions regarding this RFP must be received no later than noon Central time on December 6, 2022.

GENERAL INFORMATION

Respondents must adhere to all terms of this RFP. Late proposals will not be considered. All costs incurred in responding to this RFP will be borne by the Respondent.

APO NOT OBLIGATED TO COMPLETE PROJECT

This RFP does not obligate the Saint Cloud Area Planning Organization (APO) to award a Contract or complete the project, and APO reserves the right to cancel the solicitation if it is considered to be in its best interest.

DISPOSITION OF RESPONSES

All materials submitted in response to this RFP will become property of APO and will become public record after the evaluation process is completed and an award decision made. If the respondent submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes §13.37, the respondent must:

- Clearly mark all trade secret materials in its response at the time the response is submitted,
- Include a statement with its response justifying the trade secret designation for each item, and
- Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless APO, its agents, and employees, from any judgments or damages awarded against the APO in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the APO's award of a Contract. In submitting a response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of APO. APO is required to keep all the basic documents related to its Contracts, including responses to RFPs for a minimum of seven years.

APO will **not** consider the prices submitted by the respondent to be proprietary or trade secret materials.

- Patent Rights: The Common Grant Rules require provisions consistent with Dept. of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms," 37 CFR Part 401.
- Rights to Data: When FHWA provides Federal assistance to support the costs of a research, development, demonstration, or a special studies project, FHWA generally seeks sufficient rights in the data developed so that the resulting data can be made available to any FHWA recipient,

sub-recipient, third party contractor, or third party subcontractor.

Responses to this RFP will not be open for public review until APO decides to pursue a Contract and that Contract is executed.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL.

Small businesses, minority-owned businesses, and women-owned businesses are encouraged to respond to this solicitation. Larger firms are encouraged to sub-contract with small, minority-owned, and women-owned businesses when economically feasible.

The MnDOT Office of Civil Rights has assigned a **Race and Gender Neutral** DBE goal to this project. Bidders are directed to read Exhibit C and Section F of Exhibit D.

The DBE Special Provisions (Exhibit C) explain how to comply with the DBE requirements. In particular, see text regarding documents that a bidder must submit with its bid proposal. The form required in the bid can be found on the last page of Exhibit C.

EXCLUDED PARTIES LISTING SYSTEM.

Before entering into a third party contract or subcontract, the APO shall check the Excluded Parties Listing System (EPLS) at www.sam.gov to ensure the selected vendor or contractor has not been excluded from doing business with the federal government or its grantees. The APO shall document that the EPLS has been checked.

PROPOSAL PROTEST PROCEDURE

1. A formal letter of protest must be received at the APO Office to the

attention of the Brian Gibson, Executive Director, within ten (10) business days of the date of the award notification letter. The letter must state specifically the reason for the protest and include any documentation needed to substantiate the claim(s).

2. Saint Cloud APO will have ten (10) business days from the date of receipt of the protest letter in which to make a written response. The St. Cloud APO may extend the period for purposes of investigating the protest, if it is warranted, by notifying the complainant in writing of their intentions within the above mentioned response time.
3. If the complainant, after receiving the final written response from the Saint Cloud APO, is not satisfied that the reason for protest has

been sufficiently resolved, he/she may file a request for an appeal to be heard by the Saint Cloud APO. Such request must be written and received within the (10) business days from the date of the Saint Cloud APO response letter. The letter shall be made to the attention of Brian Gibson, Executive Director, who will schedule the hearing for the next available Saint Cloud APO Board meeting and inform the complainant in writing of said date and time.

4. Saint Cloud APO will not receive any service or product described in the PROPOSAL document from the successful Proposal until the protest has been resolved. Complainants do have the right to protest directly to FHWA if they choose.

EVALUATION AND CONTRACTING TIMELINE

It is anticipated that the evaluation and selection will be completed according to the following schedule:

Nov. 10, 2022	RFP posted
Dec. 6, 2022	Deadline for questions <u>by email only</u> (noon Central time)
Dec. 8, 2022	Deadline for APO responses to questions to be posted at http://stcloudapo.org/current-plans/current-upwp/mayhew-lake-road-corridor-study/ (noon Central time)
Dec. 22, 2022	Deadline for RFP submittals (noon Central time)
Dec. 29, 2022	Evaluation and scoring of RFP submittals
Dec. 29, 2022	Notification of Awardee <u>OR</u> of Firms in "Competitive Range" (<i>if necessary</i>)
Jan. 6, 2022	Contract Negotiations with Awardee <u>OR</u> Negotiations with Firms in "Competitive Range" (<i>if necessary</i>)
Jan. 20, 2022	MnDOT contract approval deadline
Jan. 23, 2023	Notice to proceed (pending execution of Contract documents)
Dec. 31, 2023	Deadline for all work on this contract to be completed

