

FARGO-MOORHEAD
METROPOLITAN COUNCIL OF GOVERNMENTS

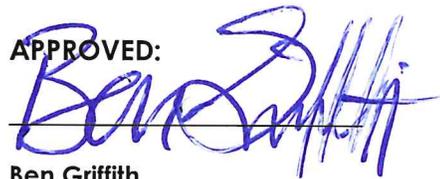
REQUEST FOR PROPOSALS (RFP)

PROJECT NO. 2024-211

Clay County Heartland Trail Routing Analysis

September, 2023

APPROVED:



Ben Griffith
Metro COG, Executive Director

REQUEST FOR PROPOSALS (RFP)

The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) requests proposals from qualified consultants for the following project:

Clay County Heartland Trail Routing Analysis

Qualifications based selection criteria will be used to analyze proposals from responding consultants. The most qualified candidates will be invited to present an in-person, virtual, or hybrid interview. Upon completion of technical ranking and interviews, Metro COG will enter into negotiations with the top ranked firm. **Sealed cost proposals shall be submitted with the RFP.** The cost proposal of the top ranked firm will be opened during contract negotiations. Those firms not selected for direct negotiations will have their unopened cost proposals returned. Metro COG reserves the right to reject any or all submittals. This project will be funded, in part with federal transportation funds and has a not-to-exceed budget of **\$250,000**.

Interested firms can request a full copy of the RFP by telephoning 701.532.5100, or by e-mail: metrocof@fmmetrocog.org. Copies will be posted on the North Dakota Department of Transportation QBS website (<https://www.dot.nd.gov>) and are also available for download in .pdf format at www.fmmetrocog.org.

All applicants must be prequalified with the North Dakota Department of Transportation (NDDOT). If not prequalified with the NDDOT, applicants will be required to submit a completed Standard Form 330 with their submittal of information.

All proposals received by **4:30 p.m. (Central Time) on Wednesday October 18, 2023** will be given equal consideration. Respondents must submit one (1) PDF of the proposal, and one (1) sealed hard copy of the cost proposal. The full length of each proposal shall not exceed thirty-five (35) pages; including any supporting material, charts, or tables.

The sealed cost proposals shall be shipped to ensure timely delivery to the contact defined below:

Dan Farnsworth
Fargo-Moorhead Metropolitan Council of Governments
Case Plaza, Suite 232
One 2nd Street North
Fargo, ND 58102
farnsworth@fmmetrocog.org
701-532-5106

Fax versions will not be accepted as substitutes for the sealed cost proposal. Once submitted, the proposals will become property of Metro COG.

Note: This RFP can be made available in alternative formats for persons with disabilities by contacting Savanna Leach, Office Manager at 701.532.5100 or leach@fmmetrocog.org.

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Note: Throughout this RFP, Metro COG may be referred to as 'Client' and the consulting firm may be referred to as 'Consultant', 'Contractor', or 'Firm'.

I AGENCY OVERVIEW

The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) serves as the Council of Governments (COG) and Metropolitan Planning Organization (MPO) for the greater Fargo, North Dakota – Moorhead, Minnesota metropolitan area. As the designated MPO for the Fargo-Moorhead Metropolitan Area, Metro COG is responsible under federal law for maintaining a continuous, comprehensive, and coordinated transportation planning process.

Metro COG is responsible, in cooperation with the North Dakota and Minnesota Departments of Transportation (NDDOT and MnDOT, respectively) and our local planning partners, for carrying out the metropolitan transportation planning process and other planning issues of a regional nature. Metro COG represents eleven cities and two counties that comprise the Metro COG region in these efforts.

II PROJECT BACKGROUND AND OBJECTIVE

The Heartland Trail is a paved state trail located in north-central Minnesota which provides recreation and transportation for walkers, runner, bicycle users, snowmobilers, cross country skier, and other uses throughout the year. The currently-constructed Heartland Trail is a 49-mile paved shared use path that extends from Park Rapids to Cass Lake. The trail was constructed in 1976 from Park Rapids to Walker with the Walker to Cass Lake portion constructed in 2002.

