REQUEST FOR PROPOSALS

10 Year Update to the
2014 Comprehensive Plan
City of Rapid City, South Dakota

Submittal Deadline:
August 15, 2023

INTRODUCTION

The City of Rapid City (CORC) requests proposals from qualified firms with considerable experience in community design, land use, environmental planning, economic analysis, and community engagement. The project will entail an update, rather than a re-write of the currently adopted Comprehensive Plan, Plan Rapid City (2014). The consultant/s will work with the Community Development Department to facilitate public engagement and confirm or re-confirm goals, objectives, and recommendations within the plan elements. In addition, the consultant/s will lead an update to the Community Profile, analyze and update the Future Land Use Plan, and recommend planning frameworks for future neighborhood/planning areas and priority corridor planning in order to respond to community needs. A detailed scope of work follows.

PURPOSE

Rapid City is the second largest community in South Dakota and serves a 200 mile radius trade area. Despite being the most geographically remote metropolitan area in the US, the community is known for extraordinary amenities including a vibrant downtown and recreational opportunities. As of the 2020 census, Rapid City’s population was 74,703, a 10% growth in population since 2010. In-migration to Rapid City over the last decade, particularly over the last few years, has resulted in accelerated growth creating challenges for housing affordability and putting pressure on City infrastructure, systems, and services. The City has an active and engaged Sustainability Committee with 7 priority focus areas resulting from a sustainability retreat in 2022.

Rapid City has a strong arts identity as evidenced by both the built environment, and its people. Arts and culture as community identity can be seen in Rapid City’s downtown, art alley and muralist community, Main Street Square, and among the many bronze sculptures. At a larger, and regional scale, Crazy Horse Memorial and Mount Rushmore National Memorial also shape South Dakota’s identity. The beauty, culture, and creativity of the Native and non-native community is also expressed at events like Native POP, the Black Hills Pow Wow, Culture Shock Fashion and Music Festival, neighborhood festivals, and the Black Hills Stock Show and Rodeo. In addition, Rapid City has a rich community of visual and performance artists spanning many genres and mediums. South Dakota Mines, situated just east of downtown is an incredible asset fostering people, ideas, and innovation to be further developed and supported in the vision for an “innovation district” downtown. The Rapid City Arts Council exists to champion inclusive, innovative, and inspiring arts opportunities to enrich the Rapid City Community. As
part of this mission, the Arts Council manages the municipally owned arts facility, the Dahl Arts Center on behalf of the people. Several other arts-based organizations and programs support artists working in the community. These are but few of many examples.

Because the arts are central to community vitality and development in Rapid City, this Plan update seeks to incorporate an arts-based approach to both the policy development and public participation components of the project. The Rapid City Arts Council and other local arts organizations will help to guide a community engagement strategy that leverages our community’s unique artists and cultural resources to empower local citizens to participate in the planning and policy development process.

OVERVIEW

The Request for Proposals seeks to establish a relationship with a qualified consult/s to conduct the 10 year update to Rapid City’s Comprehensive Plan. The Plan shall refine the vision for the community.

The opportunities and issues facing the community must be met with new ideas and/or continued expansion in the following areas:

- Continue with redevelopment of Downtown Rapid City, including the Innovation District;
- Prioritize strategies to respond to housing needs and changing demographics;
- Implement land use and policy tools which promote efficient delivery and maintenance of infrastructure, fiscally sustainable development, and mechanisms to reduce urban sprawl and its associated costs;
- Deliver programs, projects, and policies which advance equity, inclusivity and quality of life community wide;
- Expand investment in recreation, culture, and the arts for the benefit of residents and visitors;
- Develop a diversified economy which creates opportunities and a healthy workforce;
- Practice conservation and stewardship of land and natural resources for a healthy and resilient environment and economy;
- Enhance coordination between leadership in joint jurisdictional areas to respond to regional growth demands in an orderly fashion

With these factors in mind, the following scope of work has been prioritized for this project. Interested consultants are encouraged to base a scope of work on the services/tasks below, and include other project components recommended based on experience with Comprehensive Plan 10 year updates.