Metropolitan and Urbanized Area

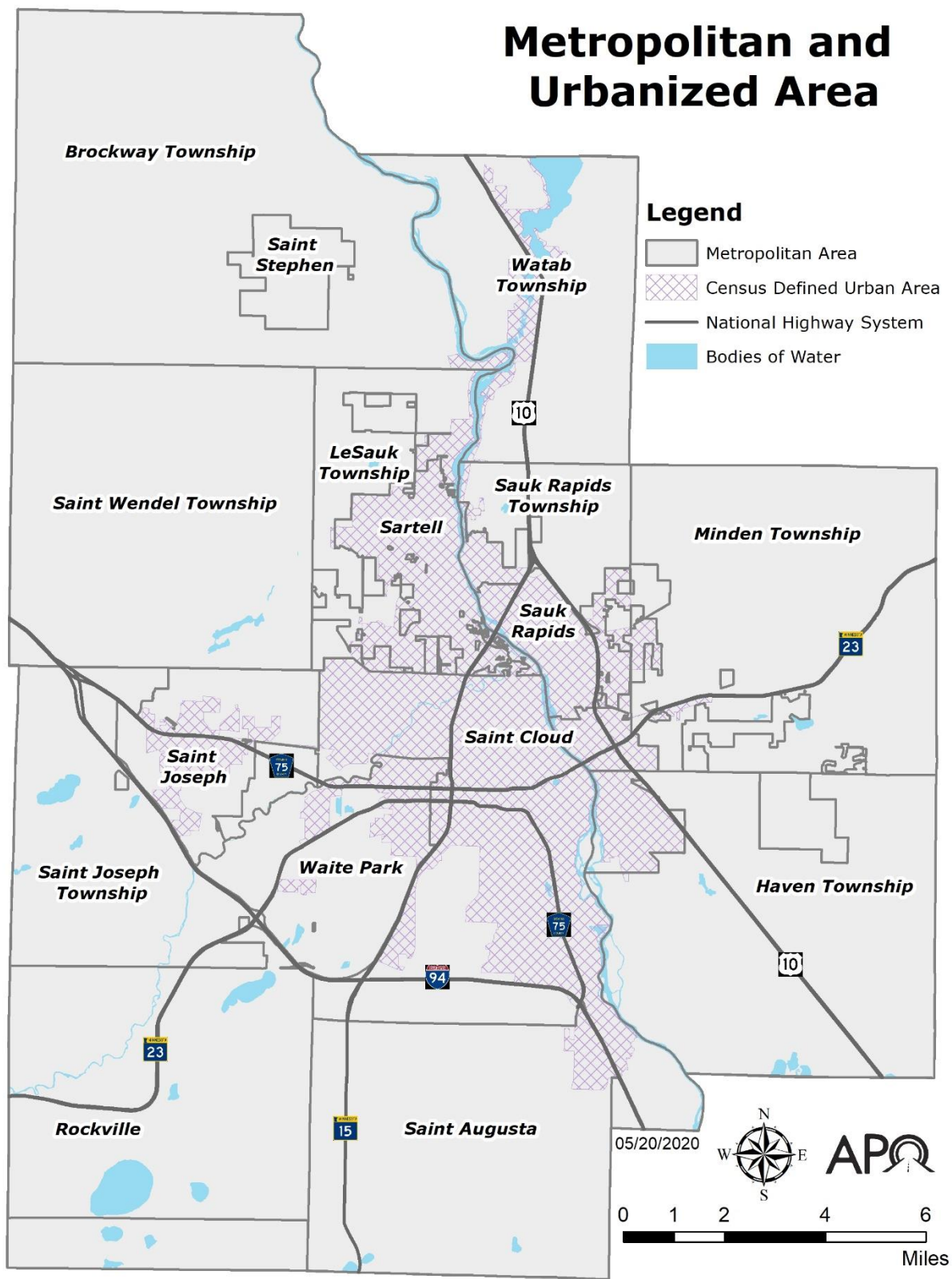


EXHIBIT B – SAMPLE PRICE PLAN

Task	Professional Hours				Cost
	Alex A.	Bill B.	Carrie C.	Totals	
Hourly Rates	\$55	\$45	\$35		
Task 1 (hrs.)					
Task 1.1 (hrs.)	2	12	35	49	\$1,875.00
Task 1.2 (hrs.)	0	6	12	18	\$690.00
TASK 1 SUBTOTAL	2	18	47	67	\$2,565.00
Task 2 (hrs.)					
Task 2.1 (hrs.)	6	24	8	38	\$1,690.00
Task 2.2 (hrs.)	2	16	12	30	\$1,250.00
TASK 2 SUBTOTAL	8	40	20	68	\$2,940.00
Labor Sub-Total (Hrs.)	10	58	67	135	
Labor Cost	\$550.00	\$2,610.00	\$2,345.00		\$5,505.00
Overhead				145%	\$7,982.25
Fixed-Fee				12%	\$1,618.47
Travel					\$725.00
Printing and Mailing					\$200.00
TOTAL COST					\$16,030.72

*If sub-contractors are used, each sub-contractor should include a similar price plan for their respective task(s).

EXHIBIT C – D.B.E. SPECIAL PROVISIONS

RACE AND GENDER NEUTRAL DBE GOAL

POLICY STATEMENT

It is the policy of the Minnesota Department of Transportation (Mn/DOT) that DBEs, as defined in 49 C.F.R. Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in parts with federal funds. Consistent with this policy and Title VI of 1964 Civil Rights Act, Mn/DOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation (DOT) assisted contract because of sex, race, color, or national origin. Mn/DOT has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the DOT, 49 C.F.R. Part 26 to implement this policy.

CONTRACT ASSURANCE

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out all the applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as Mn/DOT deems appropriate.

Furthermore, Title VI of the Civil Rights Act of 1964 assures that no person or group of persons may, on the grounds of race, color,

national origin, sex, age, handicap or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs or activities administered by Mn/DOT. For further information regarding Title VI, please contact the Office of Civil Rights, 395 John Ireland Blvd., MS 170, St. Paul, MN 55155-1899. Our telephone number is: (651) 366-3073.

The above information is applicable to every contractor including every tier of subcontractors, supplier or service providers on this project. It is the responsibility of the prime contractor, subcontractors, suppliers and service providers to ensure equal opportunity for all firms to participate on this project.

DBE GOAL

A **Race and Gender Neutral** DBE goal has been assigned to this procurement. While no numeric DBE goal is assigned, the Contractor, sub-recipient or subcontractor should make every reasonable effort to solicit DBE firms to participate as subcontractors, service providers and suppliers on this project.

ADDITIONAL SUBCONTRACTORS, SUPPLIERS AND SERVICE PROVIDERS

Whenever an additional subcontractor, supplier or service provider is selected, and this information has not been previously reported to the Mn/DOT Office of Civil Rights, the Contractor or its designated OCR Officer shall promptly provide Mn/DOT

OCR office with the following information regarding the subcontract:

1. The name of the subcontractor, supplier, or service provider;
2. The total dollar amount of the subcontract;
3. The specific work items covered by the subcontract;
4. Estimated quantities of each work item; and
5. Individual unit prices (if applicable).

SUBMITTAL OF DOCUMENTATION

Upon award of the contract, the Contractor shall submit on the attached Bidders List², a complete list of all subcontractors, service providers, suppliers and

consultants that submitted bids, and shall indicate the successful quotes that will be used on the contract.

Additionally, during the life of the contract, the Contractor shall submit progress payment reports on the attached Contractor Payment Form regarding the payments made to its subcontractors, suppliers, service providers and sub-consultants. In accordance with federal regulations and Minnesota's Prompt Payment law, Contractors are required to pay their subcontractors within ten (10) days of receiving progress payments from Mn/DOT. Contractors are also required to submit to the Project Engineer and the Mn/DOT OCR the Contractor Payment Forms no later than ten (10) days after receiving payment from Mn/DOT.

