

## **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 between the City of Rapid City, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701 (hereinafter referred to as OWNER) and KLJ Engineering LLC, a North Dakota limited liability company, of 4585 Coleman Street, Bismarck, ND 58503 (hereinafter referred to as CONSULTANT). This project will encompass the preparation of the Highway 1416 and Radar Hill Road Corridor Study for the Rapid City Area Metropolitan Planning Organization.

OWNER and CONSULTANT, in consideration of their mutual covenants herein, agree in respect of the performance of 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**

1. 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. CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

#### **1.2 Scope of Work**

The Basic Services Scope of Work is described in detail in Exhibit A and shall include tasks one through fourteen to create the Highway 1416 and Radar Hill Road Corridor Study.

### **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 shall complete the scope of work stated in Exhibit A by March 29, 2024, provided a written "Notice to Proceed" is issued by February 28, 2023. 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 \$309,215.63 as detailed in the attached Exhibit C "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 \$32,348.69.

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 C, "Cost Estimate". The remaining 10% shall be due upon approval of the Final Report for the Project as accepted by OWNER. All deliverable payments shall be subject to 10% retainage. The retainage shall be calculated and subtracted from the total billed amount on each invoice by CONSULTANT. Retained amounts due to CONSULTANT shall be presented on a final, separate invoice and paid upon Final Acceptance 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**

1. 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. Documents and products are certainly submitted to Owner before payment is made, but ownership does not transfer until services have been paid for.

## **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 negligent or willful conduct by the CONSULTANT, its employees, agents, subcontractors or assignees resulting from the performance of services related to this Agreement.

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

## **5.11 Acceptance and Modification**

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

## **SECTION 6 – TERMINATION**

### **6.1 Notice**

If the CONSULTANT breaches any of the terms or conditions of this Agreement, the OWNER may terminate this Agreement or any portion of the Agreement at any time with or without notice. In any other case, the OWNER may terminate the entire Agreement or any portion of the Agreement upon ten (10) days' written notice to CONSULTANT.

### **6.2 Take over Work**

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

### **6.3 Delivery of Work**

Upon termination, the CONSULTANT shall deliver to the OWNER all work product completed to the date of termination upon payment for services rendered. 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 conflict 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 Estimate, Exhibit D – Standard Title VI/Nondiscrimination Assurances (Appendix A&E), Exhibit E – Debarment, Exhibit F – Certification of Consultant, and Exhibit G – Evaluation forms, constitute the entire agreement of the parties. No other promises or consideration are a part of this agreement.

## **SECTION 9 – COMPLIANCE WITH CLEAN AIR ACT**

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

## **SECTION 10 – TITLE VI ASSURANCE**

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

## **SECTION 11 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

CONSULTANT certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from

participation in this transaction by any Federal department or agency.

## **SECTION 12 – INSURANCE AND REPORTING**

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

- A. Commercial General Liability Insurance: CONSULTANT shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.
- B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance: CONSULTANT agrees to procure and maintain occurrence-based professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

The insurance provided for general liability and errors and omissions shall be adequate for the liability presented, and shall be written by an admitted carrier in the State of South Dakota.

- C. Business Automobile Liability Insurance: CONSULTANT shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
- D. Worker's Compensation Insurance: CONSULTANT shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, the CONSULTANT shall furnish the OWNER with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the OWNER. The CONSULTANT shall furnish copies of insurance policies if requested by the OWNER.

## **SECTION 13 – REPORTING**

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

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

any event to law enforcement or other entities under the requirements of any applicable law.

## **SECTION 14 – DISCLOSURE TO REPORT LOBBYING**

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

The CONSULTANT will require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

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

## **SECTION 15 – SEVERABILITY PROVISION**

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

## **SECTION 16 – CONFLICT OF INTEREST**

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



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Notary Public

My Commission Expires:

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(SEAL)

**Address for Giving Notices:**

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

Steve Grabill  
KLJ Engineering LLC  
330 Knollwood Drive  
Rapid City, South Dakota 57701

## **Exhibit A Scope of Work**

The Consultant will, to the maximum extent feasible, utilize existing information, reports, and studies on file with the MPO and/or provided by the MPO. The Consultant will work closely with the Study Advisory Team and the MPO to develop the Highway 1416 and Radar Hill Road Corridor Study (Study).

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

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

### **1. Kick Off Meeting:**

The Consultant shall facilitate a meeting with the Study Advisory Team to confirm expectations and to finalize the work plan.

