

**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
DIVISION OF FINANCIAL & TECHNICAL ASSISTANCE**

**Sub-Recipient Agreement
Between**

City of Rapid City
Community Planning and Development Services
Air Quality Program
300 Sixth Street
Rapid City, South Dakota, 57701-5035

State of South Dakota
Department of Environment and Natural Resources
Division of Environmental Services
523 East Capitol Avenue
Pierre SD 57501-3182

Referred to as Sub-Recipient

Referred to as State

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

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION

- a. Sub-recipient's name : City of Rapid City
- b. Sub-Recipient's DUNS number and unique entity identifier: 057222119
- c. Federal Award Identification Number (FAIN): 99860112
- d. Federal Award Date: 8/1/2016
- e. Sub-award Period of Performance: Execution of Agreement through the 30th day of September, 2018
- f. Amount of federal funds obligated to the Sub-Recipient by this Agreement: \$60,000
- g. Total amount of federal funds obligated to the Sub-Recipient: \$60,000
- h. Total amount of the federal award committed to the Sub-Recipient: \$60,000
- i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows: Local Air Quality Program for the Rapid City Area
- j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: EPA Region 8, SD DENR, Jon Epp, Phone number (605)394-5313, E-mail address: Jon.Epp@state .sd.us
- k. CFDA No(s) and Name(s): 66.605
- l. Is the grant award for research and development (R&D)? YES NO
- m. Indirect Cost Rate for federal award: N/A

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

This Agreement shall be effective upon execution of the Agreement by all parties and will end on the 30th day of September, 2018, unless sooner terminated pursuant to the terms hereof.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

I. The Sub-Recipient:

1. The Sub-Recipient agrees to the following:

- **Program administration:** The Sub-Recipient shall prepare minutes and agendas for the Rapid City Area Air Quality Board (“Air Quality Board”) meetings; assist in the preparation of correspondence, forms and reports; and maintain a complete filing system of the above documents. Agendas and minutes of meetings shall be made available to the State through the Rapid City Air Quality Program (“Program”) website in a timely manner. The Air Quality Board minutes and activity reports will be provided to the Air Quality Board representatives for the Rapid City Council, and the Pennington County Commission, and will be made available to the public in the Program office and through the Program website.
- **Scheduled Site Inspections for Facilities with Compliance Plans:** A baseline timetable for scheduled inspections shall be established for the term of this Agreement. Inspections shall be conducted not less than annually with notice to Program staff on all sources with compliance plans. Inspection reports, follow-up inspections and complaint inspections shall be documented, maintained for three years, and made available for review by the State.
- **Compliance Plan Reviews:** Compliance plan reviews shall be conducted according to the Pennington County Air Quality Ordinance Number 12 and Rapid City Air Quality Ordinance for those operations within the Air Quality Control Zone regulated by the Sub-Recipient and the County. The reviews shall be documented, maintained for three years, and made available for review by the State.
- **Construction Permits:** Construction permits will be issued by the Sub-Recipient for those operations regulated by the Sub-Recipient and the County for projects within the Air Quality Control Zone. Each project will be monitored at least once to ensure requirements are met and on a complaint basis. Permits, inspections and enforcement actions shall be documented, maintained for three years, and made available for review by the State.
- **Public Information, Education, and Assistance:** The Sub-Recipient will provide public information relative to air quality in Pennington County and Rapid City when requested. This will include promoting pollution prevention through education and encouraging individual and corporate measures that have or would improve air quality, and continuing to respond to requests for information received from the public. The Sub-Recipient will establish and maintain an air quality website to provide access to air quality permit applications and public information on the air quality of the Sub-Recipient and County.
- **Coordination of EPA/State/Local efforts:** The Sub-Recipient will monitor new developments and any proposed changes in State and Federal regulations that would affect the local program and participate in the review process involved in such changes.
- **Training:** The Sub-Recipient staff will attend workshops and training sessions to stay current with new developments provided funds are available. Compliance, enforcement and technical

areas are preferred. Staff shall maintain certification for Visual Emission Evaluations (EPA Method 9).

- **Complaint Reporting:** All complaints shall be documented, maintained for three years, and made available for review by the State. All complaints pertaining to State-regulated sources shall be forwarded to the State no later than 5 working days from receipt of complaint, except for extraordinary circumstances. Complaint reporting shall include the name of the complainant (if known), complainant phone number (if provided), name of the source (if known), date of complaint, a description of the complaint and the action taken on the complaint.
- **Wood Burning and Dust Control Public Service Announcements:** As part of the Program's educational efforts to reduce PM10 pollution from wood burning devices and construction-generated dust, the Sub-Recipient will promote the public service announcement videos on wood burning issues and dust control. The Sub-Recipient will ensure that these public service announcements are given to the local media for airing during the appropriate seasons.
- **Paved and Unpaved Streets and Roads:** The Sub-Recipient shall continue to enforce the Ordinance for the paved streets and roads in areas regulated by the Sub-Recipient and the County within the Air Quality Control Zone. The Sub-Recipient shall develop and maintain an inventory for paved and unpaved streets and roads in the area regulated under the Pennington County Ordinance Number 12 and the Rapid City Air Quality Ordinance.
- **Unpaved Parking Areas:** The Sub-Recipient shall continue to permit, inspect and enforce the Ordinance for the unpaved parking and/or storage areas in areas regulated by the Sub-Recipient and the County within the Air Quality Control Zone. The Sub-Recipient shall develop and maintain an inventory for unpaved parking and storage areas in the area regulated under the Pennington County Ordinance Number 12 and the Rapid City Air Quality Ordinance.
- **Air Quality Alerts:** The Sub-Recipient and Air Quality Board will continue to assist the State in the implementation of the high wind dust alerts. The Sub-Recipient shall, in cooperation with the State and when necessary with the National Weather Service, issue the air quality alerts in accordance with established protocol.
- **Budget:** The Sub-Recipient shall comply with the audit provisions of OMB Circular A-128 per 40 CFR Part 31. The Sub-Recipient shall submit quarterly reimbursement requests with proper documentation to the State and shall follow the budget as finalized by the Rapid City Council. The budget and reimbursement requests will identify employee salary(ies), Program costs, Program expenditures, revenues, soft match contribution, and local (Sub-Recipient and County) match to federal funds. The Sub-Recipient agrees to provide local match to the federal funds granted under this Agreement in an amount no less than 30% local match to 70% federal funds. Local match amounts may be in the form of in-kind services acceptable to the State.
- **Annual Report:** The Sub-Recipient shall submit an annual report to the State detailing the work completed in Item I. 2 during the term of this Agreement. The annual report is due 60 days after the end of the term of this Agreement.