² Fillable PDF version available at:
<https://www.dot.state.mn.us/civilrights/pdf/tgb/tgbvets-bidderslist.pdf>



**MINNESOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS**

BIDDERS LIST

Construction Projects-Enter this information into CRL

TGB/VET Special Provisions
Revised 3/2017

State Project No. [redacted] Letting Date [redacted] **TGB** **VET Business**
 Prime Contractor [redacted] Commitment [redacted] Commitment [redacted]
 Proposed Cost [redacted] Goal [redacted] Goal [redacted]

List all comparative quotes of participants performing on the project and participants that bid. Include Subcontractors, Suppliers, Sub-consultants & Service providers.

1. Name, Contact Name and Phone number of Contractor *	Check (✓) Firms That Will Be Used	Description of Work	Dollar Amount of Subcontract/Quote
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

* Please indicate with a check mark (✓) which subcontractors, suppliers, sub-consultants & service providers you will be using on the project.

(Make additional copies of this form as necessary)

MNDOT OCR Page [redacted] of [redacted]
01/2017

EXHIBIT D – FEDERAL CONTRACT CLAUSES

REQUIRED CONTRACT CLAUSES

The Contractor agrees to comply with the following requirements and agrees to pass through these requirements to its subcontractors and third-party contractors, as applicable.

A. ACCESS TO RECORDS AND REPORTS 2 CFR §200.336

ACCESS TO RECORDS - The following access to records requirements apply to this Contract:

The Contractor will maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred in connection with work and services performed under this contract. The Contractor must make such materials available at its office at all reasonable times during the term of this contract, and for six years from the date of final payment under this contract, for inspection by the Saint Cloud APO. Copies of such materials will be furnished to the Saint Cloud APO upon one week notice during the term of this contract and for six years from the date of final payment under this contract.

B. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

NO OBLIGATION BY THE STATE OR FEDERAL GOVERNMENT - (1) The Saint Cloud APO and Contractor acknowledge and agree that, notwithstanding any concurrence by the State or Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the State or Federal Government, the State or Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Saint Cloud APO, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with State or Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS - (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FHWA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

All invoices submitted to the Saint Cloud APO for payment shall include the following certification signed by the Contractor's Project Manager:

"I certify to the best of my knowledge the belief that this request for payment is true, complete, and accurate, and the expenditures are for the purposes and objectives set forth in the project contract. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me and my employer to criminal or civil penalties for fraud, false statements, false claims, or otherwise."

D. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. §623, 42 U.S.C. §2000; 42 U.S.C. §6102, 42 U.S.C. §12112; 42 U.S.C. §12132, 49 U.S.C. §5332; 29 CFR PART 1630, 41 CFR PARTS 60 ET SEQ.

CIVIL RIGHTS - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FHWA, modified only if necessary to identify the affected parties.

E. BREACHES AND DISPUTE RESOLUTION

DISPUTES - Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

PERFORMANCE DURING DISPUTE - Unless otherwise directed by the Saint Cloud APO, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

CLAIMS FOR DAMAGES - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

REMEDIES - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Saint Cloud APO and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Minnesota.

RIGHTS AND REMEDIES - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Saint Cloud APO or Contractor shall constitute a

waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**F. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR PART 26**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of **race and gender neutral** has been established for this procurement.
- b. Respondents are directed to read the DBE Special Provisions, as posted at <http://www.dot.state.mn.us/consult/index.html> under the Prof/Tech Notices section and attached as Appendix B. The DBE Special Provisions explains how to comply with the DBE requirements. In particular, see language regarding document(s) that a respondent must submit with its proposal. The form required in the proposal can be found on page C-3 of this document. To view a listing of certified DBE's, please contact the Mn/DOT Office of Civil Rights at 651-366-3073, TTY 651-282-5799, or visit their website at <http://www.dot.state.mn.us/civilrights>.
- c. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Saint Cloud APO deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d. The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the Saint Cloud APO. In addition, [the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Saint Cloud APO and contractor's receipt of the partial retainage payment related to the subcontractor's work.]
- f. The Contractor must promptly notify Saint Cloud APO, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not

terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Saint Cloud APO.

G. PROCUREMENT OF RECOVERED MATERIALS
2 CFR §200.322

PROCUREMENT OF RECOVERED MATERIALS - The following requirements apply to the underlying contract:

The Saint Cloud APO and the Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only item designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the items exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

H. DISCLAIMER

DISCLAIMER – For contracts funded with federal funds, all final documents produced under this contract shall include the following statement on the title page:

"The preparation of this report has been funded in part by the U.S. Department of Transportation, Federal Highway Administration, and Federal Transit Administration. The contents of this document reflect the views of the authors who are responsible for the facts or accuracy of the data presented therein. The contents do not necessarily reflect the official views or policies of the U.S. Department of Transportation. This report does not constitute a standard, specification, or regulation."

For contracts funded with federal and state funds, all final documents produced under this contract shall include the following statement on the title page:

"The preparation of this report has been funded in part by the U.S. Department of Transportation, Federal Highway Administration, and Federal Transit Administration, and the Minnesota Department of Transportation. The contents of this document reflect the views of the authors who are responsible for the facts or accuracy of the data presented therein. The contents do not necessarily reflect the official views or policies of the U.S. Department of Transportation or the Minnesota Department of Transportation. This report does not constitute a standard, specification, or regulation."

I. TERMINATION FOR CAUSE AND FOR CONVENIENCE
2 CFR PART 200, APPENDIX II(B)

TERMINATION OF AGREEMENT - Either the Contractor or Saint Cloud APO may, by giving written notice specifying the effective date which shall not be less than thirty (30) days from the date such notice is given, terminate this Agreement in whole or in part. In the event of termination, all property and finished or unfinished documents and other writing prepared by the Contractor under this Agreement shall be delivered to Saint Cloud APO and Contractor shall be entitled to compensation for time expended and expenses incurred to the date of termination.

J. FEDERAL CHANGES

FEDERAL CHANGES – Contractor shall at all times comply with all applicable State and Federal regulations, policies, procedures and directives. Contractor’s failure to so comply shall constitute a material breach of this contract.

K. LOBBYING

LOBBYING – Contracts for **more than \$100,000** must require the contractor and any subcontractor(s) to file a lobbying certification. The funding threshold is based on the total contract award (i.e., prime and any subs).

L. REMEDIES

2 CFR PART 200, APPENDIX II(A)

REMEDIES - Contracts for **more than \$150,000** must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

M. CLEAN AIR AND CLEAN WATER

42 U.S.C. 7401 – 7671Q.; 33 U.S.C. 1251-1387

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT - Contracts for **more than \$150,000** must contain a provision that requires the Contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the FHWA and the Regional Office of the Environmental Protection Agency (EPA).

