

**REQUEST FOR PROPOSALS  
RAPID CITY AREA METROPOLITAN PLANNING ORGANIZATION  
SIXTH STREET AND OMAHA STREET PEDESTRIAN AND BICYCLE CROSSING STUDY  
AND SIXTH STREET PROMENADE CORRIDOR MASTER PLAN**

***SECTION 1-GENERAL INFORMATION***

The City of Rapid City in conjunction with the Rapid City Area Metropolitan Planning Organization (MPO) and the South Dakota Department of Transportation (SDDOT) is soliciting proposals from qualified consultants to prepare the Sixth Street and Omaha Street Pedestrian and Bicycle Crossing Study and Sixth Street Promenade Corridor Master Plan for the Rapid City Area Metropolitan Planning Organization.

**1.1 BACKGROUND**

Sixth Street in downtown Rapid City has developed into an important pedestrian and bicycle corridor, linking the Performing Arts Center at Rapid City High School to the Rushmore Plaza Civic Center. Other points of interest along Sixth Street include the Rapid City Public Library, Main Street Square, the Milo Barber Transportation Center, and the Promenade at Memorial Park.

While pedestrian and bicycle travel is easily accomplished along most of the corridor, the pedestrian and bicycle crossing at Sixth Street and Omaha Street (South Dakota Highway 44) has proven to be a barrier to pedestrians and bicyclists. The crossing has been reconfigured multiple times in the past in an effort to provide a safer and more inviting crossing.

With the recent development of the Promenade at Memorial Park and the planned expansion of the Rushmore Plaza Civic Center, the City of Rapid City has expressed a desire for a grade-separated crossing at Sixth Street and Omaha Street, as well as an improved pedestrian “promenade” corridor along the Sixth Street corridor, connecting the Performing Arts Center at Rapid City High School on the south end to the Rushmore Plaza Civic Center on the north end.

The South Dakota Department of Transportation has provided conceptual roadway grade profiles for the lowering of Omaha Street by approximately ten (10) feet and the raising of Sixth Street by approximately seven (7) feet to accomplish the proposed grade separation. Omaha Street (South Dakota Highway 44) has been designated as a High Clearance Route and requires a minimum vertical clearance of 17 feet.

The proposed grade separation of Omaha Street and Sixth Street will require the northern portion of Sixth Street becoming closed to vehicular traffic, creating a non-motorized crossing over the lowered grade of Omaha Street. Conceptual drawings of the proposed grade separation are available upon request.

**1.2 AREA OF STUDY**

The area of study includes the crossing of Sixth Street and Omaha Street, and will extend from Fifth Street to Mount Rushmore Road along Omaha Street, and the corridor from the Rushmore Plaza Civic Center to Columbus Street along Sixth Street.

**1.3 PROJECT DESCRIPTION**

The Sixth Street and Omaha Street Pedestrian and Bicycle Crossing Study and Sixth Street Promenade Corridor Master Plan will have the following components:

- i. a review and analysis of the existing vehicular, pedestrian and bicycle network connections along the Sixth Street Corridor from Columbus Street to the Rushmore Plaza Civic Center,
- ii. a review and analysis of traffic operations of Sixth Street with the proposed grade separation at Omaha Street and the intersections of Omaha Street and Fifth Street, and Omaha Street and Mount Rushmore Road,
- iii. a review and analysis of how the proposed grade separation will affect the operations of the Rapid Transit System at the Milo Barber Transportation Center,
- iv. goals and recommendations with planning level concepts for the corridor that will emphasize its use as an inviting pedestrian corridor including amenities, landscaping, public art, gathering places, programming, etc., and
- v. goals and recommendations with planning level concepts for extending connections from the promenade corridor to nearby streets, facilities, and recreational areas, including potential related improvements.

