

Munger Trail Extension Project

from the North Terminus of the Munger Trail to Lakewalk Trail
in Canal Park, Duluth, Minnesota

Request for Qualifications (RFQ) RFQ No. 09-18DS

To perform
Environmental Review and Documentation and Associated Preliminary Engineering

SP 118-090-14
Minn Proj. No. HPPH H146()
City of Duluth Project No. 0568TR

Issued By: The City of Duluth
Duluth, Minnesota

Issue Date: June 3, 2009

Deliver To: Dennis Sears
Purchasing Department
City Hall – City of Duluth
411 West First Street, Room 100
Duluth, MN 55802

Response Date: July 2, 2009

Time: 2:00 PM

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GENERAL INFORMATION

A "**Qualification Based Selection**" method will be used to review proposals submitted in response to this RFQ.

Responses to this RFQ will be public information under the Minnesota Data Practices Act, Minnesota Statutes Chapter 13.

This RFQ does not obligate the City of Duluth to award a Contract or complete the project and the City of Duluth reserves the right to cancel the solicitation if it is considered to be in its best interest.

Project Owner

The City of Duluth ("City") is requesting engineering services from qualified firms ("Consultant") to enter into a contract to perform a complete environmental review and documentation and the associated preliminary engineering for the proposed extension of the Munger Trail approximately 7 miles from its current terminus in West Duluth at 75th Avenue West to the Lakewalk Trail in Canal Park, Duluth, Minnesota, the ("Project").

The work is funded with Federal High Priority Project (HPP) and Local funds:

Federal:	\$ 400,000
Local:	\$ 100,000

Of the funding available, a maximum budget of \$ 500,000 has been set to complete the Project deliverables due from City and from Consultant. Consultant should view this budget as the maximum amount for the Project.

Project Manager

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Title: Project Engineer
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PROJECT OVERVIEW

In September 2007, the Duluth-Superior Metropolitan Interstate Commission in cooperation with the Arrowhead Regional Development Commission, the Northwest Regional Planning Commission, and the City of Duluth completed the Munger Trail to Lakewalk Connector Report (September 2007, <http://www.dsmic.org/Default.asp?PageID=339>), which established a framework and conceptual alignments to link the existing Munger and Lakewalk Trails. This Project is the critical link between the termination of the existing Munger and Lakewalk Trails, which will eventually connect to the Gitchi Gami Trail, an 86-mile non-motorized paved trail between Two Harbors and Grand Marais, Minnesota.

The local and statewide trail system plans envisions the Munger Trail Extension Project to complete a gap in the existing paved trail system that runs from Central Minnesota to and along the North Shore of Lake Superior. The Munger Trail is presently a 70-mile paved, multi-use trail that runs from Hinkley to Duluth's west end. Lakewalk is a 7.5-mile non-motorized, paved trail that runs through Duluth from the ship canal to 26th Avenue East along the shore of Lake Superior where it then moves inland, and by the end of 2012 will extend to Brighton Beach and Old Highway 61.

Locally, the Munger Trail Extension will provide an unprecedented community connection between Duluth's eastern and western neighborhoods. This project will create connections around barriers that are presently insurmountable at the bicycle/pedestrian level, such as I-35 and its multiple interchanges, private industrial sites, the Ore Docks, and rail crossings. The Project will provide a separation for the bicyclist/pedestrian from the motorist which will increase safety for all the users.

Additionally, two environmental benefits are anticipated from the proposed Munger Trail Extension. It will provide an alternative transportation option for non-motorized commuters located in the west end of Duluth, thereby decreasing carbon dioxide emissions. And second, it would potentially revitalize abandoned industrial sites that the trail may traverse.

The Munger Trail Extension will serve the commuters and residents alike, as well as lure tourists from neighboring states who can both use the trail and remain in the area to enjoy the abundance of local attractions. Economically, a trail can provide over \$1M annually to a community, and positively affect property values of an area.

