

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made on this day of _____, 2019 between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and HDR Engineering, Inc., hereinafter referred to as CONSULTANT. This project will encompass the preparation of the Metropolitan Transportation Plan and Bicycle and Pedestrian Master Plan Update 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 transportation planning 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 to 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 tasks one through 10 (ten) to create the "Rapid City Area Metropolitan Planning Organization Metropolitan Transportation Plan" and "Rapid City Area Bicycle and Pedestrian Master Plan Update" documents 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, and these services 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 of independent 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 that 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 Development Director or their designee shall act as OWNER'S representative with respect to the services to be rendered under this Agreement. The Community Development 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 August 31, 2020, provided a written "Notice to Proceed" is issued by April 30, 2019. The CONSULTANT'S services shall be provided in general accordance with the schedule as defined in Exhibit B. The OWNER may consider a failure by CONSULTANT to meet the schedule in Exhibit B with regard to any phase of the work as a breach of this Agreement.

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 the actual costs for services provided in an amount not to exceed \$359,030.23 as detailed in the attached Exhibit D "Cost Estimate" for services rendered under Section 1 as detailed in Attached Exhibit A. This includes a lump sum profit/fixed fee in the amount of \$34,983.12

5.1.1.1 Payment will be made pursuant to invoices submitted by the CONSULTANT with a signed voucher.

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 paragraph 5.1.1.1.

5.2 Times of Payments

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

For these services the OWNER shall make prompt payments to the CONSULTANT based on 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 and Record Keeping

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 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.

- 5.3.3 *Records.* The CONSULTANT shall maintain an accurate cost keeping system as to all costs incurred in connection with the subject of this Agreement and shall produce for examination books of accounts, bills, invoices and other vouchers, or certified copies thereof if originals are lost, at such reasonable time and place as may be designated by the OWNER. CONSULTANT 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, state, and federal 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 this Agreement is made and all other pending matters are closed.

- 5.3.4 *Inspection of Work.* The CONSULTANT shall, with reasonable notice, afford OWNER or representative of OWNER reasonable facilities for review and inspection of the work in 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.
- 5.3.5 *Audits.* If the CONSULTANT expends \$750,000.00 or more in federal awards during the CONSULTANT's fiscal year, the CONSULTANT must have an audit conducted in accordance with 2 CFR Part 200, Subpart F - Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit A-133
Coordinator
427 South Chapelle Street
% 500 East Capitol Avenue
Pierre, SD 57501-5070

If the CONSULTANT expends less than \$750,000.00 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits will be filed with and approved by the State Auditor General by the end of the ninth month following the end of the fiscal year of the entity being audited or thirty

(30) days after receipt of the auditor's report, whichever is earlier.

For either an entity-wide, independent financial audit, or an audit under 2 CFR Part 200, Subpart F, the Sub-Recipient will resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient will facilitate and aid any such reviews, examinations, and agreed upon procedures, the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and awards may be suspended, until the audit is completely resolved.

The CONSULTANT will be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The CONSULTANT may be responsible for payment of any and all questioned costs, as defined in 2 CFR 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the CONSULTANT must be made available if needed and upon request at the CONSULTANT's regular place of business for audit by personnel authorized by the State. The State and federal agency each has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, the CONSULTANT will comply in full with the administrative requirements and cost principles as outlined in U.S. Office of Management & Budget (OMB) uniform administrative requirements, cost principles, and audit requirements for federal awards – 2 CFR Part 200 (Uniform Administrative Requirements).

5.3.6 Payment shall be made subject to audit by duly authorized representatives of the OWNER. Payment shall be made as required in 48 CFR 31 and 2 CFR PART 200:

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.

5.3.7 Funding Provision. The payment of federal funds under this Agreement is subject to the availability of Metropolitan Planning Organizations Federal Highway Administration and Federal Transit Administration funds appropriated by Congress.