PLAN ELEMENTS/SCOPE OF WORK

1. **Review Plans.** Review the 2014 Comprehensive Plan in its entirety and subsequent plan amendments including the Coordinated Transit-Human Services Plan, Metropolitan Transportation Plan, Bicycle and Pedestrian Master Plan, Sixth and Omaha Pedestrian Crossing, Transit Development Plan, Downtown Area Master Plan, Cultural Plan, Historic Preservation Plan, Rapid City and Black Hills Area Housing Study, and similar land use plans. Assess areas of progress and align the Comprehensive Plan Update to existing adopted plans as applicable.
2. **Public Engagement.** The consultant will develop a public involvement strategy for the study process. This strategy will be consistent with the MPO’s Public Participation Plan and an outreach program will be conducted to involve the elderly, persons with disabilities, minorities, the low-income community and other groups traditionally under-represented in the planning process. The approach should include a broad array of methods which incorporate a Study Advisory Team and arts-based practices throughout. This can include traditional approaches such as staff interviews, additional steering committee/s, surveys, charrettes, social media, and virtual based strategies. However, the approach should also introduce techniques to make public participation in the process more accessible, inclusive, relevant, and engaging for the community. The consultant must identify a community engagement strategy which leverages our unique local artistic and cultural resources in ways that bring people together to guide policy making and the planning process. This strategy should involve local artists. Since the project utilizes federal funds, the consultant shall develop a Methods and Assumptions Document in accordance with the “Methods and Assumptions Template for SDDOT Planning Studies.” The study shall include a project website managed and updated by the consultant.

3. **Assess Goals and Values.** Re-visit the Vision and Core Values and retain, revise, remove as applicable based on the public engagement process.

4. **Update the Community Profile.** Perform research, analysis, and projections to update population growth, socioeconomic, housing, growth, and economic data for a 10 and 20 year planning horizon.

5. **Land Use Assessment.** Assess the Future Land Use Map, Land Use Designations including their definitions/purposes, their associated current zoning districts, and the acreages within each by neighborhood area. This analysis is requested within the existing City limits and the MPO area to guide development of the City. Guiding questions include: How much commercially and industrially zoned property is available to meet current and future needs? Where should industrial areas and strip commercial corridors be preserved vs. where are mixed use development pattern opportunities? What are housing typologies not allowed within current zoning districts/land use designations? The consultant should use this information to form recommendations for changes to the Future Land Use Map in service to integrating the City’s Land Use and Transportation plans, promoting housing diversity, and encouraging infill and mixed-use development. The 2014 Comprehensive Plan identified revitalization corridors and Activity Centers which should be used as a guide. The Land Use Assessment should inform any recommended revisions to the land use framework by demonstrating current land use patterns, desired land use patterns, and policy strategies to align the zoning code other applicable regulations with the community’s vision.

6. **Evaluate and Expand Guidance on Neighborhood Areas.** The 2014 Comprehensive Plan established Neighborhood Areas, Goals, and Policies. Many of the recommendations between Neighborhood Areas are repetitive and not specific to their respective geography. The City seeks to build on neighborhood area planning initiatives. While the Scope of Work for this Comprehensive Plan Update cannot perform individual
neighborhood plans, the City seeks an expanded Neighborhood Area evaluation, with recommendations for future planning frameworks to be conducted by the City.

7. **Reformat/Redesign the plan.** The City seeks formatting solutions which improve user-friendliness, accessibility and makes easier subsequent administrative updates to the Plan. The City is open to possibilities ranging from minimal changes to a more substantial overhaul as warranted and budget allows.

8. **Identify Sprawl Reduction Strategies.** The 2014 Comprehensive Plan prioritized a compact development pattern. In an effort to continually promote fiscally sustainable development, the City seeks policy guidance on sprawl reduction strategies including: joint jurisdictional coordination, infill incentives, greenfield strategies, and methods to plan and deliver urban infrastructure and services which reduce sprawl and its associated costs.

9. **Plan Adoption.** Following acceptance by the project Study Advisory Team, the consultant shall present the plan in person to the Planning Commission, MPO committees, and City Council for full adoption as required by ordinance and South Dakota State Statute.

