STATE OF SOUTH DAKOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF EMERGENCY MANAGEMENT

Sub-Recipient Agreement
Between

Rapid City Fire & Rescue
10 Main Street
Rapid City, SD 57701

State of South Dakota
Department of Public Safety
Office of Emergency Management
221 S. Central Avenue
Pierre, SD 57501

Referred to as Sub-Recipient
Referred to as State

The State and Sub-Recipient hereby enter into this agreement (the “Agreement” hereinafter) for a grant award of Federal financial assistance to Sub-Recipient.

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION:

   Information for the Federal Award Identification, as described in 2 CFR 200.331(a) may be inserted below or may be included in an attached Exhibit A and, if attached, is incorporated herein. In the event of a change in the award or funding source, the information inserted below or included in Exhibit A may change. Sub-Recipient’s consent shall not be required for the change in award or funding source and the change shall not be subject to the requirements for an amendment to this Agreement. In the event of a change, the State will provide updated information at least annually.

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

   This agreement shall be effective as indicated in Exhibit A, line e.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

   A. The Sub-Recipient will undertake and complete the work or performance as described in Exhibit A, line i.

   B. The State will not undertake or complete any work or performance under this Agreement.

4. BASIS FOR SUBAWARD AMOUNTS:

   This grant is made for the purpose of Hazardous Materials Emergency Preparedness grant program, and funded as described in Exhibit A, line i.

5. RISK ASSESSMENTS, MONITORING AND REMEDIES:

   Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

09/08/2020
Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report. Records for real property and equipment must be retained for a period of three years after final disposition.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.

When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient’s fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient’s fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient’s secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient’s established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends $750,000 or more in federal awards during the Sub-Recipient’s fiscal year, the Sub-Recipient 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  
Pierre, SD 57501-5070

If the Sub-Recipient expends less than $750,000 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 shall be completed and filed with the Department of Legislative Audit by the end of the 9th month following end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., 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/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall 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 Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 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 Sub-Recipient must be made available if needed and upon request at the Sub-Recipient’s regular place of business for audit by personnel authorized by the State. The State and/or federal agency 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, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

8. SUB-RECIPIENT ATTESTATION:

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

(A) A conflict of interest policy is enforced within the Recipient's or Sub-Recipient's organization;

(B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the Recipient's or Sub-Recipient's website;

(C) An effective internal control system is employed by the Recipient's or Sub-Recipient's organization; and

(D) If applicable, the recipient or Sub-Recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the Recipient's or Sub-Recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

If Sub-Recipient is a non-state agency they agree to disclose to the State, in writing, any conflicts of interest that exist under the Sub-Recipient’s conflict of interest policy. The State will publicly post any disclosed conflicts of interest along with the corresponding grant agreement on the OpenSD website.

In the event of a significant change in the conflict of interest policy, Sub-Recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. Sub-Recipient
understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

9. CLOSEOUT:

To close-out this Agreement, the Sub-Recipient shall submit a request for reimbursement proving all work is completed, as outlined in paragraph 30. Once the Sub-Recipient receives payment from the State, this Agreement is considered closed-out.

B. STANDARD CLAUSES

10. ASSURANCE REQUIREMENTS;

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

11. COST PRINCIPLES:

Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

12. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. Sub-Recipient may only terminate this Agreement if no grant funds under this Agreement have been expended. If this Agreement is terminated for any reason and the project is only partially complete, the Sub-Recipient may be required to repay all grant funds paid under this Agreement to the State.

13. FUNDING:

This Sub-Recipient Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

14. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned, nor the funds given to a new or additional subrecipient, without the express written consent of the State. This agreement may not be amended except in writing, which writing shall be expressly identified as part hereof, and be signed by an authorized representative of each of the parties hereto. Any assignees, subrecipients, or successors in interest must agree to be bound by all terms contained within this agreement and shall be bound hereby to all these terms.
15. CONTROLLING LAW:

This Sub-Recipient Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, exclusive of its choice of law principals. Federal law, administrative rules, and grant guidelines control the use and administration of federal grants. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

16. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

17. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

18. NOTICE:

Any notice or other communication required under this Agreement shall be in writing.

19. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient may use contractors to perform work under this Agreement as set forth in Section C. The Sub-Recipient may not sub-grant funds under this Agreement without the previous written approval of the State.

The Sub-Recipient will include provisions in its contracts for this project (or sub-grants if approved) requiring its contractors and Sub-Recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its contractors, Sub-Recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any contractors and/or Sub-Recipients. The Sub-Recipient is required to assist in this process as needed.

20. STATE’S RIGHT TO REJECT:

The State reserves the right to reject any person or entity from performing the work or services under this Agreement.

21. CONFLICT OF INTEREST:

Sub-Recipient 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 State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.
22. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination. Termination of this Agreement for any reason by either party does not relieve the Sub-Recipient of its responsibilities under this Agreement as to funds already paid.

The indemnification provision of this Agreement survives termination. If the Sub-Recipient fails to complete the project within the timelines of this Agreement, the Sub-Recipient may submit a written request for an extension. If no request for an extension is received, and the term of this Agreement expires, the funds awarded under this Agreement will automatically de-obligate and be available to other Sub-Recipients. The term of this Agreement does not include processing time allowed for final bills, but all work must be completed within the term unless an extension is requested and approved in writing.

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient 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 any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

C. AGENCY OR GRANT SPECIFIC CLAUSES

24. PURPOSE:

The Hazardous Material Emergency Preparedness (HMEP) grant is furnished by the Pipeline and Hazardous Materials Safety Administration (PHMSA) through the United States Department of Transportation (USDOT). Funds from this grant are used for planning, training, and exercise projects related to hazardous materials transportation in the State of South Dakota.

25. SCOPE OF WORK

The State applies for the HMEP grant annually and is used for hazardous materials transportation training, planning, exercise, and commodity flow studies. Objectives to be accomplished and projects to be produced by the HMEP grant funds are specified in the HMEP Expenditures and HMEP Best Practices documents provided by HMEPGrants.gov. 75% of the funds are to be passed through to the local responder agencies and the Local Emergency Planning Committees (LEPCs). Additionally, the Sub-Recipient agrees to comply in full with the terms found in the FY 2020 HMEP Grant Terms and Conditions (Exhibit B).

26. MATCH PROVISION:

Per 49 U.S.C § 5116 (c) The Sub-Recipient must provide 20 percent of the allowable direct and indirect planning and training costs of activities covered under this award. Sub-Recipients may either use cash (hard match), in-kind (soft-match) contributions, or a combination of both to meet this requirement. The types of contributions allowed are listed in 49 CFR § 110.60. This documentation will be submitted with all other documentation when requesting reimbursement.

27. COSTS, AWARD AMOUNTS, AND PAYMENTS:

The State shall not be liable under this Agreement for any amount greater than the amount awarded in Exhibit A.
No costs eligible under this Agreement shall be incurred before the sub-award period of performance.

28. PROCUREMENT:

Sub-Recipient will follow procurement standards as found in 2 CFR 200.317 through 2 CFR 200.326.

If the Sub-Recipient is utilizing the procurement by non-competitive source (sole source) method of procurement as described in 2 CFR 200.320(f), prior approval from the State must be obtained. A Request for Sole Source Purchase form must be submitted to the State prior to entering into a purchase commitment, and must be attached to Sub-Recipient’s reimbursement request.

29. REPORTING REQUIREMENTS:

The Sub-Recipient progress reports are due the first three federal quarters throughout the grant cycle. The first three federal quarter dates are January 1, April 1, and July 1.

a. Failure to submit the quarterly progress report will result in a reminder.

b. Failure to submit reports within one week of receiving the reminder will result in a letter of non-performance to the authorized recipient.

c. Failure to comply with the reporting requirements of this agreement may result in loss of program funding.

30. REIMBURSEMENTS:

HMEP grants are paid on a reimbursement basis; if you are awarded a grant, you must pay for the equipment or services and you will be reimbursed up to the amount of your subaward. You are responsible for any difference in cost. All expenses must be listed under Exhibit A, line j. or they will not be reimbursed. Projects must be completed within the sub-award period of performance as described in section Exhibit A, line e.