### **2. Methods & Assumptions:**

The Consultant shall facilitate a meeting to determine the assumptions to be used during the course of the study. Resulting from that meeting, the consultant shall develop a Methods and Assumptions Document in accordance with the Method and Assumptions Template for MPO Planning Studies.

### **3. Baseline Conditions Analysis / Obtain Data:**

The Consultant is to obtain all data needed to perform the study and assess the existing transportation network within the study area. At a minimum, the Study Advisory Team believes this task will need to:

- a) Obtain and review all applicable access ordinances and guidelines.
- b) Gather base mapping data.
- c) Review existing traffic volume and turning movement data and determine traffic volume count and turning movement count data needs. At a minimum, the following data elements are believed to be needed:
  - (i) Twelve (12) hour turning movements at each of the intersections indicated in Figure 1 and listed in Task 4. Turning movement counts should also obtain separate bicycle and pedestrian counts.
  - (ii) Twenty-four (24) hour volume counts, classification and speed data along the corridor will need to be collected during the same time period.

(iii) Traffic signal timing plans of existing signals.

It should be anticipated that peak hour turning movement counts may need to be obtained at additional intersections to check turn lane warrants. Other data elements may be available from SDDOT or City of Rapid City sources. A preliminary list, including an estimate of cost, of all traffic data anticipated to be needed to fulfill the study's requirements is requested to be presented with the written proposal. Vehicle classification is to be obtained per SDDOT procedures.

- d) Identify traffic safety problems based on crash history and potential traffic safety areas based upon local knowledge. The five year history of reportable crashes along the corridor will be provided.
- e) Verify and catalog access locations along the corridor.
- f) Review existing street / roadway design standards of all applicable agencies.
- g) Determine and gather all other relevant data needed to fulfill the study's requirements.

Much of the non-traffic data is available from the SDDOT's GIS system, Pennington County GIS Data or Rapid City's Interactive GIS (RapidMap). If data is not readily available from these sources, the Consultant will be responsible for the data collection for all other necessary data to conduct the study.

#### **4. Existing Traffic and Operations Analysis:**

The Consultant is to conduct traffic operations analyses using the methodologies of the Highway Capacity Manual 6<sup>th</sup> Edition (HCM) along the study corridor for existing conditions. Software used to assist in the analyses shall be HCS7. This will include determining the existing corridor level of service for the following segments of the Highway 1416 & Radar Hill Road corridors.

- Highway 1416 from Interstate 90 off ramp to Radar Hill Road
- Highway 1416 from Radar Hill Road to S Ellsworth Road
- Highway 1416 from S Ellsworth Road to Liberty Boulevard
- Highway 1416 from Liberty Boulevard to 151<sup>st</sup> Avenue
- Radar Hill Road from Highway 1416 to Long View Road
- Radar Hill Road from Long View Road to SD Highway 44

This will also include determining the existing intersection level of service for each intersection along the study corridors listed below:

- Highway 1416 and Radar Hill Road
- Highway 1416 and S Ellsworth Road
- Highway 1416 and Liberty Boulevard
- Highway 1416 and 151<sup>st</sup> Ave
- Radar Hill Road and Long View Road
- Radar Hill Road and SD Highway 44

Additional intersections may be identified as the study progresses.

#### **5. Project Future Conditions (2050):**

The Consultant shall work with the Rapid City MPO's traffic model and the SDDOT's traffic monitoring group to project future traffic conditions along the study corridor under a "No Build" (Do-nothing) Scenario to the year 2050.

The consultant is to conduct a traffic operations analysis using HCM 6th Edition along the study corridor for the projected conditions. This will include determining the future corridor level of service for the following segments of the Highway 1416 & Radar Hill Road corridors.

- Highway 1416 from Interstate 90 off ramp to Radar Hill Road
- Highway 1416 from Radar Hill Road to S Ellsworth Road
- Highway 1416 from S Ellsworth Road to Liberty Boulevard
- Highway 1416 from Liberty Boulevard to 151<sup>st</sup> Avenue
- Radar Hill Road from Highway 1416 to Long View Road
- Radar Hill Road from Long View Road to SD Highway 44

This will also include determining the future intersection level of service for each intersection along the study corridors listed:

- Highway 1416 and Radar Hill Road
- Highway 1416 and S Ellsworth Road
- Highway 1416 and Liberty Boulevard
- Highway 1416 and 151<sup>st</sup> Ave
- Radar Hill Road and Long View Road
- Radar Hill Road and SD Highway 44

Additional intersections may be identified as the study progresses.