II. The State

1. The State will:

- Make payment as set forth in section A. 4 from federal Section 105 Air Pollution Control funding for services set forth in section A.3.I.1. of this Agreement.
- Provide technical assistance as requested and investigate referrals from the Sub-Recipient on State facilities and street sanding operations;
- Attend meetings of the Air Quality Board and serve as an ex-officio member to the Board; and
- Conduct audits of the Sub-Recipient. Tracking of the Program performance may include an audit of the Program office records or review of Program activities during the Air Quality Board meetings. An on-site audit may be conducted if problems are found during review of payment request information, following review of the end of Agreement report or if issues are found during an Air Quality Board meeting.

2. The State will not pay the Sub-Recipient expenses as a separate item outside of the items listed in this Agreement.

4. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of an Air Quality Performance Partnership Agreement Grant for services as described in section A.3.I.1. above and payment will be made by the State after the State determines proper documentation of performance and the match requirements as set forth in Section A.3.I. 1. Payment will be made after receiving a request for reimbursement from the Sub-Recipient including documentation of local match and budget sheets for funding use.

Amount provided by State/Grantor is	\$60,000
Amount matched by Sub-Recipient	\$25,714
Total Agreement Amount	\$85,714

5. RISK ASSESSMENTS, MONITORING AND REMEDIES

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

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

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate. The rights and remedies herein conferred upon the State shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law. The failure of the State to enforce strict performance of any covenant, promise, or condition herein contained shall not operate as a waiver of the right of the State thereafter to require that the terms hereof be strictly performed according to the tenor thereof..

6. RETENTION AND INSPECTION OF RECORDS:

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

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned.

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

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

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends \$750,000 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

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

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

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

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

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

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

8. SUB-RECIPIENT ATTESTATION

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

- (a) A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;
- (b) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;
- (c) An effective internal control system is employed by the recipient's or sub-recipient's organization; and
- (d) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

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

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

9. CLOSEOUT

- a. Grant proceeds will be disbursed after determining that the report meets the requirements outlined in this Agreement.
- b. The Sub-Recipient will designate, in writing, an official to certify on Sub-Recipient's behalf that the request submitted is correct and is a valid expenditure under this Agreement.
- c. Sub-Recipient will submit a signed request for disbursement along with invoices to support the request. The request for disbursement will be submitted to such person or persons as the State may designate for approval.
- d. The State reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service for which the payment is sought. No funds will be disbursed until all fees owed by the Sub-Recipient to the Department of Environment and Natural Resources are paid.
- e. All requests for disbursement for eligible costs under this Agreement not presented within ninety (90) days after the completion of the term of this Agreement are barred from payment.

B. STANDARD CLAUSES

10. ASSURANCE REQUIREMENTS:

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

11. COST PRINCIPLES:

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

12. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (15) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice and the Sub-Recipient shall be obligated to reimburse the State for any funds theretofore improperly expended by or for the benefit of the Sub-Recipient, or any part thereof, and if not promptly paid the State may pursue all rights and remedies under any applicable laws or regulations. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination. The obligations of the Sub-Recipient pursuant to sections 18 and 26 of this Agreement shall survive termination

13. FUNDING:

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

14. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

15. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

16. SUPERCESSION:

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

17. SEVERABILITY:

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

18. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Sub-Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

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

20. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

21. CONFLICT OF INTEREST:

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

22. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

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

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

C. AGENCY OR GRANT SPECIFIC CLAUSES

24. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

25. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

26. HOLD HARMLESS:

The Sub-Recipient agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Sub-Recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

27. No part of the funding provided hereunder may be utilized for the payment of costs associated with litigation directly or indirectly involving the Sub-Recipient or the Engineering Study. No member of the Sub-Recipient's governing body or other officers, agents, employees or immediate family members, shall receive direct personal benefit from this Agreement other than reasonable compensation for services rendered, expenses incurred in furtherance of the purposes herein authorized, or benefits received as a member of general public served by the Sub-Recipient.

D. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

Rapid City Area Air Quality Board

State

Michael Pogany, Chair (Date)
Rapid City Area Air Quality Board

Steven M. Pirner (Date)
Secretary, SD Department of Environment and Natural
Resources

Steve Allender, Mayor (Date)
City of Rapid City

Attest: Pauline Sumption, Finance Officer (Date)
City of Rapid City

State Program Contact Person Jon Epp, Engineer III
Phone 605 394-5313

Rapid City Program Contact Person Michelle Tech, Air Quality Specialist
Phone 605 394-4120