WORK REQUESTED

The Project consists of developing the Environmental Documentation and Preliminary Engineering to construct the Munger Trail Extension, a 7.3-mile, non-motorized, paved trail connection that will run from the north terminus of the Munger Trail at the intersection of Grand Avenue (TH 23) and 75th Avenue West to the Canal Park District and the Lakewalk Trail in Duluth, Minnesota. In order to accomplish the general objectives of the Project, the following tasks are included in the Project to be performed by the successful Consultant. Consultants are requested to describe the approach to executing and completing each task, detail the key staff assigned, and list the task deliverables. Upon identification of the selected Consultant, the Consultant will be required to prepare a work plan detailing the components of each task which will be used as a basis for contract negotiations. Engineering Tasks of the Project are anticipated to be:

Task 1: Project Management

The Project Manager and the management of the Project and the process is key to a successful outcome. The response should reflect the Consultant approach to project management, coordination of project activities and progress, schedule management and timely delivery of the Tasks and products, communication, and quality assurance. Consultant's response should include approach to and structure of project management techniques and tools that will be applied to ensure timely development and delivery of quality products. How the Project Tasks will be executed within the Project should be described in enough detail to convey how the Project will be managed. The Consultant would also be responsible to provide any exhibits that may be required to successfully complete the Work Tasks, such as for public and committee meetings.

Task 2: Public Involvement and Participation

The City and the Duluth-Superior Metropolitan Interstate Commission have already involved community organizations, area property owners, business owners, residents, and local, regional, and state agencies in their prior planning work. The City of Duluth believes that involving the public and the entire range of stakeholders is the cornerstone of a successful public project, and is committed to early and comprehensive public involvement and outreach at all levels in decision-making related to the Munger Trail Extension Project. Consultant's response should describe the proposed approach to building on and eliciting additional successful public involvement. It is expected that a public involvement approach would include, but is not limited to, the following:

- Development of a Public Project Committee which would include the purpose of the group, the proposed members, and the meeting frequency
- Suggestions for public outreach tools and materials
- Other elements based on experience from similar projects

Task 3: Agency Involvement and Participation

During the course of preparing the environmental documentation and design plan, it is anticipated that Approvals, Concurrences, Permits, and other Agency documentation will be required. Consultant's response should describe the proposed agency involvement plan and process that identifies and obtains the required documentation in a timely manner. It is expected that the agency involvement and coordination would include, but is not limited to, the following:

- Identify all necessary local, state, and federal approvals, concurrences, permits, etc. that would be required to complete the project
- Identify other elements based on experience from similar projects

Task 4: Alternatives Analysis and Alignment Identification

Although the Munger Trail to Lakewalk Connector Report identified a preferred trail alignment, more work needs to be done to more precisely and exactly locate the final alignment of the trail. Yet, the work completed in the study offers an excellent framework from which to begin a more detailed analysis. The Consultant will be expected to provide an analysis that leads to the identification of a preferred alternative for analysis in the Environmental Document.

Task 5: Environmental Documentation

It is anticipated that this project will have a non-significant social, economic, or environmental impact and will be classified as a Categorical Exclusion. It is also anticipated that the required documentation will be a Project Memorandum (PM) and utilize the PM Template found on Mn/DOT's State Aid web site at <http://www.dot.state.mn.us/stateaid/ProjDeliv/Plans/Templates-Forms/TemplateProjectMemo.doc>. The Consultant will be responsible for preparation, publication, and distribution of the PM document in accordance with the local, state, and federal rules and regulations.

Consultant will be responsible to develop environmental analysis, conduct studies, perform environmental field surveys, and prepare and document analysis for the preferred alternative covering all required NEPA/MEPA subject areas, including, but not limited to:

- Section 4(f), 6(f), 106 properties
- Historic/Archeological
- Threatened and Endangered Species
- Section 404
- Erosion Control
- Floodplains
- Wetlands
- Contaminated Properties
- Right-of-Way and Relocation

Task 6: Design

The City will have an aerial flight and mapping created this fall based on the alignment chosen. Consultant will be responsible to prepare the final design plan, detailed engineers estimate, and special provisions for construction. The plan set will be designed in accordance with City requirements. The plan will be based on the funding available to build the first segment (\$2,258,115 (HPP) and \$700,000 (Enhancement) in 2011). The remaining segments will be broken into two or three additional segments, so that the City can bid separate sections as funding allows.