#### **6. Conceptual Design Options for the Highway 1416 & Radar Hill Road Corridors:**

The Consultant shall determine and investigate a list of corridor and intersection improvements, cost estimates, and implementation plan along the designated Highway 1416 & Radar Hill Road corridors that will satisfactorily accommodate the projected traffic demand, reduce crash rates, and consolidate access locations to reduce conflicts.

At a minimum, these conceptual design options are to show:

- Preliminary profile of mainline Highway 1416 & Radar Hill Road and all crossroads affected by the option based upon available contour data.
- Typical section(s) of mainline Highway 1416 & Radar Hill Road and all roadways affected by the option.
- Lane requirements, including auxiliary lanes, of mainline Highway 1416 & Radar Hill Road, on the crossroads, and through intersection areas.
- Turn lane requirements at intersections.



- Future intersection traffic control improvements to achieve an intersection LOS of C or better.
- Permanent signing, lane delineation and other traffic control items necessary.
- Right of Way limits
- Utility impacts/needs
- Access locations that should be removed/consolidated/relocated with the project(s) to enhance traffic flow through the corridor. Future access locations shall be determined in accordance to the Rapid City Access Standards for arterial roadways rather than SDDOT standards for rural highways.
- Location of pedestrian and bicycle access and crossings.
- Proposed locations of bus stop pullouts.
- Desktop review of potential environmental impacts.

### **7. Determination of Build Scenarios:**

Using the list of corridor improvements determined in Task 6, the Consultant shall work with the Study Advisory Team to determine up to three potential build scenarios for the entire study corridor.

### **8. Traffic and Operations Analysis of Build Scenarios:**

The Consultant is to conduct a traffic operations analysis along the study corridor for the build scenarios for both the existing and the projected 2050 traffic conditions for all build scenarios identified in Task 7.

The Consultant is to conduct a traffic operations analysis using HCM 6th Edition along the study corridor for the projected conditions of the build scenarios. This will include determining the existing and future corridor level of service for the following segments of the Highway 1416 & Radar Hill Road corridors.

- Highway 1416 from Interstate 90 off ramp to Radar Hill Road
- Highway 1416 from Radar Hill Road to S Ellsworth Road
- Highway 1416 from S Ellsworth Road to Liberty Boulevard
- Highway 1416 from Liberty Boulevard to 151<sup>st</sup> Avenue
- Radar Hill Road from Highway 1416 to Long View Road
- Radar Hill Road from Long View Road to SD Highway 44

This will also include determining the existing and future intersection level of service for each intersection along the study corridors listed:

- Highway 1416 and Radar Hill Road
- Highway 1416 and S Ellsworth Road
- Highway 1416 and Liberty Boulevard
- Highway 1416 and 151<sup>st</sup> Ave
- Radar Hill Road and Long View Road
- Radar Hill Road and SD Highway 44

Additional intersections may be identified as the study progresses.

### **9. Traffic Variables for Design:**

The Consultant shall determine the traffic design variables necessary to design the build scenarios of this study. These variables include, but are not limited to:

- Average Annual Daily Traffic for the year of construction (AADT<sub>2035</sub>).
- Average Annual Daily Traffic for the future year (AADT<sub>2050</sub>)
- Design Hour Volume, 30<sup>th</sup> highest hour of the year. (DHV);
- Direction Distribution in the predominant direction of travel (D)
- Truck Percentage of DHV (T DHV)
- Truck Percentage of AADT (T ADT)
- Design speed(s) (V)

Design variables are to be determined for the following for all logical corridor segments as determined by the Build Scenarios developed in Task 5:

### **10. Safety Analysis:**

The Consultant shall identify existing and future safety issues (actual & perceived) along the Highway 1416 & Radar Hill Road corridors of the No Build and Build Scenarios. The analyses should be done in accordance with Parts B and C of the AASHTO Highway Safety Manual.

### **11. Environmental Overview:**

The study area for the environmental overview will be an approximately 200 foot buffer surrounding the study corridor except where noted below. The Consultant will collect, summarize, and provide the source of relevant existing data along the corridor, but will not develop an environmental finding document. The planning document should provide enough detail to document the project level environmental setting. The study should meet the regulatory criteria for use of a corridor or sub-area study in NEPA, as required by 23 CFR §§ 450.212(b) and 450.318(b).