5.4 Definitions

Reimbursable Expenses means the 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, 48 CFR Part 31 and 2 CFR 200. Lodging and subsistence expenses will be reimbursed according to state guidelines using General Services Administration (GSA) federal per diem rates for Rapid City/Pennington County South Dakota.

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 to do so is granted by the OWNER. Subcontracts are to contain all the required provisions of the prime contract as required by 49 CFR Part 18, 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 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 performance of professional services by the CONSULTANT, 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.

5.11 Acceptance and Modification

This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and CONSULTANT and supersede all prior 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.

SECTION 6 – TERMINATION

6.1 Notice

If the CONSULTANT breaches any of the terms or conditions of this Agreement, the OWNER may terminate this Agreement or any portion of the Agreement at any time with or without notice. In any other case, the OWNER may terminate the entire Agreement or

any portion of the Agreement upon ten (10) days' written notice to CONSULTANT.

6.2 Take over Work

Upon termination, the OWNER may take over the work and/or may award another party an agreement to complete the work under this Agreement.

6.3 Delivery of Work

Upon termination, the CONSULTANT shall deliver to the OWNER all work product completed to the date of termination. The CONSULTANT'S work product shall become the OWNER'S property.

6.4 Payment upon Termination

6.4.1 *Termination for Default.* If the OWNER terminates the Agreement due to CONSULTANT'S default, the OWNER may pay the CONSULTANT for work satisfactorily performed and delivered to the OWNER up to the date of termination. After audit of the CONSULTANT'S billed costs to the date of termination and after determination by the OWNER of the amount of work satisfactorily performed, the OWNER will determine the amount to be paid to the CONSULTANT. The OWNER may adjust any payment to cover any additional costs to the OWNER due to the CONSULTANT'S default. The OWNER shall be entitled to recover payments made to the CONSULTANT for the work which is the cause of the termination.

6.4.2 *Termination not for Default.* If the OWNER terminates the Agreement for a reason other than default, the CONSULTANT shall be paid for the value of work performed and services rendered up to the date of termination, in an amount decided by OWNER. Any such payment shall constitute total payment for such work and services. This payment to CONSULTANT may be a portion of the fixed fee, plus actual costs. The portion of the fixed fee may be based on the ratio of the actual costs uncured to the estimated actual costs. Actual costs to be reimbursed shall be determined by audit of such costs to the date of termination.

6.4.3 *Termination at Completion of Phase.* If the Agreement is terminated at the completion of any phase of Basic Services, any progress payments paid to CONSULTANT for services rendered through such phase shall constitute total payment for such services.

6.4.4 *Termination During Phase.* If the Agreement is terminated during any phase of the Basic Services, CONSULTANT may be reimbursed for the charges of independent professional associates and consultants employed by CONSULTANT to render Basic Services incurred through such phase. CONSULTANT may also be paid for unpaid Reimbursable Expenses incurred during such phase.

SECTION 7 – GOVERNING LAW

This Agreement and any dispute arising out of this Agreement shall be governed by the laws of the State of South Dakota, without regard for any conflicts of laws provisions contained therein.

7.1 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.

7.2 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 8 – MERGER CLAUSE

This written agreement which includes the Request for Proposals and associated exhibits, to include Exhibit A - Scope of Work, Exhibit B - Project Schedule, Exhibit C – Cost Proposal, Exhibit D – Standard Title VI/Nondiscrimination Assurances (Appendix A&E), Exhibit E – Debarment, Exhibit F – Certification of Consultant, and Exhibit G – Evaluation forms constitute the entire agreement of the parties. No other promises or consideration are a part of this agreement.

SECTION 9 – 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 10 – TITLE VI ASSURANCE

The CONSULTANT will be bound by **Exhibit D**, attached to and made a part of this Agreement, said assurance being entitled, “STANDARD TITLE VI/NONDISCRIMINATION ASSURANCES APPENDIX A & E.”

SECTION 11 – 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 12 – 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 agrees to procure and maintain occurrence-based professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

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 \$1,000,000.00 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 13- 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 14 – 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 grant, 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.