## **SECTION 2-SCOPE OF SERVICES**

This Scope of Services is subdivided into separate tasks that outline the basic requirements of the study and master plan. Unless otherwise noted, the CONSULTANT is expected to fulfill each of the defined tasks and provide written documentation in the form of technical reports and/or memorandums. The tasks to complete the study and master plan are defined as follows:

### **2.1 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 grade-separated crossing, as well as the components of the master plan. 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*.

### **2.2 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 and master plan 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.

### **2.3 WEBPAGE**

The CONSULTANT team shall provide, maintain, and continually update a webpage and a Facebook page dedicated to the study and master plan as they become available. The webpage and Facebook page will be organized in such a way that will help dispense information to the public regarding the status of the study and master plan, public meeting announcements, presentations, meeting summaries, and all reports. The webpage and Facebook page 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 and master plan. The CONSULTANT shall also provide the access to the webpage and Facebook page as requested by the MPO.

### **2.4 PUBLIC INVOLVEMENT**

The CONSULTANT will develop a public involvement strategy for the study and planning 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 four (4) public meetings during the project period at which the consultant will make the lead public presentations regarding study and planning methods, findings and recommendations of the study or its sub-elements, as well as the goals and recommendations of the master plan, 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.
- Two community outreach sessions at downtown special events
- Recommendations (Draft Report / Plan Stage)

## **2.5 PEDESTRIAN AND BICYCLE NETWORK CONNECTIONS**

The purpose of this task is to review and analyze the existing pedestrian and bicycle network in the study area in order to make recommendations in regards to safety, possible improvements, and any network issues created by the proposed grade separation.

## **2.6 TRAFFIC OPERATIONS**

The purpose of this task is to review and analyze traffic operations in the study area. The proposed grade separation will remove the Sixth Street and Omaha Street intersection from the roadway network. The study will include planning level analysis of the effects of the intersection closure and possible improvements to other intersections within the study area including the intersections of Fifth Street and Omaha Street and Mount Rushmore Road and Omaha Street.

## **2.7 RAPID TRANSIT SYSTEM**

The purpose of this task is to review and analyze the circulation patterns of the existing Rapid Transit System Bus Routes affected by the proposed grade separation. The Milo Barber Transportation Center is the hub for Rapid Transit System and is located at Sixth Street and Apolda Street directly south of the Sixth Street and Omaha Street intersection.

Numerous Rapid Transit System routes currently utilize the Sixth Street and Omaha Street intersection. The closing of the intersection will necessitate reconfiguring the circulation pattern at the Milo Barber Transportation Center to allow for efficient routing.

## **2.8 CONCEPTUAL PLAN**

In preparing the Sixth Street Promenade Master Plan, the consultant will utilize the information contained in the “6<sup>th</sup> Street Promenade Conceptual Plan”, as prepared by Rapid City Community Development, to inform the master planning process.

## **2.9 REPORTS AND MEETINGS**

The consultant will provide local and state representatives with thirty (30) copies of the draft report 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 shall be required to present the draft report of the Sixth Street and Omaha Street Pedestrian and Bicycle Crossing study to the Rapid City Council, the Citizen's Advisory Committee, the Technical Coordinating Committee, and the Executive Policy Committee. The consultant shall be required to present the final draft of the Sixth Street Promenade Corridor Master Plan to the Rapid City Planning Commission and City Council.

The consultant will provide thirty (30) 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.

## **2.10 DELIVERABLES**

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

- ◆ Study and Master Plan updates in word processing format (Microsoft® Word) or as Portable Document Format (Adobe® .pdf) of the study's progression due September 30, 2019, October 31, 2019, and December 30, 2019.
- ◆ An electronic copy, in word processing format (Microsoft® Word) and Portable Document Format (Adobe® .pdf), of the draft report and executive summary, and the draft master plan.
- ◆ Thirty (30) printed copies of the final report and executive summary
- ◆ Eight (8) printed copies of the final master plan
- ◆ An electronic copy, in word processing format (Microsoft® Word) and Portable Document Format (Adobe® .pdf), of the complete final report, the complete executive summary, and the complete final master plan.
- ◆ Copies of any pertinent working papers and electronic files created during the project.