The following environmental resources are expected to be required for the environmental overview. This list is not all-inclusive and is subject to change based on meetings with project stakeholders as the study progresses. Modifications to the list may be necessary. The Consultant will conduct a “windshield survey” of the study area and utilize existing data from previous studies conducted in the area and other agencies. No additional environmental information will be field collected nor will environmental clearances be obtained.

- The foundation for a purpose and needs statement that defines the goals and objectives or vision statement for the corridor and/or the recommended project(s).
- Local land use, growth management, or development plans and projections of future land use, natural resource conservation areas, and development – This information should be available from the various local agencies.

- Consultation with resource and regulatory agencies for purposes of integrating interagency goals and plans into the corridor plan.
- Planning level evaluation of indirect and cumulative effects. This will need to include:
  - Defining the indirect and cumulative impact study area, which is assumed to be larger than the direct impact study area of the corridor study.
  - Creating a map of the study areas for direct, indirect, and cumulative impacts.
  - Identification of potential indirect impact causing activities of the build scenarios.
  - Identification of the potential direct and indirect impacts that may contribute to a cumulative impact.
- Environmental scans that produce preliminary identification of impacts and mitigation to environmental resources and environmentally sensitive areas:
  - Floodways and 100-year floodplain boundaries – The consultant shall obtain the FEMA FIRM designated floodplain areas within the Study Area.
  - Historic Preservation - The consultant will complete a records search and prepare a memo summarizing the potential of the Area of Potential Effect (APE) to contain archaeological sites and built resources of significance (buildings/structures) based on the windshield survey and preliminary research and outline recommendations for further work for compliance with Section 106 of the National Historic Preservation Act of 1966 (as amended). The records search will include a review of archaeological sites, historic buildings and structures, and previous investigations known to be located in and within a one mile buffer of the APE. Using this information, the consultant will prepare an outline of the results of this preliminary research and windshield survey, identify potential effects and make recommendations for any further cultural resources work to be done during the design phase of any potential project(s).
  - Hazardous Substances – This information will be obtained from various resource agencies.
  - Wetlands and Other Waters of the US –This information will be obtained from various resource agencies and through desktop analysis.
  - Wildlife/Threatened and Endangered Species – This information will be obtained from various resource agencies, including FWS' IPAC system.
  - Section 4(f) and 6(f) Resources— The Consultant shall inventory and map the Study Area for Section 4(f) and/or 6(f) facilities. Determine any potential impacts or ROW acquisitions that may have potential to result in a use of Section 4(f) properties (for example publicly owned public parks, recreation areas, and wildlife or waterfowl refuges, or any publicly or privately owned historic site listed or eligible for listing on the National Register of Historic Places) or Section 6(f) properties (those that have received Land and Water Conservation Funds). Using this information, the consultant will prepare recommendations for any further Section 4(f) or 6(f) work to be done during the design phase of any potential project(s).

The objective for the Environmental Overview is preparation for the initiation of the NEPA process for a proposed project action. The results and decisions of the planning process need to be documented in a way that is clear, suitable, and readily available for incorporation into a NEPA document.

## **12. Recommendations:**

Based upon the results of the Traffic and Operations Analysis and public input received, the Consultant team shall recommend a schedule of improvement projects for the Highway 1416 & Radar Hill Road corridors. Recommendations should include an estimate of costs and a general timeline for implementation of each project.

## **13. Public Involvement:**

### **A. Support the "Highway 1416 & Radar Hill Road Corridors Study Advisory Team"**

The Study Advisory Team is expected to meet 6 to 8 times (including teleconferences and/or videoconferences) during the project period for the Consultant to provide regular progress reports and to solicit feedback from members regarding study progress and execution. Three (3) of these meetings are to be scheduled and held at least one (1) week prior to each public meeting to gather the Study Advisory Team's approval on the information being presented to the public. Other meetings will be held as deemed necessary. The Study Advisory Team may also meet at additional times without the Consultant's involvement during the study period.