OTHER REQUIRED CONTRACT CLAUSES

The Contractor agrees to comply with the following additional requirements.

N. CONDITIONS OF PAYMENT

All services provided by the Contractor under this contract must be performed to the satisfaction of the Saint Cloud APO and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Consultant will not receive payment for work found by the Saint Cloud APO to be unsatisfactory or performed in violation of federal, state, or local law.

O. ASSURANCES – NON-CONSTRUCTION PROGRAMS

Contractor certifies that it complies with all the applicable clauses identified in SF-424B, Assurances – Non-Construction Programs, as provided at <https://www.grants.gov/forms/sf-424-family.html>.

EXHIBIT E – REQUIRED AFFIDAVITS AND CERTIFICATIONS

- AFFIDAVIT OF NONCOLLUSION (SEE PAGE E-4)
- CONFLICT OF INTEREST CHECKLIST AND DISCLOSURE FORM (SEE PAGE E-5)
- AFFIRMATIVE ACTION CERTIFICATION (SEE PAGE E-9)
- IMMIGRATION STATUS CERTIFICATION (SEE PAGE E-11)
- CERTIFICATION OF RESTRICTION ON LOBBYING (SEE PAGE E-13)
- ASSURANCES FOR NON-CONSTRUCTION PROGRAMS (SEE PAGE E-14)
- CERTIFICATE OF LIABILITY INSURANCE (SEE PAGE E-18)

DESCRIPTION OF REQUIRED FORMS

AFFIDAVIT OF NONCOLLUSION

Respondents must complete the “Affidavit of Noncollusion” found in this Appendix and include it with the response. The successful respondent will be required to submit acceptable evidence of compliance with workers’ compensation insurance coverage requirements prior to execution of the Contract. The successful respondent will be required to submit pre-award audit information and comply with audit standards.

ORGANIZATIONAL CONFLICTS OF INTEREST

The respondent warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to Saint Cloud APO, or the successful respondent’s objectivity in performing the Contract work is or might be otherwise impaired, or the

successful respondent has an unfair competitive advantage. The respondent agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to Saint Cloud APO, which must include a description of the action, which the successful respondent has taken or proposes to take to avoid or mitigate such conflicts.

If an organization conflict of interest is determined to exist, Saint Cloud APO may, at their discretion, cancel the Contract. In the event the respondent was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the contracting officer, Saint Cloud APO may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve Saint Cloud APO’s rights. Respondents must complete the “Conflict of Interest Checklist and Disclosure Form” and submit it along with the response, but not as a part of the response.

AFFIRMATIVE ACTION DATA

For all Contracts estimated to be **in excess of \$100,000**, respondents are required to complete the "Affirmative Action Certification" page and include it with the response.

IMMIGRATION STATUS CERTIFICATION

By order of the Governor (Governor's Executive Order 08-01), vendors and subcontractors MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the *E-Verify* system established by the Department of Homeland Security. *E-Verify* program information can be found at <http://www.dhs.gov/ximgtn/programs>.

If any response to a solicitation is or could be **in excess of \$50,000**, vendors and subcontractors must certify compliance with items 1 and 2 of the Immigration Status Certification by completing the required form and submitting it with their proposal.

In addition, prior to the delivery of the product or initiation of services, vendors must obtain this certification from all subcontractors who will participate in the performance of the contract. All subcontractor certifications must be kept on file with the contract vendor and made available to the state upon request.

RESTRICTIONS ON LOBBYING

Contractors that apply or bid for an award of **\$100,000 or more** must complete the required certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing an officer or employee of any agency, a member of Congress, officer or

employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. The Contractor must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The respondent must submit the required form with their proposal.

Pursuant to Minnesota Statutes §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

STANDARD OF PERFORMANCE, INSURANCE AND INDEMNITY

All services to be performed by Contractor hereunder shall be performed in a skilled, professional and non-negligent manner. Contractor shall obtain and maintain at his/her/its cost and expense:

- 1. Comprehensive general liability insurance** that covers the consultant services performed by Contractor for Saint Cloud APO with a combined single limit of liability of at least One Million Dollars (\$1,000,000.00).
- 2. Errors and omissions or equivalent insurance** that covers the contractor services performed by Contractor for Saint Cloud APO with a combined single limit of liability of at least One Million Dollars (\$1,000,000.00).
- 3. Worker's compensation insurance** covering Contractor (if an individual) and all of Contractor's employees with coverages and limits of coverage required by law.

Contractor shall indemnify and hold harmless Saint Cloud APO from and against all errors, omissions and/or negligent acts causing claims, damages, liabilities and damages arising out of the performance of his/her/its services hereunder.

Contractor certifies that Contractor is in compliance with all applicable worker's compensation laws, rules and regulations. Neither Contractor (if an individual) nor Contractor's employees and agents will be considered Saint Cloud APO employees. Any claims that may arise under any worker's compensation laws on behalf of any employee of Contractor and any claims made by any third party as a consequence of any act or omission on the part of Contractor or any employee of Contractor are in no way Saint Cloud APO's obligation or responsibility. By signing this Agreement, Contractor certifies that Contractor is in compliance with these laws and regulations.

Contractor shall deliver to Saint Cloud APO, concurrent with the execution of this Agreement, one or more certificate(s) of insurance evidencing that Consultant has the insurance required by this Agreement in full force and effect.

Saint Cloud APO shall be named as an additional insured under such policy(ies). The insurer will provide at least thirty (30) days prior written notice to Saint Cloud APO, without fail, of any cancellation, non-renewal, or modification of any the policy(ies) or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Saint Cloud APO, without fail, of any cancellation of any of the policy(ies) or coverage evidenced by said certificate(s) for nonpayment of premium. Contractor

shall provide Saint Cloud APO with appropriate endorsements to its policy(ies) reflecting the status of Saint Cloud APO as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Saint Cloud APO by the insurance company providing such insurance policy to Contractor.

The Contractor shall require any subcontractor permitted by Saint Cloud APO under Section 3 hereof to perform work for Contractor on the Project to have in full force and effect the insurance coverage required of the Contractor under this Agreement before any subcontractor(s) begin(s) work on the Project. Contractor shall require any such subcontractor to provide to Contractor a Certificate of Insurance evidencing that such subcontractor has the insurance required by this Agreement in full force and effect. The Contractor and Saint Cloud APO shall be named as additional insureds under such policies. The insurer will provide 30-day written notice to Saint Cloud APO and Contractor, without fail, of any cancellation, non-renewal, or modification of the policy(ies) or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to Saint Cloud APO, without fail, of any cancellation of any of the policy(ies) or coverage evidenced by said certificate(s) for nonpayment of premium. Saint Cloud APO shall also be provided with appropriate endorsements to its policy(ies) reflecting the status of Saint Cloud APO as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided Saint Cloud APO by the insurance company providing such insurance policy(ies).

