

## SUB-GRANTEE AGREEMENT

This Sub-Grantee Agreement is made and entered into effective July \_\_\_\_, 2005, by and between the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, South Dakota (hereafter called "City"), and the RAPID CITY ECONOMIC DEVELOPMENT FOUNDATION, INC., a South Dakota nonprofit corporation, of P.O. Box 747, Rapid City, South Dakota 57709-0747 (hereafter called "RCEDF").

### Recitals

A. City is the grantee under a certain Grant Agreement between the U.S. Department of Housing and Urban Development (hereafter called "HUD") and City, B-03-SP-SD-0731, HUD-EDI, FY 2003, under which HUD will make grant funds available in the amount of \$447,075 for the construction of a regional business incubator/accelerator facility in Rapid City, South Dakota. A copy of the Grant Agreement is attached hereto and incorporated herein by this reference.

B. City desires to designate RCEDF as the sub-grantee under the Grant Agreement and RCEDF agrees to accept such designation and agrees to assume the duties and obligations required of the City as grantee under the Grant Agreement.

Now, therefore, it is agreed as follows:

### Agreement

1. *Sub-Grantee.* City designates and appoints RCEDF as sub-grantee under the Grant Agreement and RCEDF agrees to assume all duties, obligations and responsibilities for the administration and disbursement of grant funds in accordance with the Grant Agreement.

2. *Compliance.* In connection with its duties and responsibilities in the administration of the grant funds, RCEDF shall faithfully observe and comply with all Grant Agreement requirements as set forth therein including, but not limited to, all laws, rules, regulations, and executive orders therein referenced.

3. *Documentation.* RCEDF shall promptly provide to HUD all certifications, financial reports, performance reports, and all other documentation required by HUD under the Grant Agreement or otherwise in connection with the grant funds and the construction project.

4. *Audit, Reports.* At the request of City, RCEDF shall promptly provide City with such written reports, documentation, or other writings as City may request in connection with the performance by RCEDF as sub-grantee under the Grant Agreement and shall permit City or its representatives to perform such audits, reviews or inspections of any records of RCEDF with respect thereto.

5. *Indemnification.* RCEDF shall defend, indemnify and hold City harmless with respect to all the duties, obligations and responsibilities assumed by RCEDF hereunder, including any and all liabilities, costs, and expenses with respect thereto.

CITY OF RAPID CITY, a South Dakota  
municipal corporation

RAPID CITY ECONOMIC  
DEVELOPMENT CORPORATION,  
a South Dakota nonprofit corporation

By \_\_\_\_\_  
Its: \_\_\_\_\_

By \_\_\_\_\_  
Its: \_\_\_\_\_

**FY 2003 EDI-SPECIAL PROJECT NO. B-03-SP-SD-0731**

**GRANT AGREEMENT  
(Includes Sub-Grantee)**

This Grant Agreement between the Department of Housing and Urban Development (HUD) and City of Rapid City (the Grantee) is made pursuant to the authority of Public Law 108-7 (the FY 2003 Appropriations Act for HUD and other agencies) and House Report 108-10 (the Conference Report on the Appropriations Act). The amount shown below is 99.35% of the amount specified in the Conference Report because of a .65% rescission mandated in the Act. The Grantee's application package, as may be amended by the provisions of this Grant Agreement, is hereby incorporated into this Agreement, is hereby incorporated into this Agreement.

In reliance upon and in consideration of the mutual representations and obligations hereunder, HUD and the Grantee agree as follows:

Subject to the provisions of the Grant Agreement, HUD will make grant funds in the amount of \$447,075 available to the Grantee.

The Grantee agrees to abide by the following:

**ARTICLE I. HUD Requirements.**

The Grantee agrees to comply with the following requirements for which HUD has enforcement responsibility.

- A. The grant funds will only be used for activities described in the application, which is incorporated by reference and made part of this Agreement as may be modified by Article VIII (A) of this Grant Agreement.
- B. **EQUAL OPPORTUNITY REQUIREMENTS**  
The grant funds must be made available in accordance with the following:
  - 1. For projects involving housing, the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107.
  - 2. The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1.
  - 3. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.

