

To: HONORABLE MAYOR AND CITY COUNCIL.

FROM: Dave Maroney, Director of Economic Development and Planning.

SUBJECT: 2017 Transportation Economic Development (TED) Grant.

DATE: July 10, 2017.

BACKGROUND.

Mayor Robinson and others have been strongly encouraged by State and Federal legislators to prepare and submit an application for TED (MnDOT) grant funds to finance construction of the overpass at Trunk Highway 52. *SRF Consulting Group, Inc.* has considerable experience in transportation planning/engineering projects (including TH 52) and proposes to assist the City of Cannon Falls with development and submission of the application which is due on September 15, 2017 – their proposal and information pertaining to the TED Program accompanies this Memorandum. The *Economic Development Authority* is scheduled to review the TED Program and application on July 12th and thereafter prepare a recommendation for your consideration.

REQUESTED COUNCIL ACTION.

The City Council is asked to authorize *SRF Consulting Group, Inc.* to assist with the preparation and submission of an application for TED (MnDOT) grant funds to finance construction of the overpass at Trunk Highway 52 pursuant to the accompanying proposal dated June 30, 2017.

June 30, 2017

Mr. Dave Maroney
Director of Economic Development and Planning
City of Cannon Falls
918 River Road
Cannon Falls, MN 55009

Subject: Proposal for Professional Services for 2017 TED Grant Writing

Dear Mr. Maroney

Thank you for the opportunity to submit a proposal to prepare a 2017 Transportation Economic Development (TED) grant for the CSAH 24 Overpass at Trunk Highway 52.

Scope of Services/Assumptions

SRF will prepare the grant applications for the City's submittal. We assume City staff will provide supporting data (e.g., development/land use projections and employment data), letters of support, and other supporting materials that will assist SRF staff in preparing an application. Furthermore, SRF will provide high-level construction cost estimates for the project if construction cost estimates are not available from the City or MnDOT.

Schedule

Based on the TED solicitation schedule, application submissions are due to MnDOT on September 15, 2017 by 5:00 p.m. The City will be responsible for submitting the application.

Basis of Payment/Budget

SRF is proposing the application preparation be completed on a lump sum basis. The cost to prepare the application is \$7,000. Other direct project expenses, such as printing, supplies, reproduction, etc., will be billed at cost, and mileage will be billed at the current allowable IRS rate for business miles. Invoices are submitted on a monthly basis for work performed during the previous month. Payment is due within 30 days.

www.srfconsulting.com

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An Equal Opportunity Employer

Changes in the Scope of Services

It is understood that if the scope or extent of work changes, the cost will be adjusted accordingly. Before any out-of-scope work is initiated, however, we will submit a budget request for the new work and will not begin work until we receive authorization from you.

Standard Terms and Conditions

The attached Standard Terms and Conditions (Attachment A) and this proposal for professional services, constitute the entire agreement between the Client and SRF Consulting Group, Inc. and supersede all prior written or oral understandings. This agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

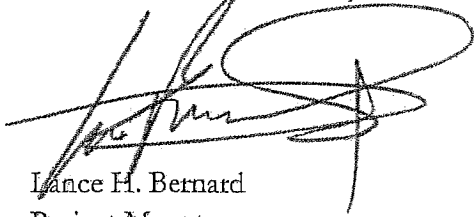
Acceptance/Notice to Proceed

A signed copy of this proposal, mailed or emailed to our office, will serve as acceptance of this proposal and our notice to proceed. The email address is lbernard@srfconsulting.com.

We sincerely appreciate your consideration of this proposal and look forward to working with you on this project. Please feel free to contact us if you have any questions or need additional information.

Sincerely,

SRF CONSULTING GROUP, INC.



Lance H. Bernard
Project Manager

lb

Attachment A – Standard Terms and
Conditions

Approved

(signature)

Name _____

Title _____

Date _____

This cost proposal is valid for a period of 90 days. SRF reserves the right to adjust its cost estimate after 90 days from the date of this proposal.

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

The Standard Terms and Conditions together with the attached Proposal for Professional Services constitute the entire Agreement between the CLIENT and SRF Consulting Group, Inc. ("SRF") and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

1. STANDARD OF CARE

- a. The standard of care for all professional services performed or furnished by SRF under this Agreement will be the care and skill ordinarily used by members of SRF's profession practicing under similar circumstances at the same time and in the same locality. SRF makes no warranties, expressed or implied, under the Agreement or otherwise, in connection with SRF's service.
- b. The CLIENT shall be responsible for, and SRF may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to SRF pursuant to this Agreement. SRF may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

2. INDEPENDENT CONTRACTOR

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the CLIENT and SRF and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or SRF. SRF's services under this Agreement are being performed solely for the CLIENT's benefit, and no other entity shall have any claims against SRF because of this Agreement or the performance or nonperformance of services hereunder.

