

EXHIBIT G
Request for Proposals
TRANSIT FEASIBILITY STUDY
for the
Rapid City Area Metropolitan Planning Organization

INTRODUCTION

Overview

The Rapid City Area Metropolitan Planning Organization (MPO) in conjunction with the South Dakota Department of Transportation (SDDOT), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA) is soliciting proposals from qualified consultants to develop a Transit Feasibility Study to determine the viability of an expanded public transportation system in the Metropolitan Planning Area (MPA). The study will evaluate needs, consider alternatives, recommend implementation strategies, and consider economic development. It is anticipated that the Transit Feasibility Study will also assist with applicable transit funding possibilities and requirements.

Background

The MPO includes the City of Rapid City, the City of Box Elder, the City of Summerset, the City of Piedmont, the Rapid City Area School District #51-4, the Meade County School District, the Douglas School District, Ellsworth Air Force Base, the unincorporated areas of Black Hawk and the developing areas of Pennington County and Meade County, SDDOT, FHWA and FTA. This includes the existing urbanized area and the area which is projected to become urbanized within the twenty year horizon of the Long Range Transportation Plan. The project area includes approximately 474 square miles (See Attachment A for complete coverage area). Currently, the main existing public transit provider, Rapid Transit System, operates within the city limits of Rapid City and does not provide service to the surrounding communities and unincorporated areas of Meade and Pennington counties. Transit services from outside of the MPA provide limited services within the Rapid City area.

The MPO adopted the Coordinated Public Transit-Human Services Plan in August, 2013 and the RapidTRIP 2040 Long- Range Transportation Plan in September 2015. During the development of these plans, public input revealed a desire by the residents of the areas surrounding Rapid City for public transit to be expanded to provide access to employment, education, shopping, medical services, and recreation.

Various human service agencies currently provide transportation services to their clients throughout the MPA. These services are focused toward select demographic groups to provide access to specific activities, including programs for senior citizens, medical services and programs, and services for persons with disabilities.

Project Details

The Transit Feasibility Study is being undertaken to determine the viability of public

transportation throughout the MPA. The results will determine how to proceed with public transit in the future as the study will show public need and benefit, probable users, analysis of alternatives, and a recommendation on the best alternative that fulfills the public transit needs of the MPA. It is critical that the study identifies the transit features, characteristics, and options that meet the local goals and objectives: financing alternatives and building on existing facilities and partnerships; and mitigating any possible adverse impacts from the recommended strategies.

The primary objectives of the study are:

- Convene a stakeholder group
- Identify baseline conditions including data collection and analysis
- Determine unmet transportation needs and options for new services
- Develop strategies to meet needs, including service, cost, and alternatives
- Evaluate alternatives to provide recommendations and an action plan

Current Transit Service

Rapid Transit System, based in Rapid City, provides both fixed-route and complementary paratransit services within the Rapid City city limits.

Rapid Ride, the fixed-route bus service, operates six routes within the city limits. Each route includes two separate segments, such as a north run and a south run. Each segment runs on 35 minute headways with all transfers occurring at the Milo Barber Transportation Center, located at 333 Sixth Street in Rapid City. All buses are accessible to meet special needs of passengers.

The hours of operation are from 6:20 A.M. through 5:50 P.M. on weekdays and 9:50 A.M. through 4:40 P.M. on Saturdays. There is no service on Sundays.

The fare for adults is \$1.50 per trip. Honored citizen (60 years and older), persons with disabilities and Medicare card holders pay half-fare of 75 cents. Children who are school aged and younger are free. Monthly passes are available for adults for \$30. Transfers are free.

INSTRUCTIONS TO PROPOSERS

Solicitation

The MPO will negotiate a professional services agreement with the successful respondent. All respondents are responsible for the costs incurred in responding to this proposal. The basic agreement template is attached as Attachment C.

Submission of Proposals

It is intended that each respondent furnish all information requested in this document. Unless specifically requested, promotional literature is not desired and will not be considered to meet any of the requirements.