Reimbursement requests must be submitted to the State as soon as possible after the project is completed and no later than the subaward end date.

Equipment and/or services must be received and the vendor paid prior to requesting reimbursement.

a. Travel: Reimbursement for meals, lodging, mileage, and other expenses will follow State policy if the local entity does not have their own policy, except where non-state employees are unable to obtain state lodging rates.

   i. In-state per diem rates can be found at: http://legis.sd.gov/Rules/DisplayRule.aspx?Rule=05:01:02:14

   ii. Out-of-state per diem rates can be found at:


   iv. When non-state employees are unable to obtain state rates, they are expected to obtain reasonable lodging rates with prior approval from the SD Office of Emergency Management HMEP grant administrator.

   v. Unallowable travel costs include entertainment charges, tobacco, alcohol or bar charges, laundry charges, visa or passport charges, tips, phone calls, personal hygiene items, in-room movies, magazines, personal transportation (other than to program activities), travel insurance, and credit card fees.

b. Documentation: Reimbursement requests must include the following documentation.
i. Itemized invoices. If the invoice is not itemized, then submit the related proposal or quote.

ii. Proof of payment. Proof of payment should be in the form of a front-and-back copy of the canceled check or a copy of electronic transfer documentation showing payment has been made to the vendor.

iii. Travel and training information.

iv. Costs must be itemized separately for each traveler (departure and return times, destinations, airfare, lodging, meals, ground transportation to program activities, and other allowable expenses).

v. Copy of the agenda or registration form.

vi. Meals will be reimbursed based on departure and return times; receipts for meals are not required.

vii. If the Sub-Recipient does not have an agency required form to summarize travel costs for grant activity participants, the Sub-Recipient may request and be provided a travel detail worksheet.

e. Rosters for all hosted trainings and exercises.

.ix. Copies of certificates for each participant if the course provides them.

COMPLIANCE WITH EXECUTIVE ORDER 2020-01:
By entering into this Agreement, Sub-Recipient certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Sub-Recipient further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

D. AUTHORIZED SIGNATURES:
In witness hereto, the parties signify their agreement by affixing their signatures hereto.

Sub-Recipient Signature ____________________________ Date _____________

State - SD Office of Emergency Management Hazardous Materials Emergency Preparedness Grant Administrator ____________________________ Date _____________

State - Director of SD Office of Emergency Management ____________________________ Date _____________
Exhibit A

FEDERAL AWARD IDENTIFICATION

Sub-recipient’s name (which must match the name associated with its unique entity identifier):

a. Sub-recipient’s name (which must match the name associated with its DUNS number): Rapid City Fire & Rescue

b. Sub-Recipient’s DUNS number and unique entity identifier: 057222119

c. Federal Award Identification Number (FAIN): 693JK31940039HMEP

d. Federal Award Date: 07/24/2020

e. Sub-award Period of Performance: 10/01/2020 – 09/30/2021

f. Amount of federal funds obligated to the Sub-Recipient by this agreement: $23,850.00

g. Total amount of federal funds obligated to the Sub-Recipient: $23,850.00

h. Total amount of the federal award committed to the Sub-Recipient: $23,850.00

i. Basis for subaward amounts:
   - Amount provided by State/Grantor is $23,850.00
   - Amount matched by Sub-Recipient $5,962.50
   - Total Grant Amount $29,812.50

j. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows:

k. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
   U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration (DOT/PHMSA) via the South Dakota Department of Public Safety, Office of Emergency Management
   Rhett Howard
   HMEP Grant Administrator
   221 S. Central Avenue
   Pierre, SD 57501
   (605) 773-3231
   Rhett.Howard@state.sd.us

l. CFDA No(s) and Name(s): 20.703 U.S. Department of Transportation Hazardous Materials Emergency Planning Grant

m. Is the grant award for research and development (R&D)? YES ___ NO X

n. Indirect Cost Rate for federal award: 6.2%