## **SECTION 3- GENERAL INSTRUCTIONS**

### **3.1 Schedule of Proposal**

*Proposals shall be governed by the following estimated schedule:*

**July 29, 2019** – Publication of Request for Proposals

**August 9, 2019** – Deadline for submission of written inquiries

**August 14, 2019** – Responses to inquiries posted

**August 23, 2019** – Written proposals due at Rapid City Community Development Department

**August 29, 2019** – Interviews of selected respondents at the City-School Administration Center

**August 30, 2019** – Selection of consultant and initiation of contract negotiations

### **3.2 Period of Performance**

Detailed scheduling of the project will be negotiated during the contract negotiations by the selected consultant and the City.

The date for initiation of the contract as well as the overall contract performance period will be negotiated with the selected consultant based on the tentative time schedule listed below.

Notice to Proceed – **September 3, 2019**

Draft Report to SAT for Review – **November 20, 2019**

Draft Report to MPO- **December 4, 2019**

Draft Report presented to MPO Committees- **December 12, 2019**

Final Report to SAT for Review – **January 24, 2020**

Final Report to MPO- **February 5, 2020**

Final Report presented to MPO Committees- **February 13, 2020**

Final Report presented to Planning Commission – **February 20, 2020**

Final Report presented to Public Works Committee – **February 25, 2020**

Final Draft Master Plan presented to City Council – **March 2, 2020**

Complete Study and Master Plan – **March 31, 2020**

Final payment and retainage will not be made to the consultant until the Final Report is accepted by the City and Rapid City Area Metropolitan Planning Organization.

### **3.3 INQUIRIES**

Please direct questions to:

Kip Harrington, Planner III  
Rapid City Community Development Department  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4120

### **3.4 SIGNATURE REQUIREMENTS**

Proposals must be signed by a duly authorized official of the proposer. Consortia, joint ventures, or teams submitting proposals, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one contractor or one legal entity which shall not be a subsidiary or affiliate with limited resources. Each proposal should indicate the entity responsible for execution on behalf of the proposal team.

### **3.5 PROPOSAL DEADLINE**

Proposals are to be submitted to:

Kip Harrington, Planner III  
Rapid City Area Metropolitan Planning Organization  
300 Sixth Street, Suite 100  
Rapid City, SD 57701

Proposals must be received no later than **2:00 pm on August 23, 2019**. The deadline is firm. Extensions will not be granted. The consultant must submit nine (9) copies of their proposal to this RFP, as well as a digital version of their proposal in word processing format (Microsoft® Word) or as Portable Document Format (Adobe® .pdf).

Proposals must remain valid for at least 90 days after the deadline. The MPO will not acknowledge receipt of proposals unless a stamped, self-addressed post card is included in the proposal package.

Anticipated Start Date:

September 3, 2019

Anticipated End Date:

March 31, 2020

**3.6 PROPOSAL GUIDELINES AND REQUIREMENTS**

Each proposer must demonstrate in their proposal that they have the professional capabilities needed to accomplish this study and master plan. The proposal should contain all information relevant to indicate the consultant team's abilities to successfully complete this study and master plan and give the study advisory team a better understanding of the consultant team's qualifications.

At a minimum, the proposal should contain the following:

- **Statement of Study Approach:** Describe the approach the consultant proposes to accomplish the study and master plan.
- **Proposed Study Team Members:** Provide a written description of the consultant team composition, including disciplines, primary role in regards to the study and master plan, and relevant experience. The information provided must clearly indicate the consultant team's point of contact, the team leader for the study (if different) and the responsible party in each firm who will be providing the required professional experience.