3. PAYMENT TO SRF

Invoices will be prepared in accordance with SRF's standard invoicing practices and will be submitted to the CLIENT by SRF monthly, unless otherwise agreed. Invoices are due and payable within thirty (30) days of receipt. If the CLIENT fails to make any payment due SRF for services and expenses within forty-five (45) days after receipt of SRF's invoice thereafter, the amounts due SRF will be increased at the rate of 1-1/2% per month (or the maximum rate of interest permitted by law, if less). In addition, SRF may, after giving seven days written notice to the CLIENT, suspend services under this Agreement until SRF has been paid in full of amounts due for services, expenses, and other related charges.

4. OPINION OF PROBABLE CONSTRUCTION COST

Any opinions of costs prepared by SRF represent its judgment as a design professional and are furnished for the general guidance of the CLIENT. Since SRF has no control over the cost of labor, materials, market condition, or competitive bidding, SRF does not guarantee the accuracy of such cost opinions as compared to contractor or supplier bids or actual cost to the CLIENT.

5. INSURANCE

SRF will maintain insurance coverage for Workers' Compensation, General Liability, Automobile Liability and Professional Liability and will provide certificates of insurance to the CLIENT upon request.

6. INDEMNIFICATION AND ALLOCATION OF RISK

- a. To the fullest extent permitted by law, SRF agrees to indemnify and hold harmless the CLIENT, their officers, directors and employees against all damages, liabilities or costs (including reasonable attorneys' fees and defense costs) to the extent caused by SRF's negligent acts under this Agreement and that of its subconsultants or anyone for whom SRF is legally liable.
- b. To the fullest extent permitted by law, the CLIENT agrees to indemnify and hold harmless SRF, their officers, directors and employees against all damages, liabilities or costs to the extent caused by the CLIENT's negligent acts under this Agreement and anyone for whom the CLIENT is legally liable.

7. TERMINATION OF AGREEMENT

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, the CLIENT shall pay to SRF all amounts owing to SRF under this Agreement, for all work performed up to the effective date of termination.

8. OWNERSHIP AND REUSE OF DOCUMENTS

All documents prepared or furnished by SRF pursuant to this Agreement are instruments of service, and SRF shall retain an ownership and property interest therein. Reuse of any such documents by the CLIENT shall be at CLIENT's sole risk; and the CLIENT agrees to indemnify, and hold SRF harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by the CLIENT or by others acting through the CLIENT.

9. USE OF ELECTRONIC MEDIA

- a. Copies of Documents that may be relied upon by the CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by SRF. Files in electronic media format of text, data, graphics, or of other types that are furnished by SRF to the CLIENT are only for convenience of the CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- b. When transferring documents in electronic media format, SRF makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by SRF at the beginning of this Assignment.
- c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of this data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the sixty (60) day acceptance period will be corrected by the party delivering the electronic files. SRF shall not be responsible to maintain documents stored in electronic media format after acceptance by the CLIENT.

10. FORCE MAJEURE

SRF shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond SRF's reasonable control.

11. ASSIGNMENT

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

12. BINDING EFFECT

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

13. SEVERABILITY AND WAIVER OF PROVISIONS

Any provisions or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the CLIENT and SRF, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

14. SURVIVAL

All provisions of this Agreement regarding Ownership of Documents and Reuse of Documents, Electronic Media provisions, Indemnification and Allocation of Risk, and Dispute Resolution shall remain in effect.

15. DISPUTE RESOLUTION

If negotiation in good faith fails to resolve a dispute within the thirty (30) days of notice of the dispute, or time period specified by applicable law, then the parties agree that each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

16. CONTROLLING LAW

This Agreement is to be governed by the law of the principal place of business of SRF.

17. SITE SAFETY

SRF shall not at any time supervise, direct, control or have authority over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety and security precautions and programs in connection with the work performed by any Contractor for the Project, nor for any failure of any Contractor to comply with laws and regulations applicable to such Contractor's work, since these are solely the Contractor's rights and responsibilities. SRF shall not be responsible for the acts or omissions of any Contractor or Owner, or any of their agents or employees, or of any other persons (except SRF's own employees and consultants), furnishing or performing any work for the Project, except as specifically outlined in SRF's scope of services.