The CONSULTANT will require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will 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 will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 - Any CONSULTANT who applies or bids for an award of \$100,000.00 or more will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier will also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

SECTION 15 - 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.

SECTION 16 – CONFLICT OF INTEREST

The CONSULTANT agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL §§ 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the OWNER. In the event of a conflict of interest, the CONSULTANT expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL §§ 5-18A-17 through 5-18A-17.6.

SECTION 17 – ASSIGNMENT PROVISION

The CONSULTANT will not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order, or obligate the CONSULTANT in any manner with any third party with respect to the CONSULTANT'S rights and responsibilities under this Agreement without the OWNERS'S prior written consent.

SECTION 18 – EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the CONSULTANT will not discriminate against any employee, or applicant for employment, because of race, religions, color, sex, disability, or national origin. Such actions will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay, other forms of compensation, and selection for training, including apprenticeship.

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

Wade Nyberg Date
Assistant City Attorney

CONSULTANT:

By:_____

Name/Title:_____

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2019, 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:

Kip Harrington
City of Rapid City
Community Development Department
300 Sixth Street
Rapid City, South Dakota 57701

HDR Engineering, Inc.
Attn: Dustin Hamilton
703 Main Street
Rapid City, SD 57701

Exhibit A Scope of Work

The Consultant will, to the maximum extent feasible, utilize existing information, reports, and studies on file with the MPO and/or provided by the MPO. The Consultant will work closely with the Study Advisory Team and the MPO to:

- Perform a review and analysis of all of the existing MPO member agencies
- Complete year 2045 traffic forecasts for the Rapid City Metropolitan Planning Area to identify future transportation needs by developing and validating the travel demand forecast model ;
- Develop goals, strategies, and performance measures to identify planning and prioritization elements within the MTP and fiscally constrain those future needs ;

The Consultant will lead the committee and public meetings. The Consultant will work with staff to keep the community well informed as the process moves forward implementing a successful community outreach program.

The following outline is offered to describe the general extent of services to be provided by the Consultant. This outline is not necessarily all-inclusive and the Consultant will include in the proposal any tasks or alternatives and services deemed necessary to satisfactorily complete the project. Consultants are encouraged to bring both industry expertise and creative ideas tested elsewhere and tailored to the MPO to help the community design the approach that best suits the MPO.

1. Methods and Assumptions:

The CONSULTANT shall facilitate a meeting to determine the assumptions to be used during the course of the study relating to the development of the MTP and the travel demand forecast model. Resulting from that meeting, the CONSULTANT shall develop a Methods and Assumptions Document in accordance with the *Methods and Assumptions Template for SDDOT Planning Studies*.

2. Study Advisory Team Meetings:

The CONSULTANT shall have a minimum of four (4) face to face meetings with the Study Advisory Team (SAT) for study coordination. The first meeting shall cover the project kickoff and the development of the Methods and Assumptions Document. Two (2) of these meetings are to be scheduled and held prior to each public meeting (can be held the same day) to gather the approval of the SAT on the information being presented. A fourth meeting should be held during the standards development phase of the study. Other SAT meetings can be held as deemed necessary, and can be conducted via teleconference or webconference.

3. Webpage:

The CONSULTANT team shall provide, maintain, and continually update a webpage and provide content for the MPO Facebook page dedicated to the study as it becomes available.

The webpage will be organized in such a way that will help dispense information to the public regarding the status of the study, public meeting announcements, presentations, meeting summaries, and all reports. The webpage can be used to assist in data gathering through web surveys and for other public participation actions as deemed appropriate as long as adequate advertising can be provided. The pages will be active at least 10 days prior to the first public meeting and shall remain active for a period of at least six (6) months after completion of the study to allow public access to the final report. The CONSULTANT shall also provide the access to the webpage as requested by the MPO.