**DELIVERABLES**

- Project Kick-Off meeting with Study Advisory Team members
- Study updates in word process format or as PDF of the study’s progression due with each submitted invoice.
- Produce a study website to be managed and updated by the consultant.
- Produce Methods and Assumptions Document, Public Participation Plan, and all materials for public presentations in conjunction with an arts-based approach.
- Provide digital, web ready drafts of the Plan for posting on the City’s website as well as the required project website. The consultant shall deliver draft documents in hard copy unless agreed otherwise.
- Produce final copies for approval and adoption by the City Council. The Comprehensive Plan format shall consist of both print-ready and standard pdf digital documents in formats agreeable to the City. Maps shall be produced in ESRI geodatabase format compatible with Rapid City/Pennington County GIS. A minimum of (20) hard copy final plans shall be included as a deliverable.
- All final maps and overlays must be delivered in ESRI geodatabase format compatible with Rapid City/Pennington County GIS, along with map templates generated throughout the process. All final maps and source data files shall be provided to the City.
- In-person presentations to the Planning Commission, MPO Committees, and City Council to adopt the Comprehensive Plan.
- The proposal shall identify any other intermittent deliverables such as advisory memos, analyses, and similar to be provided for the review of existing plans, goals and values, creation of the Community Profile Update, Land Use Assessment, Neighborhood Areas, Redesign Alternatives, and Sprawl Reduction Strategies, etc.
**SCHEDULE**

The project schedule assumes the selected consultant will be under contract by October 16, 2023. The project will launch in late January of 2024 and must be completed within 12 – 18 months. As a submittal requirement, the applicant must submit a project schedule showing key task target dates, including public meetings and hearings, and estimated task duration. Any proposed variations form the City’s intended timeline shall be discussed in the proposal.

**BUDGET**

The project budget is not disclosed. Interested consultants shall provide their proposed scope of work, and a practical budget for undertaking the project. The proposed budget shall be submitted in a sealed envelope, and opened only if the proposer is selected to perform the project. Unopened envelopes will be returned to the unselected proposers.

**FORMAT**

The total length of the proposal is not to exceed 25 pages maximum. Each proposer must demonstrate that they have the professional capabilities needed to accomplish this study. At a minimum, the proposal should contain the following:

A. Statement of Study Approach: Describe the proposed planning process methodology including an explanation of technical approaches and a detailed outline of the proposed services for executing the requirements of the Scope of Services. This section should focus on how the consultant will refine and enhance the currently adopted Comprehensive Plan, rather than starting from scratch.

B. Proposed Team Members: Provide a written description of the consultant team composition, including disciplines, primary role in regards to the study, and relevant experience. The information provided must clearly indicate the consultant team’s point of contact, the team leader for the study (if different) and the responsible party in each firm who will be providing the required professional experience.

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

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

3. Project management including:
   a. Project organizational chart including key staff to be assigned;
   b. Location of office from which the management of the project shall be performed; and
   c. Summary/matrix of key personnel's shared project experience.
C. Individual Experience: Provide a description of the background of key members of the consultant team and their specific participation in previous projects that would directly relate to the work planned to be done for this study. This may be done in descriptive text or in resume format.

D. Previous project summaries, including reference contact information, for a minimum of three (3) projects which are similar in scope to the project described herein which demonstrate pertinent corporate and key personnel experience; listing of the pertinent projects may be included. (The City reserves the right to contact any references provided herein or otherwise obtained). This section should focus on Comprehensive Plan Updates projects.

E. Project Schedule: Provide a graphic or text calendar to define the proposed study schedule for tasks and set milestone dates. The amount of time in months, and as a percentage of total workload, for each component of the planning process; the map production program; and the preparation of the draft and final versions of the Comprehensive Plan.

F. Signature/Certification: The proposal shall be signed by an official authorized to bind the offer and shall contain a statement that the proposal is a firm offer for a ninety (90) day period from the submittal deadline. The proposal shall also provide the following information: name, title, address and telephone number of the individual(s) with authority to contractually bind the company and also who may be contacted during the period of proposal evaluation for the purpose of clarifying submitted information.