4. The requirements of 24 CFR 5.105(a) regarding equal opportunity as well as the requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.
5. For those grants funding construction covered by 24 CFR 135, the requirements of section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701u) which requires that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons.
6. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, the Grantee must make efforts to encourage the use of minority and women's business enterprises in connection with grant funded activities. See 24 CFR Part 85.36(e), which describes actions to be taken by the Grantee to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.
7. Where applicable, Grantee shall maintain records of its efforts to comply with the requirements cited in Paragraphs 5 and 6 above.

**C. ENVIRONMENTAL REVIEW REQUIREMENTS.**

1. If the Grantee is a unit of general local government, a State, an Indian Tribe, or an Alaskan Native Village, the Grantee agrees to assume all of the responsibilities for environmental review and decision-making and actions, as specified and required in regulations issued by the Secretary pursuant to the Multifamily Housing Property Disposition Reform Act of 1994 and published in 24 CFR Part 58.
2. If the Grantee is a housing authority, redevelopment agency, academic institution, hospital, or other non-profit organization, the Grantee shall request the unit of general local government, Indian Tribe, or Alaskan Native Village, within which the project is located and which exercises land use responsibility, to assume all of the responsibilities for environmental review and decision-making as specified in paragraph C.1 above, and the Grantee shall carry out all of the responsibilities of a recipient under 24 CFR Part 58.

- D. Administrative requirements of OMB Circular A-133 "Audits of States, Local governments and Non-Profit Organizations."
- E. For State and Local Governments, the Administrative requirements of 24 CFR Part 85, including the procurement requirements of 24 CFR Part 85.36, and the requirements of OMB Circular A-87 regarding Cost Principles for State and Local Governments. For Non-Profits, the Administrative requirements of 24 CFR Part 84, including the procurement requirements of 24 CFR Part 84.40, and OMB Circular A-122 regarding Cost Principles for Non-Profit Institutions. For Institutions of Higher Education the applicable OMB Circular regarding Cost Principles is A-21.
- F. The regulations at 24 CFR Part 87, related to lobbying, including the requirement that the Grantee obtain certifications and disclosures from all covered persons.
- G. Restrictions on participation by ineligible, debarred or suspended persons or entities as described in Executive Order 12549 and at CFR 24 Part 5.105(c).
- H. The Uniform Relocation Act as implemented by regulations at 49 CFR Part 24.
- I. The Grantee will comply with all accessibility requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, where applicable.

**ARTICLE II. Agreement to Enforce Compliance by the Sub-Grantee with the requirements of this Grant Agreement.**

- A. The Grantee agrees to enter into a Sub-Grant Agreement with each Sub-Grantee that will have responsibility for designated aspects of project performance as identified in the application and Article VIII (B) of the Grant Agreement. The Sub-Grant Agreement shall commit the Sub-Grantee to comply with the terms of this Grant Agreement.
- B. The Grantee agrees to enforce compliance by the Sub-Grantee with the terms of this Agreement.
- C. The Sub-Grant Agreement between the Grantee and the Sub-Grantee shall contain the following:
  - 1. The activities to be undertaken by the Sub-Grantee, consistent with the activities described in the Grantee's application as modified by Article VIII (A) of this Grant Agreement.
  - 2. All applicable equal opportunity requirements set forth in Article I, Section B of this Grant Agreement.

3. Anti-lobbying requirements in 24 CFR Part 87, including the requirement to provide certain certifications and/or disclosures to the Grantee.
4. The administrative requirements of 24 CFR Part 84 or Part 85 as appropriate and Treasury Circular 1075, that grants funds shall not be requested or disbursed by the Grantee until needed and shall be the minimum amount necessary. Additional requirements for draw downs are in Articles III and IV.
5. The cost charges to the grant must be allowable (including the "reasonable and necessary" standard) and allocable as specified in OMB Circular A-87, A-122 or A-21 as appropriate.
6. The Uniform Relocation Act as implemented by regulations at 49 CFR Part 24.
7. The Grantee will comply with all accessibility requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, where applicable.
8. Restrictions on participation by ineligible, debarred or suspended persons or entities as described in Executive Order 12549 and at CFR 24 Part 5.105(c).

#### **ARTICLE III. Conditions Precedent to Draw Down.**

The Grantee may not draw down grant funds until the following actions have taken place:

- A. The Grantee and each Sub-Grantee have executed a contract as required by Article II.
- B. The Grantee has received and approved any certifications and disclosures required by 24 CFR 87.100 concerning lobbying and by 24 CFR 24.510(b) regarding ineligibility, suspension and debarment.
- C. Any other conditions listed in Article VIII ( C ) of this Grant Agreement.