4. Public Involvement:

The CONSULTANT will develop a public involvement strategy for the MTP process. This strategy will be consistent with the MPO's *Public Participation Plan* and an outreach program will be conducted to involve the elderly, persons with disabilities, minorities and the low income community and other groups traditionally under-represented in the plan process. Strategies to solicit input from the business, environmental and other communities of local significance will also be addressed

There will be a minimum of three (3) public meetings during the project period at which the consultant will make the lead public presentations regarding study methods, findings and recommendations of the study or its sub-elements, and to receive public input. These meetings are expected at the following intervals:

- One public meeting as part of the kickoff to be held at the beginning of the project to introduce the project to the public, and gather information pertaining to the needs and desires of the community.
- Development of Needs Plan (Task 7)
- Recommendations (Draft Report Stage)

5. Major Street Plan:

The purpose of this task is to review and analyze the current Major Street Plan in order to make recommendations in regards to alignment, roadway networking, topography, and constructability.

6. Model Development and Evaluation:

The purpose of this task is to develop, validate and calibrate the 2018 Base Year Model with year 2018 traffic counts. The current Rapid City Area MPO model was developed in 2004 and has been subsequently updated for each Long Range Transportation. The existing model runs on TransCAD version 5.0 and will be required to be compatible with the current version of TransCAD. The MPO has developed current and year 2045 population and land use inventories and forecasts. The end product of this task will be a validated travel demand forecast model capable of forecasting and evaluating future travel demand for alternative highway networks using TransCAD.

The entire validation process will be documented. Documentation will include a step-by-step procedural guide for the complete model set and will identify all parameters specific to the travel demand forecast models. Details will be provided describing key decisions and

conclusions from each step of the process, including trip generation, trip distribution, mode-split and traffic assignment to completion. The acceptable or tolerable range/limits for the various parameters generated in the model validation procedures that follow will be those established by the SDDOT and Federal Highway Administration. The CONSULTANT will provide all associated files in a format compatible with TransCAD.

7. Year 2045 Transportation Needs Plan and Fiscally Constrained Plan:

The purpose of this task is to develop a Metropolitan transportation plan that identifies the transportation system modifications required to meet future year mobility demands. This will be accomplished through the development of a Year 2045 Needs Plan that identifies highway modifications.

A Year 2045 Fiscally Constrained Plan will also be developed by ranking projects within a fiscally constrained plan. Those projects for which financial resources cannot be identified based on needs or priority shall be included in a list of unfunded transportation needs. This plan builds upon the Needs assessment to select a list of projects that can be funded with available revenue sources.

Both the Year 2045 Needs Plan and the Year 2045 Fiscally Constrained Plan will include narrative descriptions of the "major" and more significant projects in the Plan. Any preliminary engineering studies and NEPA phases shall also be included in the MTP.

8. Bicycle and Pedestrian Master Plan Update:

The purpose of this task is to update the Bicycle and Pedestrian Master Plan adopted in 2011. This shall entail a review and update of the Plan to ensure that the goals, existing conditions, user needs assessment, recommendations, and implementation plan comply with current standards. Updates to the document, including maps, shall be included in this task.

9. Reports and Meetings:

The consultant will provide local and state representatives with an electronic copy of the draft Metropolitan Transportation Plan prior to completion of final draft reports. The draft will include an executive summary, preliminary findings and recommendations, and any other information developed as part of the study. The consultant shall review and become familiar with the requirements of the Federal Highway Administration which pertain to metropolitan transportation planning and federal aid road projects; and, include all necessary items in the report to satisfy those requirements.

The consultant will provide forty-five (45) final reports of the analysis for submittal to the South Dakota Department of Transportation, Federal Highway Administration, and local governments for use in the planning process.

The consultant shall be required to present the draft report of the Metropolitan Transportation Plan to the Rapid City City Council, the Citizen's Advisory Committee, the Technical Coordinating Committee, and the Executive Policy Committee.