Task 7: Right-of-Way

The Consultant will be responsible to identify the required right-of-way and prepare an acquisition plan that is staged so the City can acquire the properties as funding allows. The Consultant will also be responsible to prepare the right-of-way documentation that will allow the City to acquire the properties or portions thereof identified as being needed for the first segment alignment selected on which to construct the trail. The documentation and all required exhibits should be in a recordable form acceptable to the St. Louis County Recorder's Office.

Deliverables by City of Duluth

The City of Duluth will provide the following data and information to facilitate the Project:

- Preliminary Survey
- Flight and Mapping
- Acquire required right-of-way

- The Munger Trail to Lakewalk Connector Report (September 2007) and attachments
- Digital GIS data (ArcView Maps) that encompass the length of the proposed trail
- Permits, based on Consultant/City collaboration in Task 3
- Planning Commission submittals

Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project.

STUDY SCHEDULE

It is anticipated that the work described in this RFQ will be completed in approximately 18 months.

Anticipated Start date: August 3, 2009

Anticipated End date: February 18, 2011

CONTENT OF VALID RESPONSE

In order for the response to be considered valid, the response shall be in writing, submitted on time in sealed packages, and be signed by an officer of the Consultant who can be accountable for all representations.

The response must contain at a minimum the following information, presented in the order shown:

1. Consultant's company name, business address, contact person's name, telephone number, fax number and email address. Also include names of any subcontractors included in Consultant's proposal, including identification of principal or lead subcontractor personnel, telephone number, fax number and email address, and role of subcontractor personnel in the conduct of the Project.
2. A statement of the Consultant's understanding of the objectives, goals and major tasks of the Project in order to demonstrate the Consultant's view of the nature of the Project and familiarity with the responsibilities of the Consultant during the length of the Project.
3. A description of the Consultant's proposed approach for completing the work tasks as described in ***WORK REQUESTED*** Section of this RFQ. This response should include a narrative to describe the Consultant's approach to the tasks, the primary task elements, identification of deliverables, and identification of key staff.
4. A master schedule on a single sheet, including all Project Tasks, illustrating task relationships, referencing all deliverables and including timeline of all Project activities, including the schedule of the anticipated meetings.
5. A list of Consultant's key personnel and task managers who will perform the Project work. Any subcontractors and their personnel should also be included. Consultant shall provide an organizational chart for the Project illustrating the key personnel and tasks. Provide statements for each of the key personnel detailing their work experience and qualifications relevant to the proposed Project. No change in personnel assigned to the project will be permitted without the written approval of the City's Project Manager.

6. A description of the Consultant's background and experience with similar work. This should include examples of similar work indicating the Consultant's level of involvement in the project, and the key personnel involved with the project.
7. Suggested modifications to the Project work plan, including a description of modified tasks which Consultant recommends.
8. A work plan identifying the major tasks to be accomplished. This work plan will form the basis for cost negotiations after Consultant selection. The work plan must present the Consultant's approach, task breakdown, and deliverable due dates.
9. Signed copies of the Affidavit of Noncollusion, Conflict of Interest Disclosure Form, Certification Regarding Lobbying, and Affirmative Action Certification of this RFQ and the forms and documents required under any other section of this RFQ.
10. Consultant must **not** include price information or a financial proposal either in the body of the proposal or as a separate submittal. A financial proposal will be requested from the Consultant deemed by the City to be best qualified after the qualifications evaluation process set forth in this RFQ.

QUALIFICATIONS EVALUATION CRITERIA

The Consultant shall be selected by the City utilizing the procedure recommended in 40 U.S.C §1101, et seq. A "Qualification Based Selection" method will be used to review responses submitted in response to this RFQ.