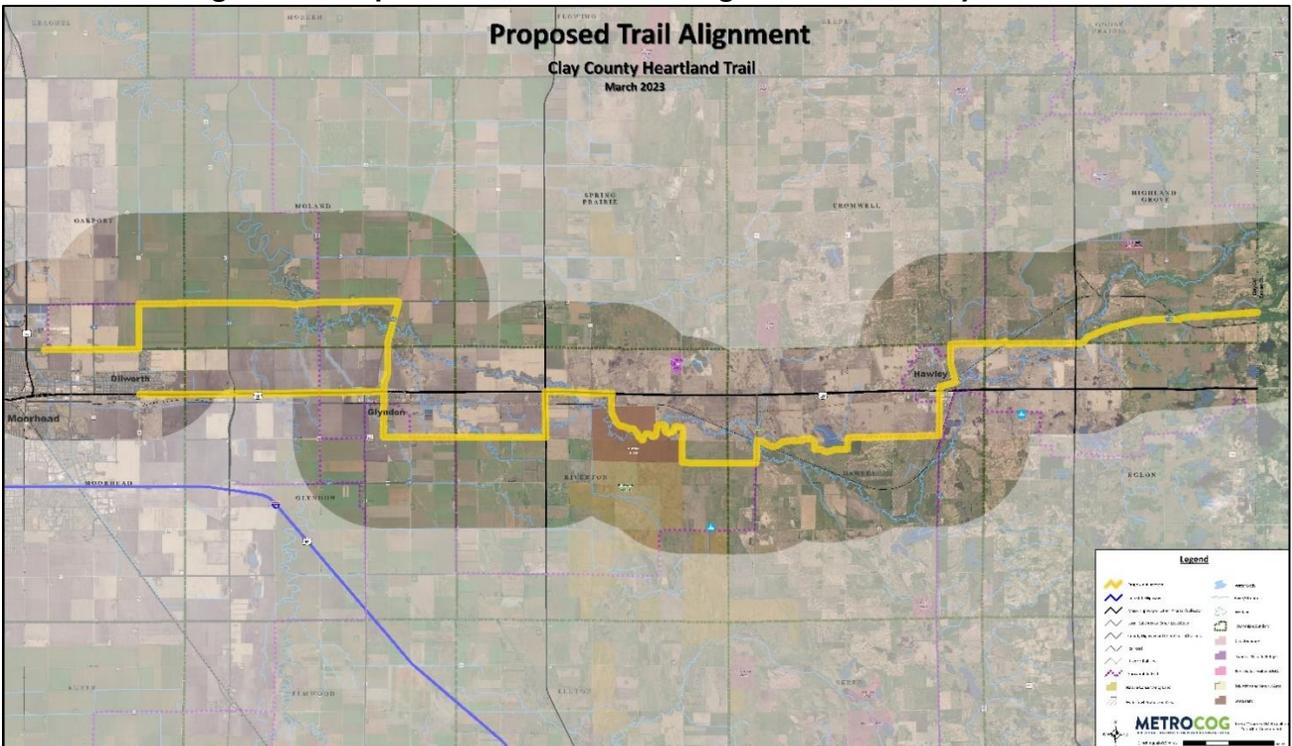
In 2006 the Minnesota Legislature authorized the extension of the Heartland Trail from Park Rapids to Moorhead. Since that time efforts have been made to try and make this a reality. In Becker County a portion of the trail is now substantially complete from Detroit Lakes to Frazee (5 miles).

In Clay County, planning efforts began in 2014 which has resulted in several discussions with jurisdictions, the development of a preliminary alignment, as well as public/landowner meetings held in 2015. In addition to planning efforts in Clay County, a one-mile segment of what might be the future Heartland Trail was constructed in Glyndon in 2019 and a traffic signal with accommodations to include a trail was installed in Hawley, MN at US Hwy 10.

The objective of this study is to build off past planning efforts by proposing alignment alternatives and then detailing precise trail placement as part of each alignment alternative. In addition, public and stakeholder engagement will be a key component of this study, which will be used to help propose a proposed detailed alignment.

A map on the following page shows the location of the study area.

Figure 1 – Proposed Heartland Trail Alignment and Study Area



For more detailed version of map, please go to:
https://www.fmmetrocog.org/application/files/7716/7787/3336/Heartland_Trail_Map_Mar2023.pdf

III SCOPE OF WORK AND PERFORMANCE TASKS

Outlined below is the scope of work that will guide development of the Clay County Heartland Trail Routing Analysis. Metro COG has included the following scope of work to provide interested Consultants with insight into project intent, context, coordination, responsibilities, and other elements to help facilitate proposal development.

This outline is not necessarily all-inclusive. The Consultant may include in the proposal any additional performance tasks or the modification of the tasks listed below that will integrate approaches to successfully complete the project. At a minimum, the Consultant is expected to complete the following tasks as part of this project:

Task 1 - Project Management and Coordination

This task involves activities required to manage the project including staff, equipment and documentation. It also includes the preparation of monthly progress reports, documenting travel and expense receipts, and preparing and submitting invoices for reimbursement. In addition, this task includes progress meetings with Metro COG. It should

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be assumed that progress meetings will occur at least monthly and as needed in between.

The Consultant will assign a single person to serve through the life of the contract as Consultant Project Manager ("PM"). The PM must be the person identified in the selected firm's proposal and may not be changed without prior written approval of Metro COG. The PM is responsible for overall project management necessary to ensure the satisfactory completion of the Clay County Heartland Trail Routing Study, on-time and on-budget, in accordance with the scope of services. The PM will serve as a single point of contact and will be expected to ensure the Consultant team is properly managed, adequate resources are available, submittals are timely, quality control processes are utilized for maximum benefit, and invoices are paid in a timely fashion.