### **B. Conduct Three Public Meetings**

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

- Project Kickoff / Data Collection / Existing Conditions Analysis
- Option Development (Task 6)
- Recommendations (Draft Final Report Stage)

The Consultant will organize and notice these meetings. For each meeting, the consultant shall provide the MPO the public meeting notice for review and approval prior to its publication to ensure the notice meets MPO requirements. At a minimum, publication of the notice shall occur twice in each of the Rapid City Journal and Native Sun Times, with the last notice published a minimum of 10 days prior to the meeting. The final proof from the publisher of the meeting notice shall be provided to MPO prior to publication. An Affidavit of Publication from the publisher will be required in the invoice for reimbursement. The SDDOT, the City of Box Elder, Pennington County Highway Department and the Rapid City MPO shall all be allowed to issue press releases based upon the public notice and advertise the meeting on their websites.

The Consultant is encouraged to use creative measures to inform commuters along the corridor of the public meetings. Direct invitation mailings to the immediate property and business owners along the study corridor and to residents in the neighborhoods adjacent to Highway 1416 & Radar Hill Road corridors will be required. The Consultant shall present

and provide exhibits for the meeting.

### C. Conduct Individual Land/Business Owner/Manager Meetings

There will be meetings moderated by the Consultant with the individual land and/or business owners/managers for those parcels and businesses directly affected by potential access changes caused by any of the options developed. It is estimated that these meetings will take place in concurrence with the 2<sup>nd</sup> public meeting.

### D. MPO Meetings

The Consultant shall prepare documents for inclusion in MPO committee packets, handouts and any presentation material needed for City & County staff to present updates on the study throughout the study period.

### E. Website

The Consultant team shall maintain a website dedicated to the study. The website should be organized in such a way that will help dispense information to the public regarding the status of the study, public meeting announcements, presentations, meeting summaries, and all reports. At a minimum, the website shall allow for public input into the study during the duration of the study. The website 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 is provided. The SDDOT, the City of Box Elder, Pennington County Highway Department and the Rapid City MPO shall be allowed to provide direct links to the study website from their websites. The website should be active at least ten (10) days prior to the first public meeting. The website shall remain active for a period of at least 6 months after completion of the study to allow public access to the final report. All public meeting notifications and public comment sheets should list the website address.

## **14. Document Preparation:**

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

- Study Updates in word processing format (Microsoft® Word .doc) or as Portable Document Format (Adobe® .pdf) of the study's progression due monthly. If the study completion date needs to be extended, study updates will be expected around the 15<sup>th</sup> of every other month beginning on April 14, 2023 until submittal of the draft final report.
- An electronic copy for the City of Box Elder, Pennington County Highway Department, the Rapid City MPO, and for the SDDOT, in word processing format (Microsoft® Word .doc) or as Portable Document Format (Adobe® .pdf) of all draft reports and executive summary.
- Fifteen (15) printed copies of the final report and executive summary.
- An electronic copy for the City of Box Elder, Pennington County Highway Department, the Rapid City MPO, and for the SDDOT, in word processing format (Microsoft® Word .doc) as well as Portable Document Format (Adobe® .pdf), of the complete final report, complete access management pre-design report, and the complete executive

summary. The PDF file shall be bookmarked for quick navigation to logical sections of the document.

- CADD (AutoCAD .dwg) design files for both conceptual design options and all approved standard typical sections.
- Copies of any pertinent working papers and electronic files created during the project.

After the Study Advisory Team's review of the draft reports, the MPO's contact person will advise the Consultant as to its acceptability and will request any changes that may be desired. It should be anticipated that multiple drafts of the final report documents may be needed before final acceptance. The electronic versions of the executive summary and final report documents shall be due to MPO's contact person ten (10) days prior to the study's completion date.