Provide a table showing the number of person-hours (not percentages of time) that will be devoted to each task by consultant team members. List the names of principal investigators and other key professionals who will be involved. Support personnel may be identified by classification. If subcontracting is necessary, include subcontractors' key personnel and support staff in the table. Clearly identify subcontractors' involvement.

Describe current commitments to other work in sufficient detail to permit assessment of each consultant team member's ability to meet the proposal's commitments. Include a statement that the level of effort proposed for principal and professional members of the study team will not be changed without written consent of RCMPO.

- **Individual Experience:** Provide a description of the background of key members of the consultant team and their specific participation in previous projects that would directly relate to the work planned to be done for this study. This may be done in descriptive text or in resume format.
- **Study / Plan Schedule:** Provide a graphic or text calendar to define the proposed study schedule for tasks and set milestone dates.
- **Budget:** Show the estimated cost for the entire study by RCMPO fiscal year. RCMPO's fiscal years run from January 1 through December 31. A sample budget is shown below.

Item	FY2019			FY2020			Total
	Rate	Total Estimate Hours	Total Estimated Cost	Rate	Total Estimate Hours	Total Estimated Cost	
<b>Salaries</b>							
Name - Title or ID#	\$20.00	90	\$1,800.00	\$20.60	125	\$2,575.00	
Name - Title or ID#	\$18.00	45	\$810.00	\$18.54	50	\$927.00	
Name - Title or ID#	\$25.00	20	\$500.00	\$25.75	20	\$515.00	
Name - Title or ID#	\$15.00	10	\$150.00	\$15.45	10	\$154.50	
Name - Title or ID#	\$11.50	5	\$57.50	\$11.85	15	\$177.68	
Subtotal:			\$3,317.50			\$4,349.18	\$7,666.68
<b>Fringe Benefits<sup>1</sup></b>			\$829.00			\$1,087.00	\$1,916.00
<b>Overhead / Indirect Costs</b>			\$2,654.00			\$3,479.00	\$6,133.00
<b>Fixed Fee</b>			\$680.00			\$892.00	\$1,572.00
<b>In-State Travel</b>			\$1,250.00			\$2,500.00	\$3,750.00
<b>Out-of-State Travel</b>			\$0.00			\$0.00	\$0.00
<b>Equipment Purchase<sup>2</sup></b>			\$0.00			\$0.00	\$0.00
<b>Expendable Supplies<sup>3</sup></b>			\$350.00			\$710.00	\$1,060.00
<b>Subcontracts</b>			\$0.00			\$0.00	\$0.00
<b>Computer Time<sup>3</sup></b>			\$0.00			\$700.00	\$700.00
<b>Report Publication<sup>3</sup></b>			\$0.00			\$1,200.00	\$1,200.00
<b>TOTAL</b>			\$9,080.50			\$14,917.18	\$23,997.68

- Notes: 1. May be included with Overhead / Indirect Costs, Must be in accordance with 48CFR Part 31  
2. Must be in accordance with 49CFR Part 1B  
3. Only if normally treated as a direct cost

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/>.

The proposed budget shall be submitted in a sealed envelope, and opened only if the proposer is selected to perform the project by the Study Advisory Team. Unopened envelopes will be returned to the unselected proposers.

### 3.7: PROPOSAL EVALUATION

Proposals will be evaluated by the Study Advisory Team. Selection will be made by the advisory team in consideration of:

- ◆ the proposer's project team;
- ◆ the proposer's experience with similar projects and other relevant agencies;
- ◆ the proposer's experience and familiarity with design criteria and standards;
- ◆ the management procedures of the proposer;
- ◆ the location of the proposer's staff and facilities;
- ◆ the quality of the proposal.

The RCMPO will afford equal opportunity to all those who submit proposals and will not discriminate in its selection of consultants on the grounds of race, sex, color, physical handicap or national origin.

Proposers will be notified of the results of the selection process in writing no later than September 10, 2019.