The response shall be organized into the following items to address how the respondent will complete items identified within the Scope of Work:

1. Transmittal Letter – shall not exceed two pages in length and shall bear the signature, in ink, of an authorized representative of the respondent and designate by name not more than two individuals authorized to negotiate and sign an agreement with the MPO on behalf of the respondent.
2. Organization – include a description of your organization, including qualifications for the project and your organization's capability to provide the services requested. This shall include a description of subcontractors and associations with other firms you wish to utilize in the performance of the tasks, including the intended working relationships and responsibilities of each. Also include a description of your understanding of the MPO's needs in the proposed project and your staffing commitments to assure your ability to meet the MPO's time frame. Please describe past client projects you have completed for MPOs that are similar in nature to that proposed in this document.
3. Project Procedures – include a description of how you will produce each of the items requested in this RFP. This must include the methods used and the quality control/ quality assurance procedures that will be observed. Subcontractors or other firms that will work on any part of the project must also be identified, including the general nature and scope of work that will be undertaken by these firms, along with each firm's work location. The vendor shall retain full responsibility for all work completed or uncompleted by any subcontractor.
4. Project Schedule – include a schedule for completing the work specified in this request, including a progress reporting strategy. (All invoicing shall be consistent with the reporting strategy.)
5. MPO Obligations – provide a list of all items to be provided by the MPO to assist you in completing the requested work. This should include any data and/or proposed use of staff, office space, and any equipment or materials/supplies that will be expected from the MPO. This component should also describe a strategy for project management indicating the mechanisms intended to be used to coordinate the proposed work with the MPO.
6. Product Example – provide an example of the Transit Feasibility Studies completed by your organization along with the project's contact information.
7. References – provide the name, address and phone number for five (5) individuals from organizations that have procured similar studies to act as references for the respondent. The individuals identified must at least hold a position of project management or other contract authority.

8. **Budget:** Show the estimated cost for the entire project for each task by MPO fiscal year. MPO's fiscal years run from January 1 through December 31. A sample budget/invoice is shown below:

Transit Feasibility Study
RAPID CITY AREA METROPOLITAN PLANNING ORGANIZATION
 (INSERT NAME) COST PROPOSAL

Item				Total
Salaries	Rate	Total Estimated Hours	Total Estimated Cost	
Name - Title or ID#	\$20.00	110	\$2,200.00	
Name - Title or ID#	\$18.00	88	\$1,584.00	
Name - Title or ID#	\$16.00	66	\$1,056.00	
Subtotal:				\$4,840.00
Fringe Benefits				\$8,000.00
Overhead/Indirect Costs				\$7,000.00
Fixed Fee (Max of 14% of Subtotal+Overhead)				\$6,000.00
In-State Travel				\$5,000.00
Out-of-State Travel				\$4,000.00
Expendable Expenses				\$3,000.00
Computer Time				\$2,000.00
Report Publication				\$1,000.00
TOTAL				\$40,840.00

If the proposal includes effort by subcontractors, a similar budget table should be included for each subcontractor.

Out-of-state travel, which is defined as travel between the consultant's base and destinations other than South Dakota, must be identified separately. All travel between the consultant's home base and South Dakota should be recorded as in-state travel.

Indirect costs listed in the budget must be substantiated if and when the proposal is selected. Prior to the first contract payment, the successful proposer must submit documentation supporting the bases and rates used to calculate indirect costs by the prime contractor and each of the subcontractors. Examples of indirect cost schedule formats can be found in Chapter 9 of the *AASHTO Uniform Audit & Accounting Guide* located at: <http://audit.transportation.org/>.

Total funding should not exceed the amount indicated as "Funds Available" on the Request for Proposal. This amount represents what MPO feels the project merits and what level of funding should be necessary to complete the work. Proposers should set the scope and depth of the project accordingly. Because of budget constraints, additional funding is highly unlikely. No budget expansions should be anticipated.

9. Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion – Lower Tier Covered Transactions: By signing and submitting this proposal, the respondent certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.
10. Non-Discrimination Statement: The City of Rapid City, in conjunction with the State of South Dakota, requires that all contractors, vendors, and suppliers doing business with any State agency, department, institution or recipient of pass-through grants, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.
11. Modification Or Withdrawal Of Proposals: Proposals may be modified or withdrawn by the offeror prior to the established due date and time. No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.
12. Proprietary Information: The proposal of the successful offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.
13. Governing Law: Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in the State of South Dakota. The laws of South Dakota shall govern this transaction.
14. Discussions With Respondents (Oral Presentation/Negotiations): An oral presentation by a respondent to clarify a proposal may be required at the sole discretion of the MPO. However, the MPO may award a contract based on the initial proposals received without discussion with the respondent. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the respondent's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each

Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the MPO's request. The MPO reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

One (1) original and four (4) copies of the proposal document should be submitted, along with one (1) scanned submittal in pdf form. The Proposer's response should contain only the information requested. All cost proposals shall be valid for a period of not less than ninety (90) days from the date of receipt. Articles should be submitted to the following address by the proposal receipt date and time specified:

Attention: Kip Harrington
Long Range Planning Division
300 Sixth Street
Rapid City, SD 57701

Submit your proposal no later than 2:00 P.M., MST, on October 14, 2016, in order to be considered a viable response.