AFFIDAVIT OF NONCOLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Respondent (if the Respondent is an individual), a partner in the company (if the Respondent is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Respondent is a corporation).
2. That the attached proposal submitted in response to the _____ Request for Proposals has been arrived at by the Respondent independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Respondent of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition.
3. That the contents of the proposal have not been communicated by the Respondent or its employees or agents to any person not an employee or agent of the Respondent and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Respondent's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this: _____ day of _____

Notary Public: _____

My commission expires: _____

CONFLICT OF INTEREST CHECKLIST AND DISCLOSURE FORM

PURPOSE OF THIS CHECKLIST. This checklist is provided to assist proposers in screening for potential organizational conflicts of interest. The checklist is for the internal use of proposers and does not need to be submitted, however, the Disclosure of Potential Conflict of Interest form should be submitted in a separate envelope along with your proposal.

DEFINITION OF "PROPOSER". As used herein, the word "Proposer" includes both the prime contractor and all proposed subcontractors.

CHECKLIST IS NOT EXCLUSIVE. Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a proposer determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

USE OF THE DISCLOSURE FORM. A proposer must complete the attached disclosure form and submit it with their Proposal. If a proposer determines a potential conflict of interest exists, it must disclose the potential conflict to Saint Cloud APO; however, such a disclosure will not necessarily disqualify a proposer from being awarded a Contract. To avoid any unfair "taint" of the selection process, the disclosure form should be provided separate from the bound proposal, and it will not be provided to selection committee members. Saint Cloud APO personnel will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer may be awarded the contract notwithstanding the potential conflict. By statute, resolution of conflict of interest issues is ultimately at the sole discretion of Saint Cloud APO.

MATERIAL REPRESENTATION. The proposer is required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, either that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The proposer must also update conflict information if such information changes after the submission of the proposal. Information provided on the form will constitute a material representation as to the award of this Contract. Saint Cloud APO reserve the right to cancel or amend the resulting contract if the successful proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is materially false or misleading.

APPROACH TO REVIEWING POTENTIAL CONFLICTS. Saint Cloud APO recognizes that proposer's must maintain business relations with other public and private sector entities in order to continue as viable businesses. Saint Cloud APO will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not Saint Cloud APO's intent to disqualify proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the proposer's ability to provide objective advice to Saint Cloud APO. Saint Cloud APO would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, Saint Cloud APO must follow statutory guidance on Organizational Conflicts of Interest.

STATUTORY GUIDANCE. Minnesota Statutes §16C.02, subd. 10 (a) places limits on state agencies ability to contract with entities having an “Organizational Conflict of Interest”. For purposes of this checklist and disclosure requirement, the term “Vendor” includes “Proposer” as defined above. Pursuant to such statute, “Organizational Conflict of Interest” means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired; or (3) the vendor has an unfair advantage.

ADDITIONAL GUIDANCE FOR PROFESSIONALS LICENSED BY THE MINNESOTA BOARD OF ENGINEERING. The Minnesota Board of Engineering has established conflict of interest rules applicable to those professionals licensed by the Board (see Minnesota Rules part 1805.0300) Subpart 1 of the rule provides “A licensee shall avoid accepting a commission where duty to the client or the public would conflict with the personal interest of the licensee or the interest of another client. Prior to accepting such employment, the licensee shall disclose to a prospective client such facts as may give rise to a conflict of interest”.

AN ORGANIZATIONAL CONFLICT OF INTEREST MAY EXIST IN ANY OF THE FOLLOWING CASES:

- ❑ The proposer, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this Contract.
- ❑ The proposer is providing services to another governmental or private entity and the proposer knows or has reason to believe, that entity’s interests are, or may be, adverse to the state’s interests with respect to the specific project covered by this contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a Saint Cloud APO project if a local government has also retained the proposer for the purpose of persuading Saint Cloud APO to stop or alter the project plans.
- ❑ The Contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the proposer has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the Contract.
- ❑ The proposer is providing real estate or design services to a private entity, including but not limited to developers, whom the proposer knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this Contract, when the value or potential uses of such property may be affected by the proposer’s performance of work pursuant to this Contract. “Property affected by the project” includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity’s property may be affected by the proposer’s work pursuant to the Contract when such work involves providing recommendations for right-of-way acquisition, access control, and the design or location of frontage roads and

interchanges. **Comment:** this provision does not presume proposers know or have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the proposer has reason to believe that its performance of work under this contract may materially affect the value or viability of a project it is performing for the other entity.

- ❑ The proposer has a business arrangement with a current Saint Cloud APO employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the proposer being awarded this Contract. This item does not apply to pre-existing employment of current or former Saint Cloud APO employees, or their immediate family members. **Comment:** this provision is not intended to supersede any Saint Cloud APO policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a proposer may have unfair access to “inside” information.
- ❑ The proposer has, in previous work for the state, been given access to “data” relevant to this procurement or this project that is classified as “private” or “nonpublic” under the Minnesota Government Data Practices Act, and such data potentially provides the proposer with an unfair advantage in preparing a proposal for this project. **Comment:** this provision will not, for example, necessarily disqualify a proposer who performed some preliminary work from obtaining a final design Contract, especially when the results of such previous work are public data available to all other proposers. Rather, it attempts to avoid an “unfair advantage” when such information cannot be provided to other potential proposers. Definitions of “government data”, “public data”, “non-public data” and “private data” can be found in Minnesota Statutes Chapter 13.
- ❑ The proposer has, in previous work for the state, helped create the “ground rules” for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- ❑ The proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the proposer hereby indicates that it has, to the best of its knowledge and belief:

____ Determined that no potential organizational conflict of interest exists.

____ Determined a potential organizational conflict of interest as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

Signature

Date

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with APO personnel.