### **3.8 OWNERSHIP OF PROPOSALS**

All proposals submitted become the property of the Rapid City Area Metropolitan Planning Organization. The MPO has the right to use all information presented in any proposal, unless it is annotated as being proprietary. The MPO considers all information contained in proposals as privileged and reserves the right to maintain its confidentiality. Selection or rejection of a proposal does not affect these rights. The MPO reserves the right to reject any and all proposals submitted. The MPO may, under certain conditions, negotiate with the proposer to address specific weaknesses in a submitted proposal.

The MPO is not responsible for any costs incurred by proposers, including proposal preparation, prior to execution of a contract.

Questions should be submitted to:

Kip Harrington, Planner III  
Rapid City Area Metropolitan Planning Organization  
300 Sixth Street  
Rapid City, SD 57701  
Phone (605) 394-4120  
Email [kip.harrington@rcgov.org](mailto:kip.harrington@rcgov.org)

Submit your questions and/or clarifications to the MPO by August 9, 2019. All questions and/or clarifications submitted, along with the answers, shall be posted on the home page of the Transportation Planning Division's webpage, as well as the Rapid City Area MPO home page by August 14, 2019.

### **3.9 ADDENDA AND SUPPLEMENTS TO RFP**

In the event that it becomes necessary to revise any part of this RFP or if additional information is necessary to enable the proposer to make adequate interpretation of the provisions of this Request for Proposal, a supplement to the RFP will be provided to each proposer.

### **3.10 REJECTION RIGHTS**

The City of Rapid City and the Rapid City Area Metropolitan Planning Organization retain the right to reject all proposals and to re-solicit if deemed to be in their best interests.

Selection is also dependent upon the negotiation of a mutually acceptable contract with the successful proposer.

### **3.11 COST OF PROPOSAL PREPARATION**

No reimbursement will be made by the City of Rapid City or any other party to this agreement for any costs incurred prior to a formal notice to proceed under a contract.

### **3.12 PROPOSALS TO BE IN EFFECT**

Each proposal shall state it is valid for a period of not less than ninety (90) days from the date of receipt.

### **3.13 PROHIBITED INTEREST**

No member, officer, employee of the City or State, or member of its governing body or of a local public body having jurisdiction within the City's service area, during his or her tenure or one year thereafter, shall have any interest, direct or indirect, in any resultant contract or the proceeds thereof.

### **3.14 TAXES**

The contract amount submitted by the consultant should take into consideration the fact that all sponsoring entities associated with the proposed project are exempt from all state taxation, including state sales tax.

### **3.15 SELECTION PROCESS**

A study team will review responses to this Request for Proposal that meet the requirements enumerated and are received prior to the designated closing date.

Upon review of qualified proposers, the committee will designate the most qualified firms as finalists based on professional qualifications, costs and financial data. The selected finalists will appear for an oral presentation and evaluation by the committee which then will select a firm. The selected consultant will be notified and contract negotiations will commence. Upon the completion of negotiations, the City of Rapid City, the Rapid City Area Metropolitan Planning Organization and the South Dakota Department of Transportation must approve the contract before any work can begin. Federal funding will be utilized in this study and thus the consultant will be subject to all of the federal contracting requirements which are incurred as a result.

Selection Criteria are attached as Exhibit A.

### **3.16 PROJECT APPROACH**

The proposer should identify the study process utilized on other significant projects of similar scope and magnitude as well as the process envisioned for this project. The specific procedures and methods proposed for coordinating the requirements of the Federal Highway Administration, the South Dakota Department of Transportation, the City of Rapid City, and the Rapid City Area Metropolitan Planning Organization shall be detailed in the proposal.

### **3.17 QUALIFICATIONS, COSTS AND FINANCIAL DATA**

Those firms submitting proposals will be evaluated according to the qualification of the firm in terms of experience, the ability to perform and manage the work, the ability to work within a schedule, and within a fixed budget. The firm is asked to submit a description of prior work that is related to the scope of work previously described. Particular emphasis will be placed on the qualifications of the firm's key staff, such as the project manager and all staff involved in the project.