#### **ARTICLE IV. Draw Downs.**

- A. A request by the Grantee to draw down grant funds under the Voice Response Access system or any other payment system constitutes a representation by the Grantee that it and all participating parties are complying with the terms of this Grant Agreement.
- B. The Grantee will be paid on an advance basis provided that the Grantee minimizes the time elapsing between transfer of the grant funds and disbursement for project purposes and otherwise follows the requirements of 24 CFR Part 85 or Part 84 and Treasury Circular 1075 (31 CFR Part 205).

- C. Before the Grant Agreement is signed, the Grantee may incur cost for activities which are exempt from environmental review under 24 CFR Part 58 and may charge the costs to the grant. Funds provided by this grant however, may not be used for reimbursement of expenses incurred prior to the enactment of The Act authorizing these funds on February 20, 2003.

#### ARTICLE V. Progress Reports.

- A. The Grantee shall submit to the Grant Officer a progress report every six-months after the effective date of the Grant Agreement. Progress reports shall consist of (1) a one-page narrative of work accomplished during the reporting period and (2) a completed Financial Status Report - Form 269 A. HUD may require additional information or increased frequency of reporting as described in article VIII C.
- B. The performance reports must contain the information required under 24 CFR Part 85.40(b) (2) or 24 CFR Part 84.51(a), as applicable including a comparison of actual accomplishment to the objectives indicated in the approved application, the reasons for slippage if established objectives were not met, and additional pertinent information including explanation of significant cost overruns.
- C. No grant drawdowns will be approved for projects with overdue progress reports.

#### ARTICLE VI. Project Close-out.

- A. The grantee shall submit to the Grant Officer a written request to close-out the grant 30 days after the grantee has drawn down all funds and completed the activities described in the application, as may be amended. The final report shall consist of (1) a narrative of all work accomplished during the project period and (2) a completed Financial Status Report - Form 269 A covering the entire project period.

HUD will then send the Close-out Agreement and Close-out Certification to the Grantee. At HUD's option, the Grantee may delay initiation of project close-out until the resolution of any HUD monitoring findings. If HUD exercises this option the Grantee must promptly resolve the findings.

- B. The Grantee recognizes that the close-out process may entail a review by HUD to determine compliance with the Grant Agreement by the Grantee and all participating parties. The Grantee agrees to cooperate with any review in any way possible, including making available records requested by HUD and the project for on-site HUD inspection.
- C. The Grantee shall provide to HUD the following documentation:
1. A Certificate of Project Close-out.
  2. A Grant Close-out Agreement.

3. A final financial report giving the amount and types of project costs charged to the grant (that meet the allowability and allocability requirements of OMB Circular A-122, A-87 or A-21 as applicable, including the "necessary and reasonable" standard); a certification of the costs, and the amounts and sources of other project funds.
  4. A final performance report providing a comparison of actual accomplishment with each of the project commitments and objectives indicated in the approved application, the reasons for slippage if established objectives were not met and additional pertinent information including explanation of significant cost overruns.
- D. The Grantee agrees that the grant funds are allowable only to the extent that the project costs, meeting the standard of OMB Circular A-122, A-87, or A-21 as applicable, equal the grant amount plus other sources of projects funds provided.
- E. When HUD has determined that the grant funds are allowable, the activities were completed as described by the Grant Agreement, and all Federal requirements were satisfied, HUD and the Grantee will sign the Close-out Agreement and Close-out Certificate.

#### ARTICLE VII. Default.

A default under this Grant Agreement shall consist of using grant funds for a purpose other than as authorized by this Agreement, any noncompliance with legislative, regulatory, or other requirements applicable to the Agreement, any other material breach of this Agreement, or any material misrepresentation in the application submissions.

#### ARTICLE VIII. Additional Provisions.

- A. Project Description. The project is as described in the application with the following changes:

NONE

- B. Changes or Clarification to the Application Related to Participating Parties:

The grantee may elect to sub-grant all or a portion of this grant to:

West River Foundation

- C. Special Conditions:

NONE



U.S. Department of Housing  
and Urban Development

City of Rapid City  
Mr. Greg Bartron

Carol Yasso for  
Authorized Signature  
Donald P. Mains

Donald P. Mains  
DAS for Economic Development

9-25-03  
Date

Greg Bartron  
Authorized Signature

Coordinator  
Title

8/12/03  
Date