Name

Phone

AFFIRMATIVE ACTION CERTIFICATION

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

Your response will be rejected unless your business:

Has a current Certification of Compliance issued by the Minnesota Department of Human Rights (MDHR) -or- Has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to Box C. Include a copy of you Certification with your response**
- We do not have a current Certificate of Compliance; However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____(date). If the date is the same as the response due date, indicate the time your plan was received: _____(time). **Proceed to Box C.**
- We do not have a Certification of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. We acknowledge that our response will be rejected. Proceed to Box C. Contact the MDHR for assistance. (See below for contact information)

Please note: Certificates of Compliance must be issued by the MDHR. Affirmative Action Plans must be approved by the Federal government, a county or a municipality must still be received, reviewed and approved by the MDHR before a Certification can be issued.

BOX B – For those companies not described in BOX A

Check below

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

BOX C – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the respondent. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: _____ Date: _____

Authorized Signature: _____ Phone: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5th Street, Suite 700
Saint Paul, Minnesota 55101

Email: employerinfo@therightsplace.net

Web: www.humanrights.state.mn.us

TC Metro: (651) 296-5663

Toll Free: 800-657-3704

Fax: (651) 296-9042

TTY: (651) 296-1283

IMMIGRATION STATUS CERTIFICATION

By order of the Governor (Governor’s Executive Order 08-01), vendors and subcontractors MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the *E-Verify* system established by the Department of Homeland Security.

E-Verify program information can be found at <http://www.dhs.gov/ximgtn/programs>.

If any response to a solicitation is or could be in excess of \$50,000, vendors and subcontractors must certify compliance with items 1 and 2 below. In addition, prior to the delivery of the product or initiation of services, vendors MUST obtain this certification from all subcontractors who will participate in the performance of the Contract. All subcontractor certifications must be kept on file with the Contract vendor and made available to the state upon request.

1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this Contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and
2. By the date of the delivery of the product and/or performance of services, the company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

I certify that the company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.

Name of Company: _____ Date: _____

Authorized Signature: _____ Phone: _____

Printed Name: _____ Title: _____

If the Contract vendor and/or the subcontractors are not in compliance with the Immigration Reform and Control Act, or knowingly employ persons in violation of the United

States immigration laws, or have not begun or implemented the *E-Verify* program for all newly hired employees in support of the Contract, the state reserves the right to determine what action it may take. This action could include, but would not be limited to cancellation of the Contract, and/or suspending or debarring the Contract vendor from state purchasing.

For assistance with the E-Verify Program

Contact the National Customer Service Center (NCSC) at **1-800-375-5283** (TTY 1-800-767-1833).

For assistance with this form, contact:

Mail: 112 Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155

E-Mail: MMDHelp.Line@state.mn.us

Telephone: 651-296-2600

Persons with a hearing or speech disability may contact us by dialing 711 or 1-800-627-3529

CERTIFICATION OF RESTRICTION ON LOBBYING

In accordance with Section 1352 of Title 31, United States Code, it is the policy of the bidder/company named below that:

1. No Federal or state appropriated funds have been paid or will be paid by or on behalf of the bidder/company, to any person for influencing or attempting to influence an officer or employee of any Federal or state agency, or a member of Congress or the state legislature in connection with the awarding of any Federal or state contract, the making of any Federal or state grant, the making of any Federal or state loan, extension, continuation, renewal, amendment, or modification of any Federal or state contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The bidder/company shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants and contracts and subcontracts under grants, subgrants, loans, and cooperative agreement), **which exceeds \$100,000**, and that all such subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Name of Bidder / Company Name: _____

Type or print name: _____

Signature of authorized representative: _____

Date ___ / ___ / ___

Title of authorized official: _____

ASSURANCES FOR NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;

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- b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
 - d. the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;
 - e. the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - f. the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - g. §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - i. any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - j. the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
 8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
 9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.
 10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

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11. Will comply with environmental standards which may be prescribed pursuant to the following:
 - a. institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - b. notification of violating facilities pursuant to EO 11738;
 - c. protection of wetlands pursuant to EO 11990;
 - d. evaluation of flood hazards in floodplains in accordance with EO 11988;
 - e. assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
 - f. conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
 - g. protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and,
 - h. protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
 12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
 13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
 14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
 15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
 16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
 17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
 18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or sub-awards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

EXHIBIT F – APO’S CONTRACT TEMPLATE

PROJECT IDENTIFICATION:

This contract is between The St. Cloud Area Planning Organization (“APO”) and <<insert contractor>> (“Contractor”).

RECITALS

1. APO is in need of services as follows:

<<insert brief description of necessary service(s)>>

2. Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of APO.

CONTRACT TERMS

3. TERM OF CONTRACT, SURVIVAL OF TERMS

3.1 Effective Date: This contract will be effective on the date APO obtains all required signatures. Contractor must not begin work under this contract until this contract is fully executed and Contractor has been notified by APO’s Authorized Representative to begin the work.

3.2 Expiration Date: This contract will expire on December 31, <<year>>, or when all obligations have been satisfactorily fulfilled, whichever occurs first.

3.3 Survival of Terms: All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this contract, including, without limitation, the following clauses within this contract: 8. Indemnification; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction and Venue; and 14. Data Disclosure.

3.4 Exhibits: Exhibits A through D are attached and incorporated into this contract.

4. CONTRACTOR’S DUTIES

4.1 Contractor, who is not an APO employee, will perform the tasks and provide the deliverables described in Exhibit A.

5. TIME

5.1 Contractor must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence.

6. CONSIDERATION AND PAYMENT

6.1 Consideration. APO will pay for all services performed by Contractor under this contract as follows:

6.1.1 Compensation. Contractor will be APO shall pay the undisputed portion of each invoice within 45 days of the date of receiving the invoice.

6.1.2 Direct Costs. Allowable direct costs include project specific costs listed on Exhibit B. Any other direct costs not listed in Exhibit B must be approved, in writing, by APO’s Authorized Representative prior to expenditure.

6.1.3 Total Obligation. The total obligation of APO for all compensation and reimbursements to Contractor under this contract will not exceed \$<<insert>>.

6.2 PAYMENT

6.2.1 Invoices. Contractor must submit invoices electronically for payment. The format of the invoices must comply with requirements set forth in Exhibit B. Contractor will submit invoices for payment on a monthly basis.

6.2.2 All Invoices Subject to Audit. All invoices are subject to Audit, at APO's discretion.

6.2.3 Subcontractors. If Contractor is authorized by APO to use or uses any subcontractors, Contractor must include all the above supporting documentation in any subcontractor's contract and Contractor must make timely payments to its subcontractors. Contractor must require subcontractors' invoices to follow the same form and contain the same information as set forth above.