The contract for the scope of work will be based on a fee schedule with a not-to-exceed amount. Project fee and cost estimates are not considered binding evaluation criteria. Each firm submitting a proposal must provide a time and cost estimate for each phase of the study based on the services enumerated and the assumed project time frame.

### **3.18 GENERAL EXPERTISE REQUIRED**

The services envisioned within this Request for Proposal includes all of the transportation planning, civil engineering and traffic engineering disciplines necessary for the completion of the project desired.

### **3.19 NON-DISCRIMINATION/AMERICANS WITH DISABILITIES ACT**

The successful consultant shall comply with the requirements of Title 49 CFR Part 21 and Title VI of the Civil Rights Act of 1964. The successful consultant shall submit upon request quarterly Title VI (civil rights) State of Contractor reports to the South Dakota Department of

Transportation. The successful Consultant shall provide services in compliance with the Americans with Disabilities Act of 1990.

### **3.20 CONTRACT PROVISIONS AND ASSURANCES**

Federal funds received by the Rapid City Area Metropolitan Planning Organization will be used as a component of the overall funding of this project. Accordingly, the selected consultant will be required to comply with all applicable Federal regulations and contracting provisions required by the Federal funding authority, including 49 CFR Part 31 - Allowable Costs, Civil Rights, Minority Business Enterprise, and other applicable assurance provisions. Additionally, the contract must be in compliance with state and local requirements applicable to such contracts.

### **SUMMARY**

All plans, calculations, maps, digital files, reports, correspondence, minutes of meetings, and related data generated for the study will be included in the final documents submitted to the Rapid City Area Metropolitan Planning Organization.

# EXHIBIT A Request For Proposals Consultant Evaluation Forms

PROPOSAL EVALUATION FORM (25 Total Points Possible)

Project Name: \_\_\_\_\_ Interviewer: \_\_\_\_\_

Firm Name: \_\_\_\_\_ Date: \_\_\_\_\_

PROPOSAL EVALUATION CRITERIA	Scoring (Circle One)
<p><b>P1: Firm's Project Team - 25% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> Size of the contract as compared to the size or ability of the firm and its' associate firms and consultants as one team to handle the project;</p> <p><b>B.</b> The education, experience, and qualifications of the personnel within the submitting firm; and by attachment that of its' associate firm(s), if any. These are the Key Designers, Construction Inspectors, and Sub-consultants. Should include professional registrations, education, certifications, and other pertinent qualifications of the indicated individuals;</p> <p><b>C.</b> Name, experience and past performance of person(s) to be assigned as project manager(s) and will have direct contact with City staff. These typically are the Design Project Manager and Construction Administration Project Manager. These are in addition to those indicated in item B. above;</p> <p><b>D.</b> Names of firm's key staff to be assigned to project with description of each person's experience and how it relates to this project's specific requirements;</p> <p><b>E.</b> Ability to expand the firm's capabilities by working with other consultants or branch offices (if required).</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P2: Firm's Experience with Similar Projects and Other Relevant Agencies within the Past 5 Years – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> A summary of similar work that has been done in-house over the past five years; as it pertains to municipal engineering, operations, maintenance, replacement, planning, design surveying, construction staking, construction administration, GIS, finance, economics, and other; P6</p> <p><b>B.</b> Prior experience with other relevant agencies for the past five years such as other municipalities, South Dakota DOT, South Dakota DENR, and others.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P3: Firm's Experience and Familiarity with Rapid City Design Criteria and Standards – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b> If the firm's familiarity with the City's design criteria and standards and City bidding, contracting methodology, and construction administration processes is limited then the firm's familiarity with other municipalities' and agencies' shall be considered.</p> <p><b>A.</b> Firm's staff's direct experience (in-house capability) with this type of project</p> <p><b>B.</b> Firm's familiarity with City design criteria and standards.</p> <p><b>C.</b> Other information to consider would be the firm's experience, knowledge, and understanding of City bidding and contracting methodology and City construction administration processes and the firm's experience with other City Departments and Divisions.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