The PM will submit monthly invoices with documentation acceptable to Metro COG throughout the life of the contract. Invoices must include the monthly progress report, a breakout of activities by task, employee hours for those tasks, and any supportive documentation for expenses. All invoice submittals, including progress reports, and any supportive materials shall be submitted to the Metro COG project manager no later than the 2nd Thursday of the month. This is to ensure invoices are processed in a timely fashion.

Task 2 – Existing & Planned Conditions

The Consultant shall conduct desktop analysis in order to gather all existing features along the study area. These features should include, but not be limited to:

- Wetlands
- Rivers, lakes, streams, drains, etc.
- Roadways and associated right-of-way
- Driveways
- Railroads (in-use & abandon) and railroad crossings
- Bridge locations
- Above ground utilities
- Land ownership and parcel lines
- Parks
- Bicycle & pedestrian facilities (shared use paths, sidewalks, bike lanes, etc.)
- Snowmobile trails
- Jurisdictional boundaries (city, township, county)
- Topographic information
- Snow fences

Metro COG and applicable jurisdictions have some of the above information available, and can provide the Consultant with available information upon request. All other non-existing datasets necessary to accomplish the goals of the analysis will need to be developed by the Consultant. Please note that engineering services such as surveying and geotechnical analysis are not eligible for Metro COG reimbursement.

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While field visits are permitted, trespassing on private property is not permitted.

The Consultant is encouraged to review relevant studies related to this project. In particular, the *2011 DNR Heartland Trail Extension Park Rapids to Moorhead Master Plan* is a recommended resource. This plan can be found on Metro COG's website at the following link:
[https://fmmetrocog.org/application/files/7715/8258/6758/Heartland State Trail Extension Master Plan.pdf](https://fmmetrocog.org/application/files/7715/8258/6758/Heartland_State_Trail_Extension_Master_Plan.pdf)

The Consultant should also research jurisdiction ordinances regarding snowmobiles. Since the Heartland Trail is required to accommodate snowmobiles, it will be important to understand where snowmobiles are permitted and prohibited. Where snowmobiles are prohibited, an alternate route will need to be provided which would be separated from the Heartland Trail.

Task 3 – Public Engagement

Public engagement will include the following:

Study Review Committee Meetings

Development of this study will be guided by a Study Review Committee (SRC) who will provide oversight and input into the study process, methodology, alternatives, overall findings, and recommendations. A minimum of five SRC meetings shall be held as part of this study process.

The Consultant will be responsible for the preparation and coordination of all information, documents, and agendas for the SRC. The Consultant will be expected to distribute materials to the SRC in a timely manner, no less than three business days prior to the meetings. Metro COG and the Consultant will work together in coordinating and scheduling SRC meetings. The Consultant is also responsible for the recording of meeting minutes, which should be submitted to Metro COG's project manager and will serve as documentation of the SRC's guidance and decisions.

Public Involvement

The Consultant shall propose an approach for public involvement which shall be in accordance with Metro COG's Public Participation Plan ([https://fmmetrocog.org/application/files/4016/7277/3608/2022 PPP - Final Policy Board Review.pdf](https://fmmetrocog.org/application/files/4016/7277/3608/2022_PPP_-_Final_Policy_Board_Review.pdf)). A minimum of two public involvement windows should be held as part of this study. Each public involvement window should include in-person public open house(s) as well as online public engagement. The Consultant, in cooperation with Metro COG and local agencies, will facilitate all public engagement activities.

Please note that all public notices, mailings, and social media boosts, etc. shall be

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paid for out of the project budget. Metro COG's website will be used to host the project webpage, and Metro COG staff will work with the Consultant to keep the website up-to-date with content provided by the Consultant team.

Stakeholder Outreach

In conjunction with Metro COG and the SRC, the Consultant shall develop a list of stakeholders which are associated with, or impacted by, the Heartland Trail. These stakeholders could include, but not be limited to: Townships, Buffalo River State Park, MSUM Science Center, BNSF, Moorhead Parks, Clay County Heartland Trail Task Force/Heartland Trail Advocates, Trail Blazers Snowmobile Club, local bicycle group(s), The Chamber of Fargo-Moorhead, Fargo-Moorhead Convention & Visitors Bureau, etc.

The Consultant should anticipate a minimum of six stakeholder meetings throughout the study process. The stakeholders will be grouped into two or three different groups.

Task 4 – Alignment AnalysisMacro-scale Alignment Analysis

The study corridor will be broken into four analysis segments: Moorhead to Glyndon, Glyndon to Buffalo River State Park, Buffalo River State Park to Hawley, and Hawley to the Clay/Becker County line. Aside from the preliminary alignment shown in **Figure 1**, the Consultant shall also develop one to two additional macro-scale/high level alignments per segment (depending on segment). Development of these alternatives should be vetted through the study review committee. Development of the macro-scale alignments, including the alignment shown in **Figure 1**, shall be based on: public & stakeholder feedback, available right-of-way, impact to privately-owned land, estimated cost, user experience, and any other important factors.