Clarification and/or revisions to the specifications and requirements

Respondents are expected to raise any questions, exceptions, or additions they have concerning the RFP document. If a respondent discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, they should immediately contact Kip Harrington at kip.harrington@rcgov.org and request modification or clarification of the RFP document.

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, revisions/amendments and/or supplements will be posted to the City of Rapid City's Transportation Planning Division's home page at <http://www.rcgov.org/departments/community-planning-development/transportation-planning.html>. It is the responsibility of the respondent to check the web page for changed and/or changing documents.

Submit your questions and/or clarifications to the MPO by **September 30, 2016**. All questions and/or clarifications submitted, along with the answers, shall be posted on the home page of the Transportation Planning Division's webpage by October 5, 2016.

Time Line

The proposed schedule for the RFP process is as follows:

RFP Publication	September 20, 2016
Deadline for submission of written inquiries	September 30, 2016
Responses posted to inquiries	October 5, 2016

Proposals due	October 14, 2016
Oral presentations (if required)	November 7-10, 2016
Anticipated award decision/contract negotiations	November 16, 2016
Transit Feasibility Study completed	August 31, 2017

The above dates are subject to change at the option of the MPO and negotiations with the selected firm.

Basis of Award

The award resulting from this request for services will be made to one firm submitting a response that best serves the needs of the MPO. Proposals will be evaluated on criteria that include:

- Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements.
- Resources available to perform the work, including any specialized services, within the specified time limits for the project.
- Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration.
- Availability to the project locale.
- Familiarity with the project locale.
- Proposed project management techniques.

This list of criteria is meant for informational purposes only. The MPO reserves the right to make its selection on any subjective criteria it deems appropriate.

A short list of firms will be developed from a review of written responses. These firms may be required to make a presentation by phone to supplement their proposals if requested by the MPO. The MPO will make every reasonable attempt to schedule presentation times convenient for the short-listed respondents. Failure of a respondent to conduct a requested presentation to the MPO on the date scheduled may result in rejection of their proposal.

The MPO reserves the right to reject any and all proposals and to negotiate the terms of the contract, including the award amount, with one or more, or none of the respondents prior to entering into a contract. Omissions, alterations, or irregularities of any kind shall constitute sufficient cause for rejection of a proposal. However, the MPO reserves the right to waive irregularities in the proposals. The MPO reserves the right to advertise for new proposals if, in its judgment, the best interest of the MPO will be served. Non-disclosure cannot be guaranteed after the selection stage of this procurement due to public record laws.

The award will be made to the qualified respondent whose proposal is most advantageous to the MPO. This list of criteria is meant for informational purposes only. The MPO reserves the right to make its selection on any subjective criteria it deems appropriate.

Ownership of Completed Products

All maps, photographs, documents, reports, digital data, html page layout and code developed, written, prepared or completed during the performance of services specified in this RFP shall become the property of the MPO and shall not be copyrighted by the proposer. Also, the same materials shall not be released or made available to any third party or used for other purposes at any time without the written approval of the MPO.

SCOPE OF WORK

The MPO is interested in receiving proposals from a consultant possessing experience with Transit Feasibility Studies and a proven record of accomplishment when working with FTA.

The Transit Feasibility Study work elements include:

- A. Purpose and Need Statement:** The purpose and need statement will form the basis for developing goals, objectives, and the evaluation criteria used for the study. The consultant is expected to interact with Rapid Transit System, FTA, the MPO and its member agencies, SDDOT, the private transportation providers, and others as required to complete the process.
- B. Public Participation:** The MPO desires to involve all stakeholders throughout the MPA. Currently, there is no public transit service outside of the Rapid City city limits, and many of the residents of the surrounding area have not been involved in the discussion of transit service but will benefit from the enhanced regional connections via transit. The engagement of these residents and communities is a critical element of the Transit Feasibility Study and will require effective outreach and communication skills.

The MPO requires a consultant with a proven track record of community engagement in regards to a discussion of transit alternatives and concerns. The consultant should possess the skills to analyze transit issues and alternatives, and communicate with area residents on feasibility, funding possibilities, and financial constraints. The MPO will assist the consultant with the development of an effective Public Participation plan. This shall include project information provided by the consultant to be placed on the websites of the MPO and the member agencies to update the projects status and opportunities for public involvement. Public participation opportunities include, but are not limited to, the following:

- **Steering Committee:** The consultant will develop a Steering Committee meeting schedule and the MPO will assist with meeting space and communications coordination.
- **Stakeholder Interviews:** In order to involve as many participants as

possible, the MPO requests that interviews be held with an approved list of stakeholders. The consultant will be responsible for scheduling and coordinating the interviews.