6.2.4 Federal Funds. If federal funds are used, Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by Contractor's failure to comply with federal requirements.

7. CONDITIONS OF PAYMENT

7.1 All services provided by Contractor under this contract must be performed to APO's satisfaction, as determined at the sole discretion of APO's Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations, including business registration requirements of the Office of the Secretary of State. Contractor will not receive payment for work found by APO to be unsatisfactory or performed in violation of federal, state or local law.

8. AUTHORIZED REPRESENTATIVES

8.1 APO's Authorized Representative. APO's Authorized Representative will be:

Brian Gibson
1040 County Road 4, Saint Cloud, MN 56303
612-320-7568
gibson@stcloudapo.org

APO's Authorized Representative, or his/her successor, will monitor Contractor's performance and has the authority to accept or reject the services provided under this contract.

8.2 Contractor's Authorized Representative. Contractor's Authorized Representative will be:

<<insert contact info>>

If Contractor's Authorized Representative changes at any time during this contract, Contractor must immediately notify APO.

9. ASSIGNMENT, AMENDMENTS, WAIVER AND CONTRACT COMPLETE

9.1 Assignment. Contractor may neither assign nor transfer any rights or obligations under this contract without the prior consent of APO and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office.

9.2 Amendments. Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.

9.3 Waiver. If APO fails to enforce any provision of this contract, that failure does not waive the provision or State's right to subsequently enforce it.

9.4 Contract Complete. This contract contains all prior negotiations and agreements between APO and Contractor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

10. INDEMNIFICATION

10.1 In the performance of this contract by Contractor, or Contractor's agents or employees, Contractor must indemnify, save and hold APO, its agents, and employees harmless from any and all claims or causes of action, including reasonable attorney's fees incurred by APO, to the extent caused by Contractor's: 1) negligent acts or omissions; 2) breach of contract; or 3) breach of the applicable standard of care. The indemnification obligations of this section do not apply if the claim or cause of action is the result of APO's negligence. This clause will not be construed to bar any legal remedies Contractor may have for APO's failure to fulfill its obligation pursuant to this contract.

11. GOVERNMENT DATA PRACTICES AND INTELLECTUAL PROPERTY

11.1 Government Data Practices. Contractor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by APO under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either Contractor or State. If Contractor receives a request to release the data referred to in this Clause, Contractor must immediately notify State and consult with APO as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law.

11.2 Intellectual Property Rights. APO owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Contract. "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Contractor, its employees, agents and subcontractors, either individually or jointly with others in the performance of this contract. Works includes Documents. "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Contractor, its employees, agents or subcontractors, in the performance of this contract. The Documents will be the exclusive property of APO, and Contractor upon completion or cancellation of this contract must immediately return all such Documents to APO. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works

made for hire.” Contractor assigns all right, title and interest it may have in the Works and the Documents to APO. Contractor must, at the request of State, execute all papers and perform all other acts necessary to transfer or record the APO’s ownership interest in the Works and Documents.

11.2.2 OBLIGATIONS

11.2.2.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by Contractor, including its employees and subcontractors, in the performance of this contract, Contractor will immediately give State’s Authorized Representative written notice thereof and must promptly furnish State’s Authorized Representative with complete information and/or disclosure thereon.

11.2.2.2 Representation. Contractor must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of APO and that neither Contractor nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless APO, at Contractor’s expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in Contractor’s or APO’s opinion is likely to arise, Contractor must, at APO’s discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of APO will be in addition to and not exclusive of other remedies provided by law.

12. WORKERS’ COMPENSATION

12.1 Contractor certifies that it is in compliance with Minnesota Statutes §176.181, subdivision 2, pertaining to workers’ compensation insurance coverage. Contractor’s employees and agents will not be considered APO employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way APO’s obligation or responsibility.

13. PUBLICITY AND ENDORSEMENT

13.1 Publicity. Any publicity regarding the subject matter of this contract must identify APO as the sponsoring agency and must not be released without prior written approval from APO’s Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

13.2 Endorsement. Contractor must not claim that APO endorses its products or services.

14. GOVERNING LAW, JURISDICTION AND VENUE

14.1 Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings arising out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Stearns County, Minnesota.

15. DATA DISCLOSURE

15.1 Under Minnesota Statutes §270C.65, and other applicable law, Contractor consents to disclosure of its social security number, federal employer tax identification number and Minnesota tax identification number, already provided to State, to federal and state agencies and state personnel involved in the payment of APO obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring Contractor to file state tax returns and pay delinquent state tax liabilities, if any, or pay other state liabilities.

16. SUBCONTRACTORS

16.1 SUBCONTRACTS

16.1.1 If Contractor is authorized by APO to use, or uses, any subcontractors, Contractor will be responsible for coordinating and managing the work of such subcontractors. The use of subcontractors does not relieve Contractor from its obligation to perform the services specified in this contract.

16.1.2 Contractor must submit a copy of all subcontracts exceeding \$10,000.00 to APO's Authorized Representative no later than 30 calendar days after executing the subcontract and prior to beginning work under the subcontract. Upon request by APO, a copy of any executed subcontract under \$10,000.00 must be sent to APO's Authorized Representative.

16.2 PAYMENT TO SUBCONTRACTORS

16.2.1 (If applicable) As required by Minnesota Statutes §16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

17. TERMINATION AND SUSPENSION

17.1 Termination by APO. APO may terminate this contract at any time. Upon termination, Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

17.2 Termination for Insufficient Funding. APO may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to Contractor. Written notice may be transmitted by electronic means. APO is not obligated to pay for any services that are provided after notice and effective date of termination. However,

Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. APO will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. State must provide Contractor notice of the lack of funding within a reasonable time of APO's receiving that notice.

18. INSURANCE REQUIREMENTS

18.1 Insurance Certificates and Continuity of Coverage Required. Contractor must not commence work under this contract until Contractor has obtained all of the insurance required below, and APO has been provided with a certificate of insurance showing that Contractor has each type of coverage and limits required under this Contract. Contractor must file the certificate with APO's Authorized Representative within 30 days after execution of this contract and prior to commencing any work under this contract. Contractor must maintain such insurance in full force and effect throughout the term of this contract.

18.2 Required Insurance. Contractor must maintain and furnish satisfactory evidence of the following insurance policies:

18.2.1 Workers' Compensation Insurance: Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:

- \$100,000.00 – Bodily Injury by Disease per employee
- \$500,000.00 – Bodily Injury by Disease aggregate
- \$100,000.00 – Bodily Injury by Accident

If Minnesota Statutes §176.401 exempts Contractor from Workers' Compensation insurance requirements or if Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements. If, during the course of performing this contract, Contractor becomes eligible for Workers' Compensation Insurance, Contractor must comply with the Workers' Compensation Insurance requirements of this section and provide State with a certificate of insurance showing such coverage.