10. Reports and Meetings:

The consultant shall provide the following items to the MPO contact person:

- ◆ Study updates in word processing format (Microsoft® Word) or as Portable Document Format (Adobe® .pdf) of the study's progression due May 10, 2019, July 12, 2019, September 13, 2019, November 15, 2019, January 17, 2020, and March 13, 2020.
- ◆ A GIS geodatabase (ESRI ArcMap® *.gdb, version 10.4.1 or higher) and a TransCAD geographic file (version 8.0 or higher) of the final Major Street Plan in State Plane coordinate system (NAD 1983, South Dakota South) compatible with the Cities of Rapid City and Box Elder's and Meade and Pennington Counties' existing coordinate system.
- ◆ An electronic copy, in word processing format (Microsoft® Word) and Portable Document Format (Adobe® .pdf), of the draft report and executive summary.
- ◆ Forty-five (45) printed copies of the final report and executive summary
- ◆ An electronic copy, in word processing format (Microsoft® Word) and Portable Document Format (Adobe® .pdf), of the complete final report and the complete executive summary.
- ◆ Copies of any pertinent working papers and electronic files created during the project.

Exhibit B Project Schedule

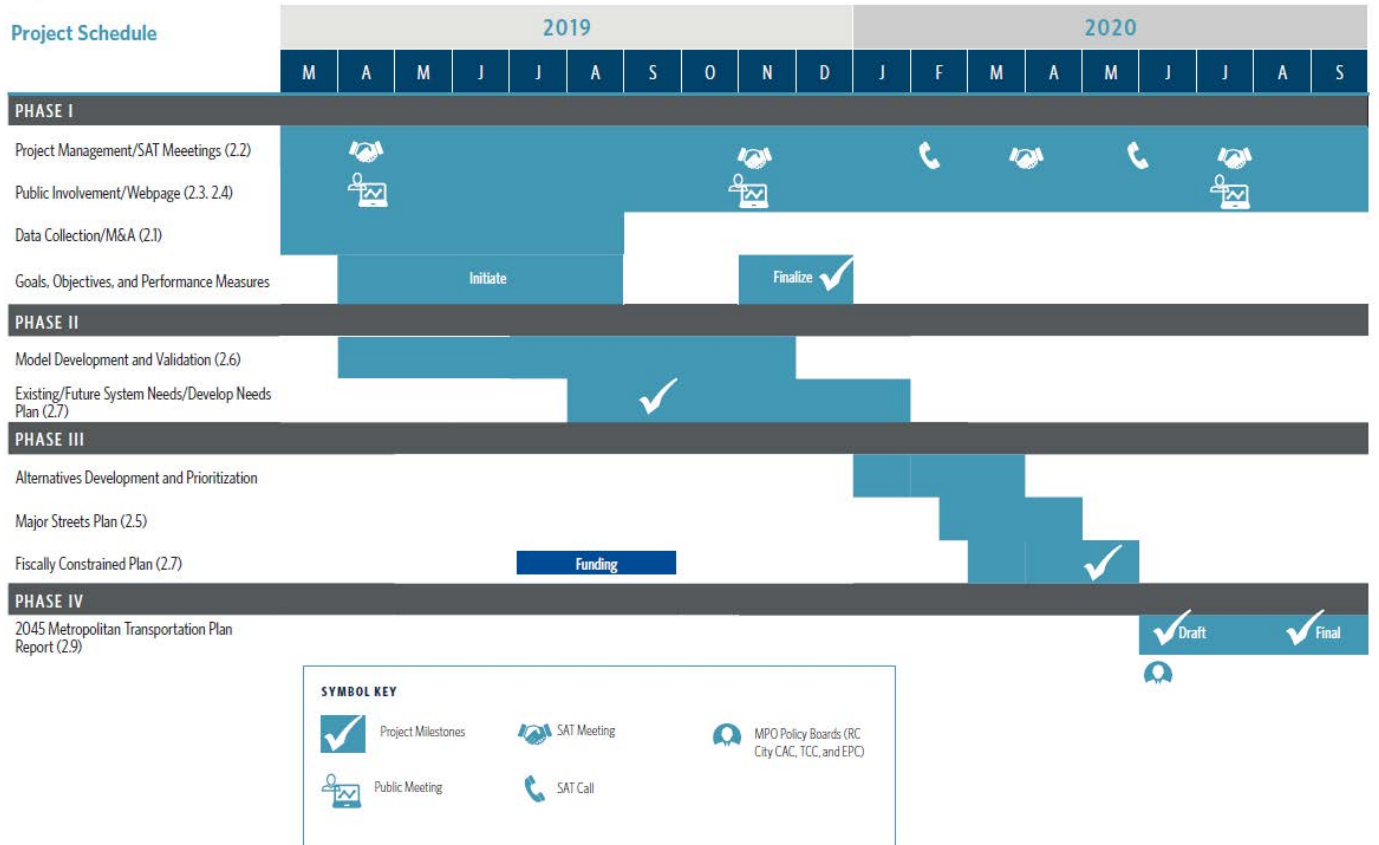


Exhibit C Cost Proposal/Rates

BUDGET ESTIMATE ENGINEERING

ITEM	FY2019			FY2020			TOTAL
Staff	RATE	TOTAL ESTIMATED HOURS	TOTAL ESTIMATED COST	RATE	TOTAL ESTIMATED HOURS	TOTAL ESTIMATED COST	
Jason Kjenstad - Principal	\$86.54	4	\$ 346.16	\$89.14	2	\$ 178.27	\$ 524.43
Dustin Hamilton - Project Manager	\$89.19	145	\$ 10,032.55	\$71.27	91	\$ 6,485.18	\$ 16,517.73
Jason Carbee - MTP Task Lead	\$62.44	233	\$ 14,548.52	\$84.31	155	\$ 9,988.55	\$ 24,517.07
Brian Ray - MTP Task Lead	\$76.61	46	\$ 3,524.06	\$78.91	32	\$ 2,525.07	\$ 6,049.13
Emily Hyland - P.I. Task Lead	\$59.73	10	\$ 597.30	\$81.52	6	\$ 389.13	\$ 986.43
Eric Wilke - Modeling	\$31.50	139	\$ 4,378.50	\$32.45	93	\$ 3,017.39	\$ 7,395.89
Stacia Slowey - Engineer	\$36.68	167	\$ 6,125.56	\$37.78	111	\$ 4,193.62	\$ 10,319.18