- **Focus Groups:** Public support of an expanded transit system is crucial to the success of the study. The consultant should hold focus groups with area decision makers and business leaders to inform, educate, and receive feedback on the study.
- **Public Open Houses:** The consultant will coordinate with the MPO and hold a series of public open houses to gather input on transit needs, to inform the public on the study process, and to receive on proposed transit alternatives and community impacts related to the Transit Feasibility Study.
- **Surveys:** The consultant will be responsible for any surveys used to obtain current information on transit needs in the MPA.

C. Development of Alternatives: The consultant will develop a broad range of potential alternatives that address the purpose and need, provide details on the methods used to review and rank the alternatives, and conduct initial and final alternatives recommendations on an expanded transit system for the MPA

D. Develop Transit Criteria: The consultant will evaluate alternatives based on criteria that will determine whether an alternative is reasonable to pursue. The analysis should involve impacts on the transportation system, mobility, and travel patterns, and consider barriers to implementation of the alternatives.

E. Evaluate Costs, Benefits, and Impacts: The consultant will evaluate all reasonable alternatives to provide for an expanded public transit system. The evaluation of the costs, benefits, and impacts should focus on the pros and cons between alternatives. As a part of the study, the consultant will be required to any possible impacts that the transit program may have on minority and low-income populations. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities which receive Federal funding assistance.

F. Develop Ridership Forecasts: The consultant will develop ridership forecasts based on the results of the community surveys and available data regarding land use, economic development, and population and employment growth.

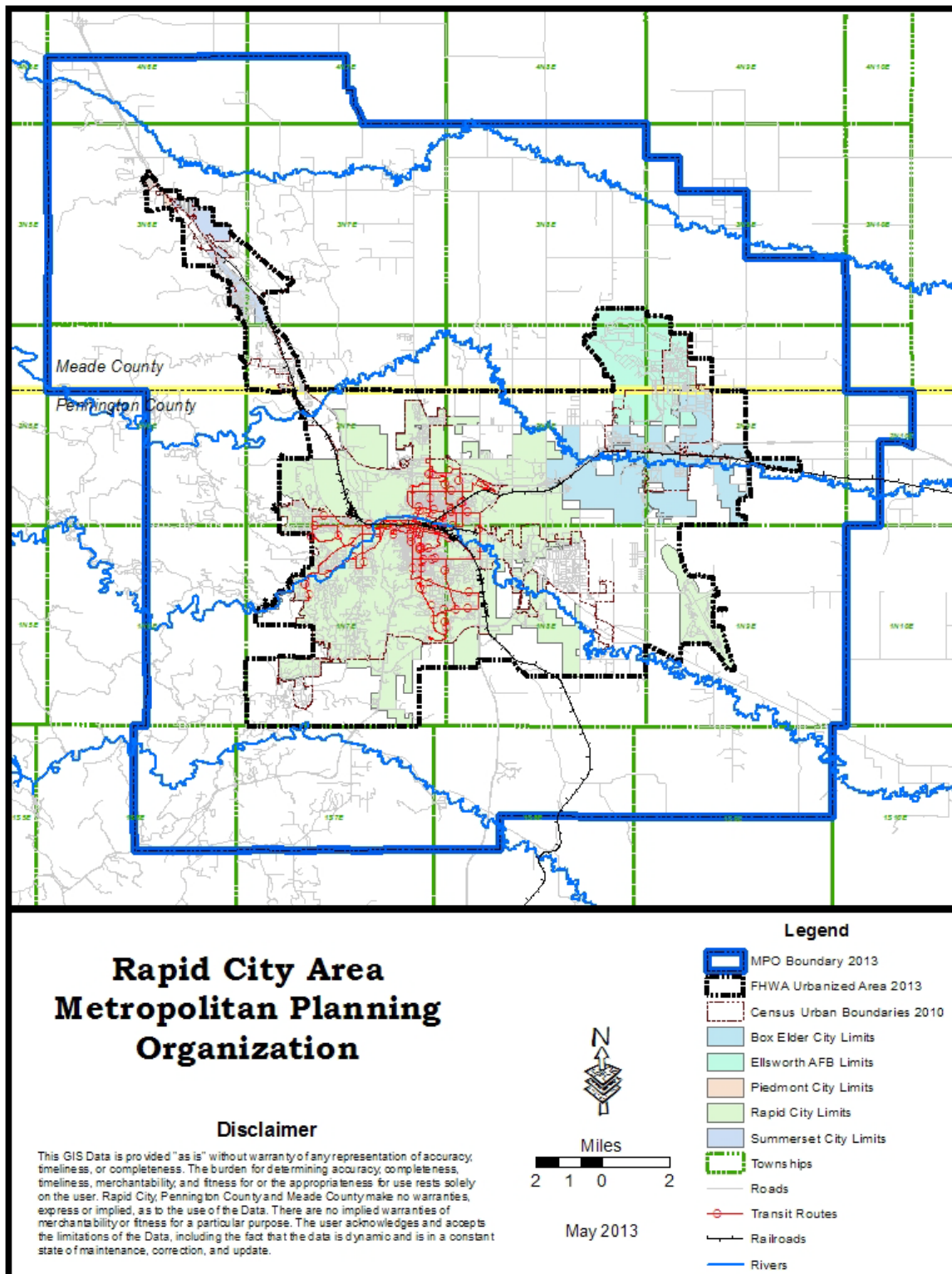
G. Develop Organizational and Operational Plans: The consultant shall develop organizational and operational plans for the alternatives that include standards of service, facility and stop locations, days and hours of operation, type and number of vehicles, travel times, fare structure, peak load capacity, and