<p><b>P4: Firm's Management Procedures – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> Firm's organizational structure must be clearly defined with personnel qualifications and where actual work will be done;</p> <p><b>B.</b> A statement regarding whether any litigation is pending or underway regarding activities of the firm or its principals within the last five years and the circumstances of the litigation;</p> <p><b>C.</b> A current certificate of insurance, including errors and omissions, executed by the insurance carrier's authorized agent;</p> <p><b>D.</b> Firm's Management Procedures; Past performance meeting budgets &amp; schedules, including methodology and procedures used to accomplish this objective. Successful QA/QC processes, and accuracy of construction cost estimates. The firm's history in meeting project design budgets, construction budgets, and schedules. The firm's ability to provide accurate construction cost estimates throughout the design process (preliminary submittal through bid opening). The firm's QA/QC methodology and procedures including personnel responsible for QA/QC. The firm's methodology, procedures and ability to meet project schedules.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P5: Office Location – 10% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p>Indicate the office location of the project manager, key designers, sub-consultants, and construction staff for the project?</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P6: Quality of Proposal – 5% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category.</b></p> <p>Proposal should be clear, concise, well written, well organized, utilize correct spelling, proper grammar, exemplify the characteristics of a professional document, and address the "Proposal Evaluation Criteria".</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

1 = Fails to meet the expectations of the reviewer in this category  
10 = Fully meets the expectation of the reviewer in this category

**INTERVIEW EVALUATION FORM (75 Total Points Possible)**

**Project Name:** \_\_\_\_\_ **Interviewer:** \_\_\_\_\_

**Firm Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

INTERVIEW EVALUATION CRITERIA	Scoring (Circle One)
<p><b>I1: Project Approach and Demonstration of Project Understanding and Issues – 45% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> Familiarization and understanding of the project and project issues including potential alternatives;</p> <p><b>B.</b> Approach toward project design and construction administration;</p> <p><b>C.</b> Experience with key project elements;</p> <p><b>D.</b> Project components including constructability, project phasing and sequencing;</p> <p><b>E.</b> Innovative design and construction administration techniques and methods;</p> <p><b>F.</b> Approach toward public involvement as it pertains to easement/ROW negotiations, public meetings, and dealing with individuals. Approach toward dealing with other governmental entities and City Departments &amp; Divisions;</p> <p><b>G.</b> Understanding of the project schedule and critical milestones;</p> <p><b>H.</b> Identification or recognition of potential project pitfalls and challenges.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>I2: Past Design and Construction Administration Performance – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>If the firm’s prior assignments with the City are limited then the firm’s prior assignments with other municipalities’ and agencies shall be considered.</b></p> <p><b>A. Design</b> - has the firm’s prior work products demonstrated the following:</p> <p><b>a.</b> Ability to meet design budgets;</p> <p><b>b.</b> Ability to meet design timelines/milestones/completion dates;</p> <p><b>c.</b> Ability to produce complete and understandable submittal documents;</p> <p><b>d.</b> Ability to stay within scope;</p> <p><b>e.</b> Ability to obtain easements and ROW;</p> <p><b>f.</b> Ability to produce accurate construction cost estimates;</p> <p><b>g.</b> Effectiveness in working with the public;</p> <p><b>h.</b> Past work products (drawings and specifications) have limited review comments and red lines;</p> <p><b>i.</b> Adhered to City design criteria and standards and produced documents that are legible and organized.</p> <p><b>B. Construction</b> - has the firm’s prior work products demonstrated the following:</p> <p><b>a.</b> Past work products (drawings and specifications) have limited unnecessary construction change orders?</p> <p><b>b.</b> Effectiveness in working with the public;</p> <p><b>c.</b> Ability to produce accurate and timely contractor pay applications;</p> <p><b>d.</b> Ability to effectively coordinating with the contractor;</p> <p><b>e.</b> Ability to verify contract obligations (Final Inspection compliance with drawings and specifications);</p> <p><b>f.</b> Ability to successfully coordinate and verify startups for electrical and mechanical types of facilities;</p> <p><b>g.</b> Ability to produce complete and understandable drawings and specifications;</p> <p><b>h.</b> Ability to verify that shop drawings, product literature, and submittals comply with City specifications, drawings, and supplemental provisions</p> <p><b>i.</b> Ability to produce accurate, detailed, quality construction deliverables (construction diaries, quantity books, and construction documentation including photos, as-built drawings, etc);</p> <p><b>j.</b> Ability to produce drawings and specifications that minimize field orders;</p> <p><b>k.</b> Ability to produce drawings and specifications that minimize Contractor questions and uncertainties;</p> <p><b>l.</b> Ability to mitigate construction problems from escalating;</p> <p><b>m.</b> Ability to effectively keep the City’s PM apprised of construction issues and potential project cost savings and increases;</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