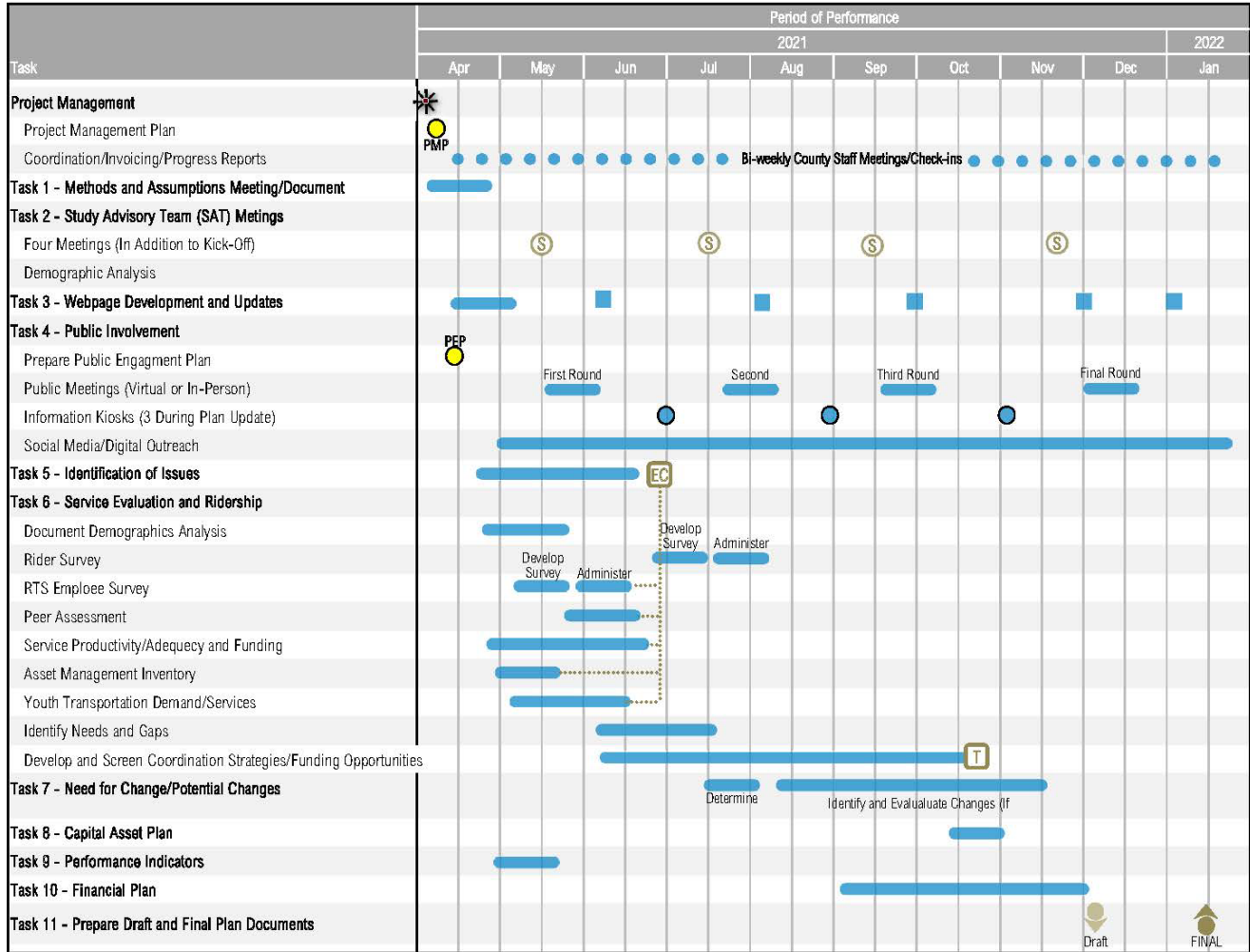
### **Available Information:**

The following will be made available to aid the selected Consultant in performing the study if the consultant deems them needed:

- Existing vehicular traffic data
- SDDOT Road Design Manual
- SDDOT vehicle classification procedures
- Available construction plans
- Available GIS data, including aerial photography, parcel information, existing land use (rooftops and commercial square footage) and crash locations
- Available data and reports from previously completed and on-going studies

Many of these documents are available on the SDDOT's website, [www.sddot.com](http://www.sddot.com) for review during proposal preparation. Information regarding the availability of specific GIS and/or traffic data from the state can be obtained from Thad Bauer at 605-773-3278 or [thad.bauer@state.sd.us](mailto:thad.bauer@state.sd.us). Information regarding the availability of specific data from the MPO can be obtained from Mr. Kip Harrington at 605-394-4120 or [kip.harrington@rcgov.org](mailto:kip.harrington@rcgov.org).

# Exhibit B Project Schedule



**Legend:**

- Kick off Meeting
- Project Management Plan
- Study Advisory Team
- Working Group
- Existing Conditions Document
- Technical Memo

## Exhibit C Cost Estimate

November 2, 2022

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



330 Knollwood Drive  
Rapid City, SD 57701-0644  
605-721-5553  
KLJENG.COM

**RE: Cost Proposal to develop the Highway 1416 and Radar Hill Road Traffic  
and Corridor Analysis Study for the Rapid City Area Metropolitan Planning Organization (MPO)**