vehicle/passenger miles and hours traveled.

- H. Develop a Comprehensive Transit System:** The consultant will review the existing transit services provide by other organizations and agencies in the MPA and determine the level of additional transit services required to serve the population of the MPA. Identification of transit enhancements can be developed in phases. The proposed expanded transit system must determine the feasibility of the program and identify possibilities to serve residents not serviced in the initial phases.
- I. Develop Operating Financial Plan:** The consultant will develop an operating financial plan which includes factors that impact financial projections. The financial plan shall include both Capital and Operations and Maintenance costs

Attachment A

Rapid City Metropolitan Planning Area



Attachment B
Sample Agreement

PROFESSIONAL SERVICES AGREEMENT
Rapid City Area MPO Transit Feasibility Study

THIS AGREEMENT made on this day of , 2016 between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and (Consultant), hereinafter referred to as CONSULTANT. This project will encompass the preparation of the Rapid City Area MPO Transit Feasibility Study for the Rapid City Area Metropolitan Planning Organization.

OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of website design and development services by CONSULTANT and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES TO CONSULTANT

1.1 General

CONSULTANT shall provide OWNER planning services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER'S professional planning services representative for the Project, providing professional planning consultation and advice and furnishing selected planning services.

1.2 Scope of Work

The Basic Services Scope of Work is described in detail in Exhibit A and shall include a structure and schedule of comprehensive transportation planning public participation activities by assembling and analyzing available data and synthesizing information gained into a "Rapid City Area MPO Transit Feasibility Study " document formatted for easy reading and viewing on screens.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.7, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A; these will be paid for by OWNER as indicated in Section 5.

2.1.1 Services resulting from significant changes in the general scope, extent

or character of the Project including, but not limited to, changes in size, complexity, or method of financing; and revising previously accepted studies, reports or design documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents.

- 2.1.2 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 2.1.3 Furnishing services to include professional associates and consultants for other than basic services (which include, but are not limited to, customary civil, structural, mechanical and electrical engineering and customary architectural design incidental thereto).
- 2.1.4 Services during out-of-town travel required of CONSULTANT other than visits to the site, attendance at OWNER'S office as required by Section 1, or other services as detailed in Exhibit A.
- 2.1.5 Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and providing other special field surveys.
- 2.1.6 Preparing to serve or serving as consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services).
- 2.1.7 Additional services in connection with the Project, excluding services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT:

- 3.1 The Community Planning and Development Services Director or their designee shall act as OWNER'S representative with respect to the services to be rendered under this Agreement. The Community Planning and Development

Services Director shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to CONSULTANT'S services for the Project.

- 3.2 Assist CONSULTANT by placing at CONSULTANT'S disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.
- 3.3 Examine all studies, reports, sketches, drawings, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
- 3.4 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT'S services.
- 3.5 Furnish or direct CONSULTANT to provide Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICE

The CONSULTANT'S period of service shall complete the scope of work stated in Exhibit A by _____, provided a written "Notice to Proceed" is issued by _____. The CONSULTANT'S services shall be provided in general accordance with the schedule as defined in Exhibit B.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services and Expenses of CONSULTANT

5.1.1 *For Basic Services.* The OWNER will pay the CONSULTANT in a lump sum amount of _____ as detailed in the attached Exhibit D "Cost Estimate" for services rendered under Section 1 as detailed in Attached Exhibit A.