Transportation Economic Development Program Description

PROGRAM PURPOSE

The Minnesota Department of Transportation's Transportation Economic Development Program (TED) provides competitive grants to construction projects on state highways that provide measurable economic benefits. The economic benefits may be local, regional or statewide in geographic scale. The TED program was authorized by the Minnesota State Legislature in state statute 174.12.

The Minnesota Department of Transportation, in partnership with the Minnesota Department of Employment and Economic Development, administers the program. DEED administers a parallel Transportation Economic Development Infrastructure (TEDI) program that funds projects on local roads and for other types of transportation. Projects may combine funding from both programs, provided the funds are used for eligible expenses. MnDOT funding may only be used for trunk highway purposes. DEED funding cannot be used on trunk highways.

TOTAL FUNDS AVAILABLE

\$18.4 million in trunk highway funds from MnDOT

DEED has an additional \$4.2 million in general obligation bonds available through the Transportation Economic Development Infrastructure program.

MAXIMUM AWARD

The maximum award provided to any one project in this solicitation will be \$10 million.

DEADLINE TO APPLY

September 15, 2017

ELIGIBLE APPLICANTS

Eligible applicants are any governmental entity as defined by state law, including tribes. MnDOT districts are eligible applicants. Non-state aid cities are strongly encouraged to work with their county in developing the application.

Applicants are strongly encouraged to contact and work with local port authorities, economic development authorities, housing and redevelopment authorities and other agencies who specialize in economic development in developing your application.

Minnesota Department of Transportation

If an applicant fails to demonstrate adequate progress during the project's pre-development phase, or if the ultimate award allowable does not "close the funding gap" on the proposed project, funding may be withdrawn and allocated to another project.

REPORTING REQUIREMENTS

Applicants receiving funding through the TED program will be required to submit annual reports beginning one year after construction. MnDOT and DEED will provide each grantee the necessary annual reporting documents.

SELECTION CRITERIA

TED program applications will be evaluated based on the following criteria:

Criteria	Percent of Score
Economic Benefits:	40%
<ul style="list-style-type: none">• Job creation/retention• Income creation/retention• Benefits to targeted industry and labor	
Transportation Benefits:	40%
<ul style="list-style-type: none">• Benefit-cost analysis• Need for the project• Consistency with state and local plans• Improvements for freight and multimodal transportation	
Project Readiness Risk Assessment	20%

Additional points may be awarded for project applications that include contributions from non-public sources or that advance the geographic distribution objectives in Minnesota State Statute 174.12 Subd. 7(b).

ELIGIBLE PROJECTS

To be eligible for funding, a proposed project must have a trunk highway purpose—it must improve, enhance or modify a state trunk highway or highway right-of-way. Eligible projects may do more than improve the trunk highway (i.e. replace local utilities, improve a city or county road, etc.), but funding from this solicitation can only fund work on the trunk highway and trunk highway right-of-way as specified in MnDOT's Cost Participation Policy for Cooperative Construction Agreements (MnDOT Policy FM011: <https://www.dot.state.mn.us/policy/financial/fm011.html>).

Applications for new or modified interchanges in the Minneapolis-St. Paul metropolitan region will not be considered unless they have completed the Metropolitan Council's interchange approval process.

Applications for new or modified interchanges on interstates should consult with the Federal Highway Administration Minnesota division prior to submitting a TED application.

The TED program specifically targets transportation improvements that will lead to measurable economic benefits. For a project to be eligible, it must contribute to job creation or retention or another measurable economic benefit. Housing development cannot be the primary beneficiary of the project.

MATCH REQUIREMENT

Applicants are required to identify other public and/or private funding sources that will be leveraged to contribute to the transportation construction cost of the proposed project. The TED program will provide funding for up to 70 percent of the total transportation infrastructure cost of the project or the state's maximum allowable share as determined by MnDOT's cost participation policy or MN State Statute 174.12 Subd. 7, whichever is less.

Applicants are strongly encouraged to consult with their MnDOT district office in deriving appropriate cost share estimates.

Applications that include funding or in-kind donation of right-of-way from non-public sources will receive additional consideration in project scoring.

DEADLINE FOR USE OF FUNDS

Projects must begin construction by the end of calendar year 2020, unless an extension is requested in writing and approved by MnDOT.

After projects are selected for funding, program and district staff at MnDOT will continue to work closely with project sponsors to ensure that project pre-development activities such as project financing, right-of-way acquisition and environmental permitting proceed on schedule. In addition, final cost sharing agreements will be completed based on an analysis of project elements and the MnDOT cost participation policy. This analysis could change the amount of the TED grant awarded to selected projects. Selected project sponsors will be expected to provide regular progress reports to MnDOT.