The Heartland Trail is required to accommodate snowmobiles; however, some jurisdictions prohibit snowmobile use within their limits. Therefore, alternate snowmobile routes will need to be provided bypassing jurisdictions which prohibit snowmobiles. As part of this analysis, the Consultant shall develop at least one snowmobile bypass route per alignment around any jurisdiction which prohibits snowmobile usage. It is encouraged that existing snowmobile routes be considered when developing these snowmobile bypass routes.

In cooperation with the study review committee, the Consultant shall also identify locations for trail accesses, interpretive stops (natural, historical, cultural), scenic stops, rest areas, and more.

Micro-scale Alignment Analysis

Once the macro-scale alignments have been developed, the Consultant shall dive into each macro-scale alignment and show the trail in a detailed granular scale (micro-

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scale). If the alignment is along a roadway corridor, the trail shall be laid-out in detail on both sides of the roadway. As part of the micro-scale alignment development and analysis, the trail should be proposed in an optimum location to account for Minnesota state trail requirements, existing roadway typical sections, clear zones, and drainage needs (if parallel to roadway), privately-owned land, right-of-way, driveways, above ground utilities, water features (wetlands, streams, ponds/lakes), obstructions, and more.

Task 5 – Cost Estimates

The Consultant shall develop planning-level cost estimates to for each of the macro-scale alignments developed. These estimates shall be broken into alignments per segment (Moorhead to Glyndon, Glyndon to Buffalo River State Park, etc.).

Task 6 – Implementation Plan

In cooperation with the study review committee, the Consultant shall develop an implementation plan for the Clay County Heartland Trail. This should identify which sections of the trail should be constructed first and also recommend when various cities along the corridor should consider trail construction and trail connections.

Task 7 – Draft Study Document

Upon completion of the aforementioned tasks, the Consultant shall provide a draft study document for review by the study review committee, stakeholders, and public. The study document shall include but not be limited to: existing conditions information, public involvement information and results, alignment layouts and analysis, cost estimates, implementation plan, and any pertinent maps and graphics.

The study document should include an appendix. Meeting summaries, public involvement results, and technical documentation should be included in the appendix of the study document.

Task 8 – Final Study Document

Once comments on the draft study document have been received and addressed, the Consultant shall assemble the final study document. The final study document shall be in PDF format.

Task 9 – Adoption Process

As part of the study's adoption process, presentations will be made to local boards and committees. The Consultant should budget for up to four presentations of the final study to local boards and committees.

NOTE: While under contract, if the Consultant wishes to modify or include additional tasks deemed necessary to complete the study, this must be agreed to by Metro COG before issuing the notice to proceed.

IV IMPLEMENTATION SCHEDULE

1) Consultant Selection

| | |
|--|-------------------------------|
| Advertise for Consultant Proposals | approximately 9/22/2023 |
| Due Date for Proposal Submittals (by 4:30pm) | 10/18/2023 |
| Review Proposals/Identify Finalists | 10/19/2023 – 10/26/2023 |
| Interview Finalists | between 11/1/2023 – 11/8/2023 |
| Metro COG Board Approval/Consultant Notice | 11/16/2023 |
| Contract Negotiations | 11/17/2023 – 11/29/2023 |
| Signed Contract | approximately 12/1/2023 |
| QBS Submittal & Approval (between NDDOT & Metro COG) | 12/1/23 – 12/15/23 |
| Notice to Proceed* | approximately 1/2/2024 |

***Notice to Proceed shall not be issued until the Consultant has provided all materials required for contracting, including, but not limited to, the Proposed Sub-Consultant Request form (SFN 60232 (9-2016) and Prime Consultant Request to Sublet form (SFN 60233 (9-2019) form, if applicable, and the Qualifications Based Selection documentation has been fully compiled by Metro COG and submitted to and approved by the North Dakota Department of Transportation.**

2) Project Development (Major Milestones)

| | |
|--|------------------------------|
| Project Kick-off | January 2024 |
| Plan Development | January 2024 – November 2024 |
| Final Draft of Study | December 2024 |
| Final Completion of Study | January 2025 |
| Presentations to committees and boards | February - March 2025 |
| Final Invoices Received | March 2025 |

V EVALUATION AND SELECTION PROCESS.

Selection Committee. The Client will establish a multijurisdictional selection committee to select a Consultant. The Selection Committee may consist of staff from the following: Metro COG, Clay County, the cities of Moorhead and Dilworth, the MN DNR, and/or

MnDOT.