G. Proposed Plan of tasks detailing specific milestones within each phase and element and the deliverables/working documents associated with each. The City reserves the right to negotiate work tasks prior to finalizing a contract with the selected firm.

H. Budget (SEALED BID): Show the estimated cost of the entire study. A sample budget is shown below. If the proposal includes effort by subcontractors, a similar budget table should be included for each subcontractor.

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

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

Proposals must contain the following information on the outside of the packaging:

1. Proposal for your Comprehensive Plan Update  
2. Your company name
Seven paper copies and 1 digital copy (thumb drive) of each proposal is required. All proposals will be retained by the City of Rapid City and will not be returned.
Sample Budget – SUBMIT IN SEALED BID

DEADLINE + METHOD

Only proposals with sealed bids will be accepted and considered.

Proposals will be accepted at the Community Development Department, Planning Projects Division, 300 Sixth Street, Rapid City, SD, 57701 until 4:00 p.m. Tuesday, August 15, 2023. Proposals may be delivered in person, by U.S. Postal Service, or by private carrier/courier. Proposals may not be faxed or emailed to the City.

Questions regarding this Request for Proposals may be addressed to Sarah Hanzel, Division Manager, Community Development Department, Planning Projects Division, 300 Sixth Street, Rapid City, SD, 57701; by calling 605.394.4120; or emailing sarah.hanzel@rcgov.org.

Questions are due by Friday, July 28th. All questions and their responses will be made available by close of business on Wednesday, August 2.

EVALUATION AND CONSULTANT SELECTION

A review committee will evaluate the proposals. Qualified firms may be invited to make a presentation to the committee. Final selections will be based on written proposals and if applicable, presentations.

A scoring matrix is attached. The evaluation will consider but not be limited to the following:

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<th>Item</th>
<th>FY2022</th>
<th>FY2023</th>
<th>Total</th>
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<tr>
<td><strong>Salaries</strong></td>
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<td>Name - Title or ID#</td>
<td>$20.00</td>
<td>90</td>
<td>$1,800.00</td>
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<td>$57.50</td>
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<td><strong>Subtotal</strong></td>
<td>$3,317.50</td>
<td>$4,349.18</td>
<td>$7,666.68</td>
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<td><strong>Fringe Benefits</strong></td>
<td>$829.00</td>
<td>$1,087.00</td>
<td>$1,916.00</td>
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<tr>
<td><strong>Overhead / Indirect Costs</strong></td>
<td>$2,654.00</td>
<td>$3,479.00</td>
<td>$6,133.00</td>
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<td><strong>Fixed Fee</strong></td>
<td>$680.00</td>
<td>$892.00</td>
<td>$1,572.00</td>
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<td><strong>In-State Travel</strong></td>
<td>$1,250.00</td>
<td>$2,500.00</td>
<td>$3,750.00</td>
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<td><strong>Out-of-State Travel</strong></td>
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<td><strong>Equipment Purchase</strong></td>
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<td><strong>Expendable Supplies</strong></td>
<td>$350.00</td>
<td>$710.00</td>
<td>$1,060.00</td>
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<td><strong>Subcontracts</strong></td>
<td>$0.00</td>
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<tr>
<td><strong>Computer Time</strong></td>
<td>$0.00</td>
<td>$700.00</td>
<td>$700.00</td>
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<td><strong>Report Publication</strong></td>
<td>$0.00</td>
<td>$1,200.00</td>
<td>$1,200.00</td>
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<td><strong>TOTAL</strong></td>
<td>$9,080.50</td>
<td>$14,917.18</td>
<td>$23,997.68</td>
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Notes: 1. May be included with Overhead / Indirect Costs, Must be in accordance with 48CFR Part 31
2. Must be in accordance with 49CFR Part 1B
3. Only if normally treated as a direct cost
A. The firm’s overall project approach and proposal quality;
B. The firm’s public engagement strategy;
C. The firm’s project team;
D. The firm’s demonstrated experience with relevant projects and past work products;
E. The firm’s project management practices.