Consultant qualifications will be evaluated on the basis of qualifications as demonstrated in the response itself. A 100-point scale will be used to create the final evaluation recommendation. An interview **will not** be part of the evaluation process. The factors and weighting on which proposals will be judged are:

- 10%** Consultant's expressed Project understanding of the objectives, goals, and major tasks of the Project.
- 30%** Technical competence and expertise as expressed and demonstrated by the Consultant of the proposed Tasks of the Project, including Project Management and work plan, scheduling, communication techniques and effectiveness, public and agency involvement.
- 20%** Technical competence and expertise as expressed and demonstrated by the Consultant of the proposed Tasks of the Project, including understanding and approach of the environmental documentation and process, design requirements, and delivery of right-of-way work.
- 15%** The qualifications and experience of Consultant's key personnel and other resources who are to be involved in the Project and a clear understanding and illustration of their ability to complete the Project within the given timeline.
- 15%** Specialized technical expertise, capabilities, and technical competence as demonstrated by the Consultant's background and experience with similar work, and ability and experience in handling similar projects.

10% The Consultant's record of past performance, including demonstrated ability to build and maintain Project momentum, meet schedules, control the project budget, and provide quality work.

Proposals will be evaluated and a successful Consultant will be chosen on the basis of qualifications only. The successful Consultant will be required to submit a detailed scope of services and budget promptly after selection. The City of Duluth and the successful Consultant will then meet to negotiate the final scope of services and compensation. If the City of Duluth and the successful Consultant are unable to agree upon a scope of services and compensation within a reasonable time (as stated in the Projected Timeline Section of this RFQ), then the City of Duluth may declare negotiations to be at an impasse, and may commence negotiations with the next highest-ranked responder.

RESPONSE FORMAT

Responses must be submitted on 8-1/2" x 11" size paper and should be typed using a minimum 12 point standard font. Graphic illustrations may be shown on 11" x 17" paper and will be considered as one page. Responses to this RFQ may not exceed **10 pages** in length, including the cover letter. An appendix may be attached that includes resumes and examples of relevant work and experience. This appendix may not exceed **20 pages**. The response narrative and appendixes should be bound together in a single submittal.

Proposals are to be submitted in a sealed mailing envelope or package, clearly marked "**Response to Request for Qualifications to Perform Environmental Review and Documentation and Associated Preliminary Engineering for the Munger Trail Extension Project – RFQ No. 09-18DS**" on the outside along with the name and address of the Consultant. An authorized member of the firm must sign each copy of the proposal in ink.

One (1) original, six (6) photocopies, and one (1) CD in PDF format of the response are required.

PROPOSAL QUESTIONS

Responders who have any questions regarding this RFQ must submit questions by e-mail only to:

Kimberly Sannes
ksannes@duluthmn.gov

All questions and answers will be posted on City's Purchasing Web Page at http://www.duluthmn.gov/purchasing/bid_information.cfm under the Current Bid Information section. All prospective Consultants will be responsible for checking the web page for any addendums to this RFQ and any questions that have been answered. Please note that questions will be posted verbatim as submitted.

Questions regarding this RFQ must be received by the City no later than 2:00 p.m. Central Standard/Daylight Time on June 15, 2009.

The City will post answers to such questions no later than 2:00 p.m. Central Standard/Daylight Time on June 18, 2009.

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

PROJECTED TIMELINE FOR RFQ

June 3, 2009	RFQ Advertised and Issued
June 15, 2009	Written questions from Consultants regarding this RFQ must be received
June 18, 2009	Responses to questions will be sent to all parties who requested the RFQ
July 2, 2009	RFQ Responses received at City of Duluth
July 8, 2009	Notification of Successful Bidder
July 13, 2009	Successful Consultant to submit financial proposal
July 13-16, 2009	Contract Negotiations
August 3, 2009	Contract Award and Notice to Proceed Issued

SUBMISSION OF RESPONSES

All proposals must be sent to:

Dennis Sears
Purchasing Department
City Hall – City of Duluth
411 West First Street, Room 100
Duluth, MN 55802

Date: July 2, 2009

Time: 2:00 PM

GENERAL INFORMATION

Consultants must adhere to all terms of this RFQ. Late proposals will not be considered. All costs incurred in responding to this RFQ will be borne by the Consultant. Fax and e-mail responses will not be considered.