Item	FY 2022			FY 2023			FY 2022-2023	
	Rate	Total Estimated Hours	Total Estimated Cost	Rate	Total Estimated Hours	Total Estimated Cost	Total Estimated Hours	Total Estimated Cost
Steve Grabill; Senior Project Manager	\$65.84	24	\$1,580.16	\$67.82	324	\$21,972.12	348	\$23,552.28
Joe DeVore; Traffic Engineer	\$50.00		\$0.00	\$51.50	63	\$3,244.50	63	\$3,244.50
Mark Powers; Planning Task Leader	\$48.08	4	\$192.32	\$49.52	290	\$14,361.50	294	\$14,553.82
Oz Khan; Engineer	\$29.99	6	\$179.94	\$30.89	120	\$3,706.76	126	\$3,886.70
Cassidy Trapp; Associate Designer	\$27.04		\$0.00	\$27.85	65	\$1,810.33	65	\$1,810.33
Payton Gehloff; Engineering Technician I	\$20.00		\$0.00	\$20.60	56	\$1,153.60	56	\$1,153.60
Brandon Fried; Engineer	\$38.70		\$0.00	\$39.86	40	\$1,594.44	40	\$1,594.44
Ryan Sundberg; Engineer	\$49.34	2	\$98.68	\$50.82	70	\$3,557.41	72	\$3,656.09
Matt Oen; Engineer in Training II	\$37.63		\$0.00	\$38.76	256	\$9,922.28	256	\$9,922.28
Dave Wiosna; Associate Planner	\$27.06		\$0.00	\$27.87	56	\$1,560.82	56	\$1,560.82
Wade Kline; Public Engagement/ Gov. Relations	\$61.61	2	\$123.22	\$63.46	20	\$1,269.17	22	\$1,392.39
Claire Johnson; Sr. Public Engagement Strategist	\$34.62		\$0.00	\$35.66	116	\$4,136.40	116	\$4,136.40
Stacie Cornett; Graphic Designer	\$29.00		\$0.00	\$29.87	62	\$1,851.94	62	\$1,851.94
Kory Rude; Environmental Planner II	\$30.77		\$0.00	\$31.69	192	\$6,085.08	192	\$6,085.08
Vincent Popyk; Environmental Planner I	\$21.50		\$0.00	\$22.15	94	\$2,081.63	94	\$2,081.63
Ashlee Nilson; Environmental Planner II	\$25.54		\$0.00	\$26.31	64	\$1,683.60	64	\$1,683.60
Liz Ricciardi; Environmental Planner III	\$41.83		\$0.00	\$43.08	111	\$4,782.42	111	\$4,782.42
Jeff Shelton; Archaeologist II	\$24.23		\$0.00	\$24.96	18	\$449.22	18	\$449.22
Jeff Price; GIS Analyst III	\$37.24		\$0.00	\$38.36	147	\$5,638.51	147	\$5,638.51
Julie Rustan; Project Assistant I	\$18.75	2	\$37.50	\$19.31	88	\$1,699.50	90	\$1,737.00
<b>Subtotal</b>			<b>\$2,211.82</b>			<b>\$92,561.23</b>		<b>\$94,773.05</b>
Fringe Benefits			-			-		-
Overhead/Indirect Costs (184.44%)			\$4,079.48			\$170,719.93		\$174,799.41
Fixed Fee (12%)			\$754.96			\$31,593.74		\$32,348.69
Cost of Money (0.45% COF)			\$9.95			\$416.53		\$426.48
In-State Travel			\$136.00			\$952.00		\$1,088.00
Out-of-State Travel			-			-		-
Equipment Purchase			-			-		-
Expendable Supplies			-			-		-
Advertising, Public Meetings			-			\$2,880.00		\$2,880.00
Vendors (Spack and StreetLight Data)			-			\$2,900.00		\$2,900.00
Computer Time			-			-		-
Report Publication			-			-		-
<b>TOTAL</b>			<b>\$7,192.21</b>			<b>\$302,023.42</b>		<b>\$309,215.63</b>

**Note:** Room Costs Based on 8 Days (Assumes \$40 Meals and \$96 Lodging) = \$1,088

**Note:** Ad Costs –

Rapid City Journal – Cost for 3 x 6 is \$160 x 6 = \$960

Native Sun Times – Cost for 3 x 6 is \$320 x 6 = \$1,920

Ads Total = \$960 + \$1,920 = \$2,880



**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 KLJ Engineering LLC, which has an address of 4585 Coleman Street, Bismarck, ND 58503, 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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date