Proposals shall be evaluated and ranked based on the attached criteria as determined by the City of Rapid City. The City of Rapid City will afford equal opportunity to all those who submit proposals and will not discriminate in its selection of consultants on the grounds of race, sex, color, physical handicap or national origin.

Proposers will be notified of the results of the selection process in writing once the selected firm is under contract.

OWNERSHIP OF PROPOSALS
All proposals submitted become the property of the City of Rapid City. The City has the right to use all information presented in any proposal, unless it is annotated as being proprietary. The City considers all information contained in proposals as privileged and reserves the right to maintain its confidentiality. Selection or rejection of a proposal does not affect these rights. The City reserves the right to reject any and all proposals submitted. The City may, under certain conditions, negotiate with the proposer to address specific weaknesses in a submitted proposal. The City is not responsible for any costs incurred by proposers, including proposal preparation, prior to execution of a contract.

PROFESSIONAL SERVICE CONTRACT
A signed Professional Service Contract, provided by the City, is required prior to any work initiated on this study. A standard Professional Service Contract template is included with the RFP.

SUBLETTING OF CONTRACT
The Consulting Firm shall agree, after the contract is awarded, not to assign or sublet the whole or any part of the contract without the prior written consent of the City.

CHANGES IN SCOPE OF SERVICES
The Consulting Firm shall agree that any change of scope in the work to be performed after the original contract has been signed shall be documented as a written change order, be accepted by all parties, and made a part of the original contract by addendum.

CHANGES IN PERSONNEL
The personnel identified in the proposal shall work on the project until completion. Any substitution of personnel shall require the approval of the City in writing. Personnel changes shall only be considered for valid reasons, such as an employee leaving the firm, major illness or accident. Only persons determined by the City to be well qualified shall be approved.

GENERAL INFORMATION
The City reserves the right to inspect and investigate the business reputation, or other qualifications, of any firm and to reject any proposal, irrespective of quoted prices, if it is determined to be lacking in any of the essentials necessary to assure acceptable standards of performance. The City reserves the right to obtain financial data or other supplemental information concerning the firm and/or its subcontractors. Proposals submitted in response to the Request for Proposals shall constitute a binding offer. Acknowledgement shall be indicated by the original signature of a Principal legally authorized to execute contractual obligations and shall also signify acceptance of all terms and conditions including compensation, as set forth in the Request for Proposals. The firm shall identify clearly and thoroughly any variations between its proposal and the City’s Request for Proposals. Failure to do so shall be deemed a waiver of any rights to subsequently modify the terms and/or conditions.

The Consultant shall comply with all federal, state, and local laws and regulations in the performance of service.

**PROHIBITED ENTITY CERTIFICATION**

The Bidder must submit a Certification of Prohibited Entity Status with its bid that certifies that the Bidder is not a Prohibited Entity as defined in SDCL 5-18A-1(19A), defined as a company or organization which is ultimately owned or controlled by a foreign parent entity or the government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela. This Certification shall be provided in a form acceptable to the City of Rapid City. A Bidder shall provide any information requested by the City to verify the certification, upon request; however the City may rely on the certification without conducting any further investigative research or inquiry.

Sarah Hanzel  
Community Development Department  
300 Sixth Street  
Rapid City  
SD 67701  
(605) 394-4120  
[www.rcgov.org](http://www.rcgov.org)