<p><b>I3: Past Performance of Quality Control and Quality Assurance (QA/QC) – 15% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> Completeness of submittals, drawings and specifications;</p> <p><b>B.</b> Minimizing the number and frequency of design errors;</p> <p><b>C.</b> Project Constructability - Successfully addressed project constructability, sequencing, and phasing;</p> <p><b>D.</b> Clarity - the contractor easily understands the intent of the project and what is being conveyed in the drawings and specifications;</p> <p><b>E.</b> Expectations - the project meets the owner's objectives and intent for the project;</p> <p><b>F.</b> Quality - past deliverables are of high quality (adherence to City design criteria and standards as well as general document legibility and organization).</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>I4: The Firm's Project Team and Task Assignment Summary – 15% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> If a consortium of individuals or firms, amount and type of work to be done in respective offices and how quality and schedule of work will be controlled by assigned project manager(s);</p> <p><b>B.</b> Name, experience and past performance of person(s) to be assigned as project manager(s) and to have direct contact with City staff (Design and Construction);</p> <p><b>C.</b> Names of firm's staff to be assigned to project tasks with description of each person's experience and how it relates to this project's specific requirements. The firm shall indicate the project team members assigned to each task identified in the RFP draft scope of services. The firm shall provide the proposed billing rates for each team member proposed to be working on the project for design and construction services.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>I5: Quality of Interview – 5% of total</b></p> <p>The evaluator should consider the following information when scoring this category. The firm's interview should be articulate, clear, concise, and organized. The firm should communicate project issues, ideas, alternatives, and address the "Interview Evaluation Criteria".</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

1 = Fails to meet the expectations of the reviewer in this category

10 = Fully meets the expectation of the reviewer in this category

**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 \_\_\_\_\_, hereinafter referred to as CONSULTANT. This project will encompass the preparation of the Sixth Street and Omaha Street Pedestrian and Bicycle Crossing Study and Sixth Street Promenade Corridor Master Plan.

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 2.1 through 2.10 to create a "Sixth Street and Omaha Street Pedestrian and Bicycle Crossing Study and Sixth Street Promenade Corridor Master Plan" 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, 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 March 31, 2020 provided a written "Notice to Proceed" is issued by September 3, 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 \_\_\_\_\_ 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 \$\_\_\_\_\_.

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

anceled 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 7<sup>th</sup> 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 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

Assistant City Attorney

\_\_\_\_\_  
Date

**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:**

City of Rapid City

~~Community Planning and Development Services~~Community Development Department

300 Sixth Street

Rapid City, South Dakota 57701

Consultant

Attn:

Street Address

City, State Zip Code

**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: \_\_\_\_\_