5.1.1.1 Payment will be made pursuant to invoices submitted by the CONSULTANT with a signed voucher. Progress payments may be made upon completion of each component as detailed in Exhibit D or at the OWNER's discretion based on work completed and documented on monthly progress reports.

5.1.2 *For Additional Services.* OWNER shall pay CONSULTANT for Additional Services rendered under Section 2 as follows:

- 5.1.2.1 General. For additional services of CONSULTANT'S principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 on the same basis as outlined in paragraphs 5.1.1.1, 5.1.1.2 and 5.1.1.3.

5.2 Times of Payments

CONSULTANT shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to CONSULTANT'S monthly statements.

For these services the OWNER shall make prompt monthly payments to the CONSULTANT based on monthly billings submitted by the CONSULTANT up to 90% of the maximum fee for each Task as shown on Exhibit D, "Cost Estimate." The remaining 10% shall be due upon approval of the Final Report for the Project as accepted by OWNER.

5.3 Other Provisions Concerning Payments

- 5.3.1 If OWNER fails to make any payment due CONSULTANT for services and expenses within forty-five (45) days after receipt of CONSULTANT'S statement the CONSULTANT may, after giving seven (7) days written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges.
- 5.3.2 In the event of termination by OWNER upon completion of any phase of Basic Services, progress payments due CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, CONSULTANT also will be reimbursed for the charges of independent professional associates and consultants employed by CONSULTANT to render Basic Services incurred through such phase. In the event of any such termination, CONSULTANT will be paid for unpaid Reimbursable Expenses previously incurred.
- 5.3.3 The employees of CONSULTANT, professional associates and consultants, whose time is directly assignable to the program shall keep and sign a time record showing the element of the Project, date and hours worked, title of position and compensation rate.
- 5.3.4 *Records.* The CONSULTANT shall maintain an accurate cost keeping system as to all costs incurred in connection with the subject to this Agreement and shall produce for examination books of accounts, bills, invoices and other vouchers or certified copies there under if originals be

lost at such reasonable time and place as may be designated by the OWNER and shall permit extracts and copies thereof to be made during the contract period and for three years after the date of final payment to CONSULTANT.

All personnel employed by CONSULTANT shall maintain time records for time spent performing work on study described in this Agreement for a period of three years from the conclusion of the study. Time records and payroll records for said personnel shall be similarly retained by CONSULTANT for a period of three years from the conclusion of the study.

Upon reasonable notice, the CONSULTANT will allow OWNER auditors to audit all records of the CONSULTANT related to this Agreement. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after final payment under Agreement is made and all other pending matters are closed.

5.3.5 *Inspection of Work.* The CONSULTANT shall, with reasonable notice, afford OWNER or representative of OWNER reasonable facilities for review and inspection of the work under this Agreement. OWNER shall have access to CONSULTANT'S premises and to all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to this Agreement.

5.3.6 *Audits.* The CONSULTANT shall, with reasonable notice, afford representatives of the OWNER reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require; shall produce and exhibit such books, accounts, documents and property as he may determine necessary to inspect and shall, in all things, aid him in the performance of his duties.

5.3.7 Payment shall be made subject to audit by duly authorized representatives of the OWNER. Payment as required in 49 CFR 26.29:

The CONSULTANT shall pay subcontractors or suppliers within 15 days of receiving payment for work that is submitted for progress payment by the OWNER. If the CONSULTANT withholds payment beyond this time period, written justification by the CONSULTANT shall be submitted to the OWNER upon request. If it is determined that a subcontractor or supplier has not received payment due without just cause, the OWNER may withhold future estimated payments and/or may direct the CONSULTANT to make such payment to the subcontractor or supplier. Prompt payment deviations will be subject to price adjustments.

5.3.8 In the event the service to the contract is terminated by the OWNER for fault on the part of the CONSULTANT, the agreement shall be null and void, and, the OWNER shall be entitled to recover payments made to the CONSULTANT on the work which is the cause of the at-fault termination. The CONSULTANT shall be paid only for work satisfactorily performed and delivered to the OWNER up to the date of termination. After audit of the CONSULTANT'S actual costs to the date of termination and after determination by the OWNER of the amount of work satisfactorily performed, the OWNER shall determine the amount to be paid the CONSULTANT.

5.4 Definitions

Reimbursable Expenses means the actual expenses incurred by CONSULTANT or CONSULTANT'S independent professional associates or consultants directly in connection with the Project, including expenses for: transportation and subsistence incidental thereto; reproduction of reports, graphics, and similar Project related items; and if authorized in advance by OWNER, overtime work requiring higher than regular rates. In addition, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expenses of photographic production techniques times a factor of 1.0 as determined in accordance with CONSULTANT'S normal accounting practices. All costs must be accumulated and segregated in accordance with Consultant's normal business practice and FAR Part 31.