**CONTRACT PROVISIONS AND ASSURANCES**

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

<table>
<thead>
<tr>
<th><strong>INTERVIEW EVALUATION CRITERIA</strong></th>
<th><strong>Scoring (Circle One)</strong></th>
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<tbody>
<tr>
<td><strong>P1: The Firm's Overall Project Approach and Proposal Quality - 20% of total</strong></td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>The evaluator should consider the following information when scoring this category:</td>
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<tr>
<td><strong>A.</strong> Is the proposal responsive to the Request for Proposals? Does the firm understand the scope of work and show an ability to meet the stated purpose and needs of the City of Rapid City?</td>
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<td><strong>B.</strong> Is the proposal unique and/or innovative?</td>
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<td><strong>C.</strong> How does the proposal communicate the professionalism of the firm?</td>
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<td><strong>D.</strong> Is the proposal complete, clear, well organized, and well written? Does the proposal contain errors or inaccuracies?</td>
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<th><strong>P2: The Firm's Public Engagement Strategy – 25% of total</strong></th>
<th>1 2 3 4 5 6 7 8 9 10</th>
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<td>The evaluator should consider the following information when scoring this category:</td>
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<td><strong>A.</strong> Is the proposed public engagement strategy comprehensive, innovative, and accessible to a wide pool of participant stakeholders?</td>
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<td><strong>B.</strong> Has the firm depicted their past success is designing and facilitating an arts based public engagement process that is relevant to the requested scope of work?</td>
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<td><strong>C.</strong> Does the strategy include multiple mediums/tools to collect citizen input and articulate community vision?</td>
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<td><strong>D.</strong> Does the firm incorporate outcomes from the public engagement process into the master plan vision and final deliverables?</td>
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<th><strong>P3: The Firm's Project Team – 20% of total</strong></th>
<th>1 2 3 4 5 6 7 8 9 10</th>
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<td>The evaluator should consider the following information when scoring this category:</td>
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<td><strong>A.</strong> Has the firm communicated the qualifications of the personnel within the submitting firm as they relate to education, experience, and other relevant credentials?</td>
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<td><strong>B.</strong> Does the proposal identify the name(s), experience, and past performance of person(s) assigned to the project with descriptions of each person’s experience? Are the key personnel appropriately matched to the requested scope of work and deliverables?</td>
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<td><strong>C.</strong> Does the firm have the ability to expand their capabilities by working with other consultants or branch offices if required?</td>
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1 = Fails to meet the expectations of the reviewer in this category
10 = Fully meets the expectation of the reviewer in this category
### P4: The Firm’s Demonstrated Experience with Relevant Projects and Quality of Past Work Products – 25% of total

The evaluator should consider the following information when scoring this category:

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**A.** Did the firm provide a summary of similar work that has been done in over the past five years as it relates to the project scope? If so, do those projects support the firm's claims?
**B.** Has the firm given an account of past experience leading a master plan process in communities with an arts based approach? Do they have experience working with communities that share other relevant similar characteristics of Rapid City?
**C.** Has the firm communicated an ability to tailor tried and tested methods from other places to fit individual communities' needs?
**D.** Does the firm have positive past experience working with relevant agencies and stakeholders?

### P5: The Firm’s Project Management Practices - 10% of total

The evaluator should consider the following information when scoring this category:

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**A.** Does the firm describe their past performance meeting budgets and schedules?
**B.** Does the firm have the ability to manage and facilitate the planning process from the location of the office/s in which project manager and other associates will be working?
**C.** Is the firm compatible to collaborate with City staff and representatives, project stakeholders, and City elected officials?

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

THIS AGREEMENT made on this day of __________, 2023 between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and _______________________, hereinafter referred to as CONSULTANT.

This project will encompass the 10 year update to the Comprehensive Plan.

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

SECTION 1 - BASIC SERVICES

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

1.2 Scope of Work

The Basic Services Scope of Work is described in detail in Exhibit A and shall include tasks X.X through X.X to create a “Comprehensive Plan Update” document formatted for easy reading and viewing on screens. Updated responses to Scope of Work amends original Scope of Work detailed in Proposal.

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 services performed by OWNER.
2.1.3 Furnishing services of independent professional associates and consultants for other than Basic Services.

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 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).

2.1.6 Additional services in connection with the Project, excluding services that are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

SECTION 3 - OWNER’S RESPONSIBILITIES
OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT:

3.1 The Community Development Director or their designee shall act as OWNER’S representative with respect to the services to be rendered under this Agreement. The Community Development Director shall have complete authority to transmit instructions, receive information, interpret and define OWNER’S policies and decisions with respect to CONSULTANT’S services for the Project.

3.2 Assist CONSULTANT by placing at CONSULTANT’S disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.

3.3 Examine all studies, reports, sketches, drawings, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

3.4 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT’S services.