The Consultant selection process will be administered under the following criteria:

- 20% - Understanding of study objectives and local/regional issues
- 20% - Proposed approach, work plan, and management techniques
- 20% - Experience with similar projects
- 20% - Expertise of the technical and professional staff assigned to the project
- 15% - Current workload and ability to meet deadlines
- 5% - Inclusion of DBE/MBE firm on project team

The Selection Committee, at the discretion of the Client and under the guidance of NDDOT policy, will entertain formal in-person or virtual presentations for the top candidates to provide additional information for the evaluation process. The presentations will be followed by a question-and-answer period during which the committee may question the prospective Consultants about their proposed approaches.

A Consultant will be selected on November 16th, 2023 based on an evaluation of the proposals submitted, the recommendation of the Selection Committee and approval by the Metro COG Policy Board.

The Client reserves the right to reject any or all proposals or to waive minor irregularities in said proposal, and reserves the right to negotiate minor deviations to the proposal with the successful Consultant. The Client reserves the right to award a contract to the firm or individual that presents the proposal, which, in the sole judgement of the Client, best accomplishes the desired results.

The RFP does not commit the Client to award a contract, to pay any costs incurred in the preparation of the contract in response to this request or to procure or contract for services or supplies. The Client reserves the right to withdraw this RFP at any time without prior notice.

All proposals, whether selected or rejected, shall become the property of the Client.

VI PROPOSAL CONTENT

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the Consultant seeking to provide comprehensive services specified herein for the Client, in conformity with the requirements of the RFP. The proposal should demonstrate qualifications of the firm and its staff to undertake this project. It should also specify the proposed approach that best meets the RFP requirements. The proposal must address each of the service specifications under the Scope of Work and Performance

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Tasks.

The Client is asking the Consultant to supply the following information. Please include all requested information in the proposal to the fullest extent practical.

- 1) **Contact Information.** Name, telephone number, email address, mailing address and other contact information for the Consultant's Project Manager.
- 2) **Introduction and Executive Summary.** This section shall document the Consultant name, business address (including telephone, email address(es)), year established, type of ownership and parent company (if any), project manager name and qualifications, and any major facts, features, recommendations or conclusions that may differentiate this proposal from others, if any.
- 3) **Work Plan and Project Methodology.** Proposals shall include the following, at minimum:
 - a) A detailed work plan identifying the major tasks to be accomplished relative to the requested study tasks and expected product as outlined in this RFP;
 - b) A timeline for completion of the requested services, including all public participation opportunities and stakeholder meetings, identifying milestones for development of the project and completion of individual tasks.
 - c) List of projects with similar size, scope, type, and complexity that the proposed project team has successfully completed in the past.
 - d) List of the proposed principal(s) who will be responsible for the work, proposed Project Manager and project team members (with resumes).
 - e) A breakout of hours for each member of the team by major task area, and an overall indication of the level of effort (percentage of overall project team hours) allocated to each task. Note that specific budget information is to be submitted in a sealed cost proposal as described below in Section VIII. General Proposal Requirements.
 - f) A list of any subcontracted agencies, the tasks they will be assigned, the percent of work to be performed, and the staff that will be assigned.
 - g) List of client references for similar projects described within the RFP.
 - h) Disadvantaged Business Enterprise (DBE) and/or Minority Business Enterprise (MBE) Firms, if applicable.
 - i) Ability of firm to meet required time schedules based on current and known

future workload of the staff assigned to the project.

- 4) **Signature.** Proposals shall be signed by an authorized member of the firm/project team.
- 5) **Attachments.** Review, complete, and submit the completed versions of the following RFP Attachments with the proposal:

Exhibit A - Cost Proposal Form (as identified in VIII 1) – Submit as sealed hard copy

Exhibit B – Federal Clauses

Exhibit C – SFN 60232: Proposed Sub-Consultant Request

VII SUBMITTAL INFORMATION

Proposals shall be submitted in PDF format. Sealed cost proposals shall be submitted as a hard copy. Cost proposals should be shipped to ensure timely delivery to the contact as defined below:

Dan Farnsworth
Transportation Planner
Fargo-Moorhead Metropolitan Council of Governments
Case Plaza, Suite 232
One 2nd Street North
Fargo, ND 58102-4807
farnsworth@fmmetrocog.org

All proposals received by 4:30 p.m. on Wednesday, October 18, 2023 at Metro COG's office will be given equal consideration. Minority, women-owned and disadvantaged business enterprises are encouraged to apply. Respondents must submit one (1) PDF copy of the proposal. The full length of each proposal should not exceed thirty-five (35) pages; including any supporting material, charts, or tables.

The Consultant may ask for clarifications of the RFP by submitting written questions to the Metro COG project manager identified above.