City of Duluth Not Obligated To Complete Project

This RFQ does not obligate the City to award a Contract or complete the project, and the City 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 RFQ will become property of the City and will become public record after the evaluation process is completed and an award decision made. If the Consultant submits information in response to this RFQ that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes §13.37, the Consultant 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 the City, its agents and employees, from any judgments or damages awarded against the City in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the City's award of a Contract. In submitting a response to this RFQ, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the City. The City is required to keep all the basic documents

related to its Contracts, including responses to RFQs for a minimum of seven years.

The City of Duluth will not consider the prices submitted by the responder to be proprietary or trade secret materials.

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

Contingency Fees Prohibited

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.

Affidavit of Noncollusion

Consultants must complete the attached “Affidavit of Noncollusion” and include it with the response. The successful Consultant will be required to submit acceptable evidence of compliance with workers' compensation insurance coverage requirements prior to execution of the Contract. The successful Consultant will be required to submit pre-award audit information and comply with audit standards.

Organizational Conflicts of Interest

The Consultant 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 the City, or the successful Consultant’s objectivity in performing the Contract work is or might be otherwise impaired, or the successful responder has an unfair competitive advantage. The Consultant agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the City, which must include a description of the action, which the successful Consultant has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the City may, at its discretion, cancel the Contract. In the event the Consultant 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, the City 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 the City’s rights. Consultants must complete the attached “Conflict of Interest Checklist and Disclosure Form” and submit it along with the response, but not as a part of the response.

Disadvantaged Business Enterprises (DBE) Requirements

This RFQ 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*. A separate contract **DBE goal of 10%** has been established for this procurement. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of the DOT-assisted contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the City deems appropriate. Each subcontract the Consultant signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Consultant is required to document sufficient DBE participation to meet these goals, or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of contract is conditioned on submission of the following:

1. Names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of Consultant's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in Consultant's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

Consultant must present the information required above prior to contract award (see 49 CFR 26.53(3)).

Certification Regarding Lobbying

Federal money will be used to pay for all or part of the work under the Contract, therefore the Consultant must complete the attached "Certification Regarding Lobbying" and submit it as part of its proposal.

Affirmative Action Data

For all Contracts estimated to be in excess of \$100,000.00, responders are required to complete the attached "Affirmative Action Certification" page and include it with the response.

Equal Employment Opportunity (EEO) Special Provisions

This document is required to be included in this RFQ and can be found at <http://www.dot.state.mn.us/civilrights/documents/specialprovisions.pdf>.

Insurance Requirements

1. **Insurance Certificates and Continuity of Coverage Required.** The successful Consultant must provide a certificate of insurance showing that they have each type of insurance coverage and limits required under this Contract. The certificate must be filed with the City's Authorized Representative within 30 days of execution of this Contract. Each policy and Certificate of Insurance must contain a 30 day notice of cancellation, nonrenewal or changes in coverage or limits to all named and additional insured. The successful responder must maintain such insurance in full force and effect throughout the term of this Contract.
2. **Required Insurance.** The following insurance coverages are required:
 - a. **Workers' Compensation Insurance:** Except as provided below, the successful responder will be required to provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, will require its subcontractor(s) to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum amounts 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 law exempts the successful Consultant from Workers' Compensation insurance requirements, or if such responder has no employees in the State of Minnesota, they will be required to provide a written statement, signed by an authorized representative, indicating the qualifying exemption.