3.5 Furnish or direct CONSULTANT to provide Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICE
The CONSULTANT’S period of service shall complete the scope of work stated in Exhibit A by Month, Day, Year, provided a written “Notice to Proceed” is issued by Month, Day, Year. 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 $COST as detailed in the attached Exhibit C “Cost Estimate” for services rendered as detailed in Attached Exhibit A.

5.1.1.1 Payment will be made pursuant to invoices submitted by the CONSULTANT.

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. CONSULTANT shall calculate the 10% retainage on all invoices.

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 at their actual cost and no more, as determined in accordance with CONSULTANT’S normal accounting practices. All costs must be accumulated and segregated in accordance with Consultant’s normal business practice, 48 CFR Part 31 and 2 CFR 200. Lodging and subsistence expenses will be reimbursed according to state guidelines using General Services Administration (GSA) federal per diem rates for Rapid City/Pennington County South Dakota.

5.5 Ownership of Data

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

5.6 Publication and Release of Information

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

5.7 Acquisition of Property or Equipment

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

5.8 Independent Consulting and Subcontracting

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

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

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

Neither this Agreement nor any interest therein shall be assigned, sublet or transferred unless written permission to do so is granted by the OWNER. Subcontracts are to contain all the required provisions of the prime contract as required by 49 CFR Part 18, definitions.

5.9 Personnel Employment

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

5.10 Claims

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

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

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

SECTION 6 – TERMINATION

6.1 Notice

If the CONSULTANT breaches any of the terms or conditions of this Agreement and fails to cure within ten (10) days after OWNER provides CONSULTANT with notice of default, the OWNER may terminate this Agreement or any portion of the Agreement at any time thereafter. In any other case, the OWNER may terminate the entire Agreement or any portion of the Agreement upon ten (10) days’ written notice to CONSULTANT.

6.2 Take over Work

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

6.3 Delivery of Work

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

6.4 Payment upon Termination

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

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

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

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

**SECTION 7 – GOVERNING LAW**

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

7.1 *Forum Selection*

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

7.2 *Compliance Provision*

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

**SECTION 8 – MERGER CLAUSE**

This written agreement which includes the Request for Proposals and associated exhibits, to include Exhibit A - Scope of Work, Exhibit B - Project Schedule, Exhibit C – Cost Proposal, Exhibit D – Standard Title VI/Nondiscrimination Assurances (Appendix A&E), Exhibit E – Debarment, Exhibit F – Certification of Consultant, and Exhibit G – Certification of Prohibited Entity Status (SDCL 5-18A-51) constitute the entire agreement of the parties. No other promises or consideration are a part of this agreement.

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

Consultant stipulates that any facility to be utilized in the performance of this contract, under the Clean Air Act, as amended, Executive Order 11738, and regulations in implementation thereof is not listed on the U.S. Environmental Protection Agency List of Violating Facilities pursuant to 40 CFR 15.20 and that the OWNER and the State Department of Transportation shall be promptly notified of the receipt by the CONSULTANT of any communication from the Director, Office of Federal Activities, EPA, indication that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
SECTION 10 – TITLE VI ASSURANCE
The CONSULTANT will be bound by Exhibit D, attached to and made a part of this Agreement, said assurance being entitled, “STANDARD TITLE VI/NONDISCRIMINATION ASSURANCES APPENDIX A & E.”

SECTION 11 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
CONSULTANT certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

SECTION 12 – INSURANCE AND REPORTING
Before the CONSULTANT begins providing service, the CONSULTANT will be required to furnish the OWNER the following certificates of insurance and assure that the insurance is in effect for the life of the contract:

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

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance: CONSULTANT agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than $1,000,000.00.

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

C. Business Automobile Liability Insurance: CONSULTANT shall maintain business automobile liability insurance or equivalent form with a limit of not less than $1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker’s Compensation Insurance: CONSULTANT shall procure and maintain workers’ compensation and employers’ liability insurance as required by South Dakota law.

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

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 sub recipients will certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 - Any CONSULTANT who applies or bids for an award of $100,000.00 or more will file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying”. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier will also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.
SECTION 15 - SEVERABILITY PROVISION
In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 16 – CONFLICT OF INTEREST
The CONSULTANT agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL §§ 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the OWNER. In the event of a conflict of interest, the CONSULTANT expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL §§ 5-18A-17 through 5-18A-17.6.