VIII GENERAL RFP REQUIREMENTS

- 1) **Sealed Cost Proposal.** All proposals must be clearly identified and marked with the appropriate project name, inclusive of a separately sealed cost proposal per the requirements of this RFP. Cost proposals shall be based on an hourly “not to exceed” amount and shall follow the general format as provided within Exhibit A of this RFP. Metro COG may decide, in its sole discretion, to negotiate a price for

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the project after the selection committee completes its final ranking. Negotiation will begin with the Consultant identified as the most qualified per requirements of this RFP, as determined in the evaluation/selection process. If Metro COG is unable to negotiate a contract for services negotiations will be terminated and negotiations will begin with the next most qualified Consultant. This process will continue until a satisfactory contract has been negotiated. The sealed cost proposal is required to include the following documentation:

- a. **Documentation from the ND Secretary of State detailing the prime consultant is in good standing and is licensed to do business in the State of North Dakota**
 - b. **Documentation that the prime consultant is registered with the ND Board of Registration**
 - c. **Documentation showing registration with the federal System for Award Management (SAM.gov) that the prime consultant has not been suspended, debarred, voluntarily excluded, or deterred ineligible**
- 2) Consultant Annual Audit Information for Indirect Cost.** Consulting firms proposing to do work for Metro COG must have a current audit rate no older than 15 months from the close of the firms Fiscal Year. Documentation of this audit rate must be provided with the sealed cost proposal. Firms that do not meet this requirement will not qualify to propose or contract for Metro COG projects until the requirement is met. Firms that have submitted all the necessary information to Metro COG and are waiting for the completion of the audit will be qualified to submit proposals for work. Information submitted by a firm that is incomplete will not qualify. Firms that do not have a current cognizant Federal Acquisition Regulations (FARs) audit of indirect cost rates must provide this audit prior to the interview. **This documentation should be attached with the sealed cost proposal. The submitted Indirect Rate MUST match the Indirect Rate on all invoicing.**
- 3) Debarment of Suspension Certification and Certification of Restriction on Lobbying.** See Exhibit B, Federal Clauses regarding Debarment of Suspension and Restriction on Lobbying.
- 4) Respondent Qualifications.** Respondents must submit evidence that they have relevant past experience and have previously delivered services similar to the requested services within this RFP. Each respondent may also be required to show that similar work has been performed in a satisfactory manner and that no claims of any kind are pending against such work. No proposal will be accepted from a respondent whom is engaged in any work that would impair his or her ability to perform or finance this work.
- 5) Disadvantaged Business Enterprise.** Pursuant to Department of Transportation policy and 49 CFR Part 23, Metro COG supports the participation of DBE/MBE

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businesses in the performance of contracts financed with federal funds under this RFP. Consultants shall make an effort to involve DBE/MBE businesses in this project. If the Consultant is a DBE/MBE, a statement indicating that the business is certified DBE/MBE in North Dakota or Minnesota shall be included within the proposal. If the Consultant intends to utilize a DBE/MBE to complete a portion of this work, a statement of the Subconsultant's certification shall be included. The percent of the total proposed cost to be completed by the DBE/MBE shall be shown within the proposal. Respondents should substantiate (within proposal) efforts made to include DBE/MBE businesses.

- 6) US DOT Policy Statement on Bicycle and Pedestrian Accommodations.** Consultants are advised to review and consider the *US DOT Policy Statement on Bicycle and Pedestrian Accommodation* issued in March of 2010 when developing written proposals.
- 7) North Dakota Department of Transportation Consultant Administration Services Procedure Manual.** Applicants to this Request for Proposal are **required** to follow procedures contained in the *NDDOT Consultant Administration Services Procedure Manual*, which includes prequalification of consultants. This Manual may be found on the NDDOT website at www.dot.nd.gov/manuals/environmental/proceduremanual.pdf.

IX CONTRACTUAL INFORMATION

- 1) The Client reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within forty-five (45) days after the award of the proposal. The Client will not pay for any information contained in proposals obtained from participating firms.
- 2) The Client reserves the right to request clarification on any information submitted and additionally reserves the right to request additional information of one (1) or more applicants.
- 3) Any proposal may be withdrawn up until the proposal submission deadline. Any proposals not withdrawn shall constitute an irrevocable offer for services set forth within the RFP for a period of ninety (90) days or until one or more of the proposals have been approved by the Metro COG Policy Board.
- 4) If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations agreed to, the Client shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least ninety (90) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.
- 5) Any agreement or contract resulting from the acceptance of a proposal shall be

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on forms either supplied by or approved by the Client and shall contain, as a minimum, applicable provisions of the Request for Proposals. The Client reserves the right to reject any agreement that does not conform to the Request for Proposal and any Metro COG requirements for agreements and contracts.

- 6) The Consultant shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of Metro COG.
- 7) The Consultant agrees to not start any work on the project until the Qualifications Based Selection requirements have been satisfied and approved by the NDDOT, and Metro COG has provided the consultant with a notice to proceed.**

X PAYMENTS

The selected Consultant will submit invoices for work completed to the Client. Payments shall be made to the Consultant by the Client in accordance with the contract after all required services, and items identified in the scope of work and performance tasks, have been completed to the satisfaction of the Client.

XI FEDERAL AND STATE FUNDS

The services requested within this RFP will be partially funded with funds from the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). As such, the services requested by this RFP will be subject to federal and state requirements and regulations.