- b. **Commercial General Liability Insurance:** The successful Consultant will be required to 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 the Contract whether the operations are by it or by a subcontractor or by anyone directly or indirectly employed by the successful Consultant pursuant to the Contract. Insurance minimum amounts are as follows:
- \$1,500,000.00 – per occurrence
 - \$1,500,000.00 – annual aggregate
 - \$1,500,000.00 – 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
 - City of Duluth named as an Additional Insured
- c. **Commercial Automobile Liability Insurance:** The successful responder will be required to maintain insurance protecting the responder 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 the Contract, and in case any work is subcontracted the responder must require the subcontractor to provide Commercial Automobile Liability. Insurance minimum amounts are as follows:
- \$1,500,000.00 – 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
 - City of Duluth named as an Additional Insured
- d. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance.** The successful responder will be required to carry the following minimum amounts:
- \$1,500,000.00 – per claim or event
 - \$1,500,000.00 – annual aggregate

Any deductible will be the sole responsibility of the successful Consultant and may not exceed \$50,000.00 without the written approval of the City of Duluth.

The retroactive or prior acts date of such coverage will not be after the effective date of the Contract.

This policy must provide coverage for all claims the successful responder may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the successful responder's professional services required under the Contract, and include an extended reporting period provision of a minimum of five years if commercially available, otherwise a minimum of three years, following completion of the work.

- e. **Additional Insurance Conditions:**
- i. The successful Consultant's policy(ies) must be primary insurance to any other valid and collectible insurance available to the City of Duluth with respect to any claim arising out of the Contract;
 - ii. The successful Consultant's policy(ies) will provide the City of Duluth with 30 days advance notice of cancellation, nonrenewal or reduction in limits of coverage or other material change;
 - iii. The successful Consultant will be responsible for payment of Contract related insurance premiums and

- deductibles;
 - iv. The successful Consultant will be required to include legal defense fees in addition to its liability policy limits, with the exception of section d above; and
 - v. The successful Consultant must obtain insurance policies from an insurance company having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better and authorized to do business in the State of Minnesota.
 - vi. An Umbrella or Excess Liability insurance policy may be used to supplement Contractor’s policy limits to satisfy the full policy limits required by the Contract.
3. **Right to Terminate.** The City of Duluth will reserve the right to immediately terminate the Contract if the successful Consultant is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the successful Consultant. All insurance policies must be open to inspection by the City of Duluth and copies of policies must be submitted to the City of Duluth’s Contract Administrator upon written request.

THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

City of Duluth – Affidavit of Noncollusion

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

1. That I am the Consultant (if the Consultant is an individual), a partner in the company (if the Consultant is a partnership), or an officer or employee of the Consultant corporation having authority to sign on its behalf (if the Consultant is a corporation);
2. That the attached proposal submitted in response to the _____ Request for Qualifications has been arrived at by the Consultant independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Consultant of materials, supplies, equipment or services described in the Request for Qualifications, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Consultant or its employees or agents to any person not an employee or agent of the Consultant 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.

Consultant's Firm Name: _____

Authorized Person (Please Print): _____

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 to Mn/DOT, 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 (or separately as directed by Mn/DOT for projects not awarded through a competitive solicitation). If a proposer determines a potential conflict of interest exists, it must disclose the potential conflict to Mn/DOT; 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. Mn/DOT Contract Management 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. Mn/DOT Contract Management personnel may consult with Mn/DOT’s Project Manager and Department of Administration personnel. By statute, resolution of conflict of interest issues is ultimately at the sole discretion of the Commissioner of Administration.

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. Mn/DOT reserves 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. Mn/DOT recognizes that proposer’s must maintain business relations with other public and private sector entities in order to continue as viable businesses. Mn/DOT will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not Mn/DOT’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 Mn/DOT. Mn/DOT would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, Mn/DOT 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 Mn/DOT project if a local government has also retained the proposer for the purpose of persuading Mn/DOT 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 Mn/DOT 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 Mn/DOT employees, or their immediate family members. **Comment:** this provision is not intended to supercede any Mn/DOT 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 the City of Duluth contract personnel.

Name

Phone

Certification Regarding Lobbying

For Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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 undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of 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 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000.00, 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.**

Munger Trail Extension Project RFQ
City of Duluth
June 3, 2009

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 Consultant. 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: _____ Telephone number: _____

Printed Name: _____ Title: _____