SECTION 17 – ASSIGNMENT PROVISION
The CONSULTANT will not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order, or obligate the CONSULTANT in any manner with any third party with respect to the CONSULTANT’S rights and responsibilities under this Agreement without the OWNERS’S prior written consent.

SECTION 18 – EQUAL EMPLOYMENT OPPORTUNITY
In connection with the execution of this Agreement, the CONSULTANT will not discriminate against any employee, or applicant for employment, because of race, religions, color, sex, disability, or national origin. Such actions will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay, other forms of compensation, and selection for training, including apprenticeship.

SECTION 19 – PROHIBITED ENTITY STATUS
CONSULTANT acknowledges that it is not a Prohibited Entity, as defined by South Dakota Law, and as evidenced by its Certificate in Exhibit F. CONSULTANT agrees to notify OWNER within five days of the event should it become a Prohibited Entity during the course of this Contract. CONSULTANT acknowledges that Prohibited Entity status may be grounds for termination of the contract, pursuant to Section 6 of this Contract.
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement by their duly authorized officers on the day, month and year first written above.

OWNER:

Attest: Jason Salamun, Mayor  Date

Daniel Ainslie  Date
Finance Director

APPROVED AS TO FORM

Jennifer Utter  Date
Assistant City Attorney

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

On this _____ day of ___________, 2023, before me, a Notary Public, personally appeared Jason Salamun, Mayor of the City of Rapid City, and acknowledged to me that he did sign the foregoing document as such officer and for the purposes therein stated.

__________________
Notary Public

My Commission Expires:

(SEAL)

CONSULTANT:

By: _______________________
Printed Name: _______________________
Title: _______________________

STATE OF _______________________
COUNTY OF _______________________

On this _____ day of ___________, 2023, before me, a Notary Public, personally appeared _______________________, a Principal of ____________________________, and acknowledged to me that s/he did sign the foregoing document as such officer and for the purposes therein stated.

__________________
Notary Public

My Commission Expires:

(SEAL)
Address for Giving Notices:

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

CONSULTANT
Attn: NAME
ADDRESS
CITY ST ZIP
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 origin, 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.).

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

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental agency (federal, state or local) with commission of any of the offenses listed in paragraph (2) of this certification; and

4. Have not within a three-year period preceding this application had one or more public transactions (federal, state or local) terminated for cause or default.

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

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

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement.

2. agreed, as an expressed or implied condition for obtaining this Agreement to employ or retain the services of any firm or person in connection with carrying out the Agreement, or

3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; except as here expressly stated (if any):

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

____________________________________
Signature

Printed Name: ______________________

Title: ______________________________

Date: _____________________________
Exhibit G
CERTIFICATION OF PROHIBITED ENTITY STATUS
SDCL 5-18A-51

SDCL 5-18A-1(19A) defines “Prohibited Entity” as follows:
“[A]n organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled by:
(a) A foreign parent entity from the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela; or
(b) The government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.
A prohibited entity does not include a citizen or legal permanent resident of the United States, or an individual foreign national;
The undersigned hereby certifies the following:
1. I am an authorized representative and agent of ________________________________ (“Bidder”);
2. Check one:
   ___ Bidder is not a Prohibited Entity as defined by SDCL 5-18A-1(19A); or
   ___ Bidder is a Prohibited Entity pursuant to SDCL 5-18A-1(19A) but grounds for waiver exist pursuant to SDCL 5-18A-52. If marking this option, provide the basis for the requested grounds for waiver.
3. I understand that a Bidder who becomes a Prohibited Entity, as defined above, at any time after making this certification that it is not a Prohibited Entity, Bidder must provide written notice to the City, who may terminate the contract.
4. I understand that the City of Rapid City has the right to terminate a contract with any contractor who submits a false certification, and that any bidder who submits a false certification may be subject to suspension or debarment under SDCL 5-18D-12.
Dated this _____ day of _______, 20___.

[Contractor Business Name]
By: ____________________________________
Printed name: ___________________________
Title: _________________________________