The services performed under any resulting agreement shall comply with all applicable federal, state, and local laws and regulations. In addition, this contract will be subject to the relevant requirements of 2 CFR 200.

XII TITLE VI ASSURANCES

Prospective Consultants should be aware of the following contractual ("Contractor") requirements regarding compliance with Title VI should they be selected pursuant to this RFP:

- 1) **Compliance with Regulations.** The Consultant shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations).
- 2) **Nondiscrimination.** The Consultant, with regard to the work performed by it, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of Subconsultants, including procurements of materials and leases of equipment. The Consultant shall not participate, either directly or indirectly, in the discrimination

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prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations to Metro COG and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**.
- 4) **Information and Reports.** The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Metro COG or the North Dakota Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to Metro COG, or the North Dakota Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance.** In the event of the Consultant's noncompliance with the nondiscrimination provisions as outlined herein, the Client and the North Dakota Department of Transportation shall impose such sanctions as it or the Federal Highway Administration / Federal Transit Administration may determine to be appropriate, including but not limited to:
 - 6) Withholding of payments to the Consultant under the contract until the Consultant complies; or
 - 7) Cancellation, termination, or suspension of the contract, in whole or in part.
- 8) **Incorporation of Title VI Provisions.** The Consultant shall include the provisions of Section XII, paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Consultant shall take such action with respect to any subcontract or procurement as Metro COG or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation by a Subconsultant or supplier as a result of such direction, the Consultant may request Metro COG enter into such litigation to protect the interests of Metro COG; and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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** The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.

XIII TERMINATION PROVISIONS

The Client reserves the right to cancel any contract for cause upon written notice to the Consultant. Cause for cancellation will be documented failure(s) of the Consultant to provide services in the quantity or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Consultant without additional harm to the participants or the Client.

The Client may cancel or reduce the amount of service to be rendered if there is, in the opinion of the Client, a significant increase in local costs; or if there is insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the Client will notify the Consultant in writing ninety (90) days in advance of the date such actions are to be implemented.

In the event of any termination, the Client shall pay the agreed rate only for services delivered up to the date of termination. The Client has no obligation to the Consultant, of any kind, after the date of termination. Consultant shall deliver all records, equipment and materials to the Client within 24 hours of the date of termination.

XIV LIMITATION ON CONSULTANT

All reports and pertinent data or materials are the sole property of the Client and its state and federal planning partners and may not be used, reproduced or released in any form without the explicit, written permission of the Client.

The Consultant should expect to have access only to the public reports and public files of local governmental agencies and the Client in preparing the proposal or reports. No compilation, tabulation or analysis of data, definition of opinion, etc., should be anticipated by the Consultant from the agencies, unless volunteered by a responsible official in those agencies.

XV CONFLICT OF INTEREST

No Consultant, Subconsultant, or member of any firm proposed to be employed in the preparation of this proposal shall have a past, ongoing, or potential involvement which could be deemed a conflict of interest under North Dakota Century Code or other law. During the term of this Agreement, the Consultant shall not accept any employment or engage in any consulting work that would create a conflict of interest with the Client or in any way compromise the services to be performed under this agreement. The Consultant shall immediately notify the Client of any and all potential violations of this paragraph upon becoming aware of the potential violation.

XVI INSURANCE

The Consultant shall provide evidence of insurance as stated in the contract prior to execution of the contract.

XVII RISK MANAGEMENT

The Consultant agrees to defend, indemnify, and hold harmless the Client and the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the Client and the State or its agents, but not against claims based on the Client's and the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Consultant to the Client and the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Client and the State is necessary. Consultant also agrees to defend, indemnify, and hold the Client and the State harmless for all costs, expenses and attorneys' fees incurred if the Client or the State prevails in an action against Consultant in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

The Consultant shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

1. Commercial general liability and automobile liability insurance - minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence.
2. Workforce Safety insurance meeting all statutory limits.
3. The Client and the State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an additional insured on the commercial general liability and automobile liability policies.
4. Said endorsements shall contain a "Waiver of Subrogation" in favor of the Client and the state of North Dakota.
5. The policies and endorsements may not be canceled or modified without thirty (30) days prior written notice to the undersigned Client and the State Risk Management Department.

The Consultant shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the Client prior to commencement of this agreement.

The Client and the State reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract must first qualify as and be appointed by the

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North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08.

When a portion of the work under the Agreement is sublet, the Consultant shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Consultant, the Client and the State as a result of work undertaken by the Subconsultant. In addition, the Consultant shall ensure that any and all parties performing work under the Agreement are covered by public liability insurance as outlined above. All Subconsultants performing work under the Agreement are required to maintain the same scope of insurance required of the Consultant. The Consultant shall be held responsible for ensuring compliance with those requirements by all Subconsultants.

Consultant's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Client or State. Any insurance, self-insurance or self-retention maintained by the Client or the State shall be excess of the Consultant's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured Consultant shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Consultant from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the Consultant. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Client and the State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Consultant in excess of the minimum requirements set forth above.