18.2.2 Commercial General Liability Insurance: Contractor must maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under this contract whether the operations are by Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor pursuant to this contract. Insurance minimum amounts are as follows:

-
- \$2,000,000.00 – per occurrence
 - \$2,000,000.00 – annual aggregate
 - \$2,000,000.00 – annual aggregate – Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured, to the extent permitted by law

18.2.3 Commercial Automobile Liability Insurance: Contractor is required to maintain insurance protecting Contractor from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired and non-owned autos which may arise from operations under this contract and in case any work is subcontracted the Contractor will require the subcontractor to provide Commercial Automobile Liability. Insurance minimum limits are as follows:

- \$2,000,000.00 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

- Owned, Hired, and Non-owned Automobile

18.2.4 Professional/Technical, Errors and Omissions and/or Miscellaneous Liability Insurance: Contractor must maintain insurance providing coverage for all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor’s professional services performed under this contract. Unless otherwise specified within this contract, Contractor is required to carry the following minimum limits:

- \$1,000,000.00 – per claim
- \$1,000,000.00 – annual aggregate

Any deductible will be the sole responsibility of Contractor and may not exceed \$50,000 without the written approval of State. If Contractor desires State’s approval to have a higher deductible amount, Contractor must make such request in writing, specifying the amount of the desired deductible and providing financial statements, acceptable to State, to enable State to ascertain Contractor’s ability to cover the deductible from its own resources. State will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act. The retroactive or prior acts date of such coverage must not be after the effective date of this contract and Contractor must maintain such coverage for a period of at least three years following the completion of work.

If such insurance is discontinued, then extended reporting period coverage must be obtained to fulfill this requirement.

18.2.5 ADDITIONAL INSURANCE CONDITIONS:

18.2.5.1 With the exception of Professional Liability and Worker's Compensation, Contractor's policies will be primary insurance to any other valid and collectible insurance available to APO with respect to any claim arising out of Contractor's performance under this contract;

18.2.5.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the APO within five business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days advance written notice to the State of Minnesota.

18.2.5.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles; **18.2.5.4** If Contractor is self-insured, a Certificate of Self-Insurance must be provided to State;

18.2.5.4 Contractor's policies must include legal defense fees in addition to its liability policy limits, with the exception of Article 18.2.4 above;

18.2.5.5 Contractor must obtain insurance policies from insurance companies having an "AM BEST" rating of "A minus", a Financial Size Category VII, or better, and authorized to do business in the state of Minnesota; and

18.2.5.6 An Umbrella or Excess Liability insurance policy may be used to supplement Contractor's policy limits to satisfy the full policy limits required by this contract.

18.3 Right to Terminate. APO reserves the right to immediately terminate the contract if Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Contractor. All insurance policies must be open to inspection by APO and copies of policies must be submitted to APO's Authorized Representative upon written request.

19.DISCRIMINATION PROHIBITED BY MINNESOTA STATUTES §181.59

19.1 Contractor will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a

violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

20. E-VERIFY CERTIFICATION (IN ACCORDANCE WITH MINNESOTA STATUTES §16C.075)

20.1 For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of APO, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor. All subcontractor certifications must be kept on file with Contractor and made available to APO upon request.

21. PLAIN LANGUAGE; ACCESSIBILITY STANDARDS

21.1 Plain Language. Except for designs, plans, layouts, maps and similar documents, Contractor must provide all deliverables in "Plain Language". Executive Order 14-07 requires the Office of the Governor and all Executive Branch agencies to communicate with Minnesotans using Plain Language. As defined in Executive Order 14-07, Plain Language is a communication which an audience can understand the first time they read or hear it. To achieve that, Contractor will take the following steps in the deliverables:

- Use language commonly understood by the public;
- Write in short and complete sentences;
- Present information in a format that is easy-to-find and easy-to-understand; and
- Clearly state directions and deadlines to the audience.

21.2 Accessibility Standards. Except for designs, plans, layouts, maps and similar documents, Contractor agrees to comply with the State of Minnesota's Accessibility Standard (http://mn.gov/oet/images/Stnd_State_Accessibility.pdf) for all deliverables under this contract. The State of Minnesota's Accessibility Standards entail, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 of the Rehabilitation Act, as amended. Contractor's compliance with the State of Minnesota's Accessibility Standard includes, but is not limited to, the specific requirements as follows:

- All videos must include closed captions, audio descriptions and a link to a complete transcript;
- All documents, presentations, spreadsheets and other material must be provided in an accessible format. In addition, Contractor will provide native files in an editable format. Acceptable formats include InDesign, Word and Excel; and
- All materials intended for downloading and printing such as promotional brochures, must be labeled as such and the content must additionally be provided in an accessible format.

22. CERTIFICATION OF NONDISCRIMINATION (IN ACCORDANCE WITH MINNESOTA STATUTE §16C.053)

22.1 For services valued in excess of \$50,000, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Contractor's business. For purposes of this section, "discrimination" includes, but is not limited to, engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

23. ADDITIONAL PROVISIONS

NONE

24. FEDERAL CLAUSES

See Exhibit C.

25. REQUIRED CERTIFICATIONS AND AFFIDAVITS

See Exhibit D.

26. COMPONENT PARTS

This Contract consists of the following component parts, all of which are fully a part of this contract as if herein set out verbatim, or in not attached, as if hereto attached, to wit:

- a) Request for Proposals for <<insert title>>, dated <<date>>
- b) All Attachments identified in the Table of Contents of the Request for Proposals
- c) Provider Proposal dated <<insert date>>
- d) This Contract, including all Exhibits A through D
- e) Federal Contract Clauses
- f) Disadvantaged Business Enterprises (DBE) Special Provisions.
- g) Affidavit of Non-Collusion (signed by the Consultant)
- h) Disclosure of Potential Conflict of Interest Checklist (signed by the Consultant)
- i) Affirmative Action Certification (signed by the Consultant)
- j) Immigration Status Certification (signed by the Consultant)
- k) Certification of Restriction on Lobbying (signed by the Consultant)
- l) Assurances for Non-Construction Programs (signed by Consultant)
- m) Certificate of Liability Insurance for the Consultant, dated <<insert>>