Chris Bailey - Engineer	\$46.65	38	\$ 1,772.70	\$48.05	26	\$ 1,249.29	\$ 3,021.99
Jon Markt - Reliability Analysis	\$43.41	11	\$ 477.51	\$44.71	7	\$ 312.99	\$ 790.50
Jon Wiegand - Traffic Ops	\$49.00	12	\$ 588.00	\$50.47	8	\$ 403.76	\$ 991.76
Pam Yonkin - Funding	\$78.79	14	\$ 1,103.06	\$81.15	10	\$ 811.54	\$ 1,914.60
Jaimie Krzeminski - Bike/Ped	\$69.06	57	\$ 3,936.42	\$71.13	37	\$ 2,631.88	\$ 6,568.30
Ryan Hanson - Pavement/Bridge	\$40.29	12	\$ 483.48	\$41.50	8	\$ 331.99	\$ 815.47
Troy Borchard - Bridge	\$60.09	10	\$ 600.90	\$61.89	6	\$ 371.36	\$ 972.26
Beth Wemple - Safety	\$80.21	14	\$ 1,122.94	\$82.62	10	\$ 826.16	\$ 1,949.10
Whitney Schroeder - Safety	\$36.06	29	\$ 1,045.74	\$37.14	19	\$ 705.69	\$ 1,751.43
Stephen Decker - Performance Measures	\$104.13	10	\$ 1,041.30	\$107.25	6	\$ 643.52	\$ 1,684.82
Tina Fricke - Environmental Coord.	\$47.61	22	\$ 1,047.42	\$49.04	14	\$ 686.54	\$ 1,733.96
Kelly Spitzley - Website/Graphics	\$43.68	67	\$ 2,928.56	\$44.99	45	\$ 2,024.57	\$ 4,953.13
Tess Nejedelo - Soc. Media/Logistics	\$28.02	30	\$ 840.60	\$28.86	20	\$ 577.21	\$ 1,417.81
Ralph Batenhorst QA/QC	\$97.85	10	\$ 978.50	\$100.79	6	\$ 604.71	\$ 1,583.21
Ellen Erickson - Project Assistant	\$26.90	36	\$ 968.40	\$27.71	24	\$ 664.97	\$ 1,633.37
Carla Schwebach - Project Controller	\$37.65	26	\$ 978.90	\$38.78	14	\$ 542.91	\$ 1,521.81
Rhodes - Project Professional	\$35.58	124	\$ 4,411.92	\$36.65	82	\$ 3,005.09	\$ 7,417.01
Schmedt - Sr. GIS Specialist	\$59.66	19	\$ 1,133.54	\$61.45	13	\$ 798.85	\$ 1,932.39
Isenberg - GIS Tech	\$30.00	96	\$ 2,880.00	\$30.90	64	\$ 1,977.60	\$ 4,857.60
Casals - Graphics	\$28.71	36	\$ 1,033.56	\$29.57	24	\$ 709.71	\$ 1,743.27
Leggett - Project Assistant	\$36.72	4	\$ 146.88	\$37.82	10	\$ 378.22	\$ 525.10
Arms - QA/QC	\$85.30	0	\$ -	\$87.86	12	\$ 1,054.31	\$ 1,054.31
SUBTOTAL:		1,421	\$ 69,070.98		955	\$ 48,050.06	\$ 117,121.04
Fringe Benefits / Overhead (148.91%)			\$ 102,853.60			\$ 71,551.34	\$ 174,404.94
Fixed Fee (12%)			\$ 20,830.95			\$ 14,352.17	\$ 34,983.12
In-State Travel			\$ 4,320.00			\$ 2,880.00	\$ 7,200.00
Printing			\$ 10,848.00			\$ 7,232.00	\$ 18,080.00