Exhibit A – Cost Proposal Form

Cost Proposal Form – Include completed cost form (see below) in a separate sealed envelope – labeled “**Sealed Cost Form – Vendor Name**” and submit with concurrently with the technical proposal as part of the overall RFP response. The cost estimate should be based on a not to exceed basis and may be further negotiated by Metro COG upon identification of the most qualified Consultant. Changes in the final contract amount and contract extensions are not anticipated.

REQUIRED BUDGET FORMAT

Summary of Estimated Project Cost

| 1. | Direct Labor | Hours | x | Rate | = | Project Cost | Total |
|-------------------|---|-------|---|-----------------|---|--------------|-------|
| | Name, Title, Function | 0.00 | x | 0.00 | = | 0.00 | 0.00 |
| | | | x | | = | 0.00 | 0.00 |
| | | | x | | = | 0.00 | 0.00 |
| | | | | Subtotal | = | 0.00 | 0.00 |
| 2. | Overhead/Indirect Cost (expressed as indirect rate x direct labor) | | | | | 0.00 | 0.00 |
| 3. | Subconsultant Costs | | | | | 0.00 | 0.00 |
| 4. | Materials and Supplies Costs | | | | | 0.00 | 0.00 |
| 5. | Travel Costs | | | | | 0.00 | 0.00 |
| 6. | Fixed Fee | | | | | 0.00 | 0.00 |
| 7. | Miscellaneous Costs | | | | | 0.00 | 0.00 |
| Total Cost | | | | | = | 0.00 | 0.00 |

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Exhibit B - Federal Clauses

Equal Employment Opportunity Clause – 41 CFR 60-1.4(a) and 2 CFR Part 200 Appendix II (C)

41 CFR 60-1.4(a)

- (a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract): during the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
 - (2) The contract will, in all solicitations or advertisements for employees placed by or no behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the secretary of labor.
 - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the secretary of labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the secretary of labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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- (6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the secretary of labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the secretary of labor as a means of enforcing such provisions including sanctions for noncompliance: *provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.*

2 CFR Part 200 Appendix II (C)

- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Sanctions and Penalties for Breach of Contract – 2 CFR Part 200 Appendix II (A)

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C 1908, 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.

Termination for Cause and Convenience – 2 CFR Part 200 Appendix II (B)

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

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Rights to Inventions Made Under a Contract or Agreement – 2 CFR Part 200 Appendix II (F)

- (F) Right to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "Funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Debarment and Suspension – 2 CFR Part 200 Appendix II (I)

- (I) Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p.235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Byrd Anti-Lobbying Amendment – 2 CFR Part 200 Appendix II (J)

- (J) Byrd Anti-Lobbying Amendment (31 U.S.C 1352) – Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence 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. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Exhibit C – SFN 60232: Proposed Sub-Consultant Request

PROPOSED SUB-CONSULTANT REQUEST

North Dakota Department of Transportation, Environmental & Transportation Services
SFN 60232 (9-2016)

Sub-Consultant firms that have been contacted and agree to be listed on a Prime Consultants Project Proposal for work with NDDOT must submit original form and one copy to be attached to the Prime Consultants Proposal. This form is used for informational purposes only.

| | | | | | |
|--------------------------|------------|------------------------------|---------------|-------------------------------|----------|
| NDDOT Project Number | | NDDOT Project Control Number | | Prime Consultant Company Name | |
| Company Name | | Owner | | | |
| Address | | City | | State | ZIP Code |
| Company Telephone Number | Fax Number | | Email Address | | |

Type of Work to be Subcontracted

| | | | |
|---|--|---|---|
| <input type="checkbox"/> Appraisals | <input type="checkbox"/> Environmental | <input type="checkbox"/> Planning | <input type="checkbox"/> Structural Design |
| <input type="checkbox"/> Architecture | <input type="checkbox"/> Geotechnical | <input type="checkbox"/> Public Involvement | <input type="checkbox"/> Survey |
| <input type="checkbox"/> Bridge Inspection | <input type="checkbox"/> Materials Testing | <input type="checkbox"/> Roadway Design | <input type="checkbox"/> Traffic Operations |
| <input type="checkbox"/> Construction Engineering | <input type="checkbox"/> Partnering Facilitation | <input type="checkbox"/> Soil Contamination | <input type="checkbox"/> Wetlands Delineation |
| <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Photogrammetry | <input type="checkbox"/> Steel Fabrication | <input type="checkbox"/> Other |

The undersigned declares that all statements listed above are true.

| |
|------------|
| Firm Name |
| Print Name |
| Title |

| | |
|-----------|------|
| Signature | Date |
|-----------|------|

| | | |
|---|------------------------------|-----------------------------|
| Is Firm Currently NDDOT Certified as a DBE? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|------------------------------|-----------------------------|