5.5 Ownership of Data

Documents and all products of this Agreement are to be the property of the OWNER. Any reuse of documents for extensions of the Project or other projects shall be at the OWNER's sole risk and liability.

5.6 Publication and Release of Information

The CONSULTANT shall not copyright material developed under this Agreement without written authorization from the OWNER. The OWNER reserves a royalty-free non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

5.7 Acquisition of Property or Equipment

The acquisition of property or equipment will be in accordance with 49 CFR 18.32.

5.8 Independent Consulting and Subcontracting

While performing services hereunder, CONSULTANT is an independent contractor and not an officer, agent, or employee of the City of Rapid City.

Any employee of the CONSULTANT engaged in the performance of services required under the agreement shall not be considered an employee of the OWNER, and any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees or other persons while so engaged and any and all claims made by any third party as a consequence of any act or omission of the part of the work or service provided or to be rendered herein by the CONSULTANT shall in no way be the obligation or responsibility of the OWNER.

CONSULTANT shall perform all work except specialized services. Specialized services are considered to be those items not ordinarily furnished by CONSULTANT which must be obtained for proper execution of this Agreement. Specialized services required by the study, if any, will be provided pursuant to Section 2 of this Agreement.

Neither this agreement nor any interest therein shall be assigned, sublet or transferred, unless written permission therefor is given by the OWNER. Subcontracts shall contain all the required provisions of the prime contract as required by 49 CFR Part 16, definitions.

5.9 Personnel Employment

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the OWNER shall have the right to annul this Agreement without liability or, in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fees, commission, percentage, brokerage fee, gift or contingent fee.

5.10 Nondiscrimination/ADA

The CONSULTANT agrees to comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964. The CONSULTANT agrees to submit upon request quarterly Title VI (Civil Rights) State of Contractor reports to the State. The CONSULTANT agrees to provide services in compliance with the Americans With Disabilities Act of 1990.

5.11 Claims

To the extent authorized by law, the CONSULTANT shall indemnify and hold harmless the OWNER, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and reasonable attorney fees to the extent such claims are caused by any negligent performance of professional services by, the CONSULTANT, its employees, agents, subcontractors or assignees.

To the extent authorized by law, the OWNER shall indemnify and hold harmless the CONSULTANT, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and reasonable attorney fees, to the extent such claims are caused by OWNERS negligent acts in connection with the PROJECT and acts of its employees, agents, subcontractors or assignees.

It is further agreed that any and all employees of either party, while engaged in the performance of any work or services, shall not be considered employees of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees, while so engaged on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the other party.

5.12 Acceptance and Modification

This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and CONSULTANT and supersede all other written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled after consultation with, and approval in writing by, the parties to this Agreement.

5.13 Termination or Abandonment

The CONSULTANT and the OWNER share the right to terminate this Agreement upon giving thirty (30) days written notice of such cancellation to the other party. If this Agreement is terminated under this paragraph, CONSULTANT shall deliver to OWNER all work product produced up to the time of termination. OWNER shall reimburse CONSULTANT for all work completed to the date of termination.

In the event the CONSULTANT breaches any of the terms or conditions hereof, this Agreement may be terminated by the OWNER at any time with ten (10) days written notice and an opportunity to cure. If termination for such a default is effected by the OWNER, any payments due to CONSULTANT at the time of termination may be adjusted to cover any additional costs to the OWNER because of CONSULTANT'S default. Upon termination the OWNER may

take over the work and may award another party an agreement to complete the work under this Agreement. If after the OWNER terminates for a default by CONSULTANT it is determined that CONSULTANT was not at fault, then the CONSULTANT shall be paid for eligible services rendered and expenses incurred up to the date of termination.

SECTION 6 – GOVERNING LAW

This agreement and any dispute arising out of this agreement shall be governed by the laws of the State of South Dakota.

6.1 Forum Selection

Any dispute arising out of this contract shall be litigated in the Circuit Court for the 7th Judicial Circuit, Rapid City, South Dakota.

6.2 Compliance Provision

The CONSULTANT shall comply with all federal, state and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The CONSULTANT shall procure all licenses, permits or other rights necessary for the fulfillment of its obligation under the Agreement.

SECTION 7 – MERGER CLAUSE

This written agreement which includes the Request for Proposals and associated exhibits, to include Exhibit A Scope of Work, Exhibit B Schedule, Exhibit C Billing Rates, Exhibit D Cost Estimate and Appendix A, constitute the entire agreement of the parties. No other promises or considerations shall be a part of this agreement.