Mailings			\$ -			\$ -	\$ -
Public Meeting Notifications			\$ 1,200.00			\$ 800.00	\$ 2,000.00
SHPO Records Search			\$ 90.00			\$ 60.00	\$ 150.00
HazMat Records Research			\$ 195.00			\$ 130.00	\$ 325.00
Public Meeting Media / Website			\$ 2,580.00			\$ 1,720.00	\$ 4,300.00
Capital Cost of Money (0.3980%)			\$ 274.90			\$ 191.24	\$ 466.14
TOTAL			\$ 212,063.43			\$ 146,966.80	\$ 359,030.23

Exhibit D
Professional Services Agreement
STANDARD TITLE VI / NONDISCRIMINATION
ASSURANCES APPENDIX A & E
MARCH 1, 2016

During the performance of this contract, the CONSULTANT, 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: In all solicitations either by 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 for 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.

During the performance of this Agreement, the CONSULTANT, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.* [78 stat. 252]) (prohibits discrimination on the basis of race, color, national origin), and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 *et seq.*) (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC Ch. 471, § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. Ch. 471, § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Exhibit E
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.

Exhibit F
Professional Services Agreement
CERTIFICATION OF CONSULTANT

I certify that I am the _____ and duly authorized representative of the firm of _____, whose address is _____, and that neither I nor the above firm I represent has:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement.
2. agreed, as an expressed or implied condition for obtaining this Agreement to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the State of South Dakota Department of Transportation, the Federal Highway Administration, and United States (U.S.) Department of Transportation, in connection with this Agreement involving participation of Federal-aid Highway Funds, and is subject to applicable state and federal laws, (both criminal and civil).

Signature

Title: _____

Date: _____