SECTION 8 – COMPLIANCE WITH CLEAN AIR ACT

Consultant stipulates that any facility to be utilized in the performance of this contract, under the Clean Air Act, as amended, Executive Order 11738, and regulations in implementation thereof is not listed on the U.S. Environmental Protection Agency List of Violating Facilities pursuant to 40 CFR 15.20 and that the OWNER and the State Department of Transportation shall be promptly notified of the receipt by the CONSULTANT of any communication from the Director, Office of Federal Activities, EPA, indication that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

SECTION 9 – NON-DISCRIMINATION/AMERICANS WITH DISABILITIES ACT

The Metropolitan Planning Organization will comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964, the latter identified as Appendix A,

attached to and made a part of this Agreement. The Metropolitan Planning Organization will submit, upon request, quarterly Title VI (Civil Rights) State of Contractor reports to the STATE. The Metropolitan Planning Organization will provide services in compliance with the Americans With Disabilities Act of 1990, and any amendments.

SECTION 10 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

CONSULTANT certifies, by signing this agreement that neither it nor its Principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

SECTION 11 – INSURANCE AND REPORTING

Before the CONSULTANT begins providing service, the CONSULTANT will be required to furnish the OWNER the following certificates of insurance and assure that the insurance is in effect for the life of the contract:

- A. Commercial General Liability Insurance: CONSULTANT shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.
- B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance: CONSULTANT shall procure and maintain professional liability insurance or miscellaneous professional liability Insurance with a limit not less than \$1,000,000.00.
SAMPLE
The insurance provided for general liability and errors and omissions shall be adequate for the liability presented, and shall be written by an admitted carrier in the State of South Dakota.
- C. Business Automobile Liability Insurance: CONSULTANT shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
- D. Worker's Compensation Insurance: CONSULTANT shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, the CONSULTANT shall furnish the OWNER with properly executed Certificates of Insurance which shall clearly

evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the OWNER. The CONSULTANT shall furnish copies of insurance policies if requested by the OWNER.

SECTION 12- REPORTING

CONSULTANT agrees to report to the OWNER any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject CONSULTANT, or the OWNER or its officers, agents or employees to liability. CONSULTANT shall report any such event to the OWNER immediately upon discovery.

CONSULTANT'S obligation under this section shall only be to report the occurrence of any event to the OWNER and to make any other report provided for by their duties or applicable law. CONSULTANT'S obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the OWNER under this section shall not excuse or satisfy any obligation of CONSULTANT to report any event to law enforcement or other entities under the requirements of any applicable law.

SECTION 13 – DISCLOSURE TO REPORT LOBBYING

CONTRACTOR certifies, to the best of CONTRACTOR'S knowledge and belief, that: No Federal appropriated funds have been paid or will be paid, by or on CONTRACTOR'S behalf, 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 loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

CONTRACTOR 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such

failure.

SECTION 14 - SEVERABILITY PROVISION

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement by their duly authorized officers on the day, month and year first written above.

OWNER:

Attest:

Mayor

Date

Finance Officer

Date

APPROVED AS TO FORM

Carla Cushman

Date

Assistant City Attorney

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this _____ day of _____, 2016, before me a Notary Public, personally appeared Steve Allender, Mayor of the City of Rapid City, and acknowledged to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

CONSULTANT:

By: _____

Title

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2016, before me, a Notary Public, personally appeared _____, a Principal of _____, and

acknowledged to me that s/he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

Address for Giving Notices

City of Rapid City
Community Planning and Development Services
300 Sixth Street
Rapid City, South Dakota 57701

SAMPLE

Professional Services Agreement Assurances

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended (hereinafter referred to as the “Regulations”), incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, religion, national origin, sex, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination 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: All solicitations for competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, national original, sex, age or disability.
- (4) Information and Reports: The contractor 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 the South Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the South Dakota Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain this information.
- (5) Sanctions for Noncompliance: In the event of the contractor’s noncompliance with the nondiscrimination provisions of this contract, the South Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - (a) withholding of payments to the contractor under the contract until the

- contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the South Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions or non-compliance. Provided however that, in the event of a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the South Dakota Department of Transportation to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter such litigation to protect the interests of the United States.

**Professional Services Agreement
Debarment**

**CERTIFICATION FOR DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

The CONSULTANT certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental agency(federal, state or local) with commission of any of the offenses listed in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (federal, state or local) terminated for cause or default.

The CONSULTANT certifies that if it becomes aware of any later information that contradicts the statements of paragraph (1) through (4) above, it will promptly inform the City of Rapid City.