

**REQUEST FOR PROPOSALS  
2013 COMPREHENSIVE PLAN UPDATE  
CITY OF RAPID CITY, SOUTH DAKOTA**

**SUBMITTAL DEADLINE:  
JANUARY 16, 2013**

The City of Rapid City is requesting proposals from qualified firms with considerable experience in community design, land use and environmental planning, economic analysis, and citizen involvement/participation to update the City's Comprehensive Plan.

Interested consultants shall submit documentation substantiating their qualifications to perform the services required. The scope of the project is to update the existing Comprehensive Plan and refine a community-based vision based upon public participation.

***COMMUNITY PROFILE***

Known as the Star of the West and the City of Presidents, Rapid City is a thriving community of nearly 70,000 in the heart of the Black Hills. It is a land of wonderment, pristine ponderosa forests, rippling streams, iconic monuments and a rich western history, a place that still greets new residents, businesses and millions of annual visitors with a welcoming smile and a helping hand. Thanks to its diversity, Rapid City's economy remains strong despite downturns in many metropolitan areas of the United States. Our skilled and growing medical community serves the entire multi-state region. Our burgeoning retail sector draws shoppers from four surrounding states. Our call centers serve customers nationwide. Nearby Ellsworth Air Force Base remains a strong and stable force in the nation's defense.

The region offers unparalleled amenities that have attracted new businesses and residents. In order to preserve Rapid City's quality of life, while continuing to attract new businesses and investments to the community, the City must plan for its future. The Comprehensive Plan is the framework for ensuring orderly and efficient growth of the community.

The City of Rapid City has an estimated steady 1 to 2 percent annual growth over the past 30 years. Although considered "manageable," Rapid City has recently experienced a significant increase both within the corporate limits and outlying areas, providing a challenge regarding provision of infrastructure. From 2009 to 2011, the City has seen the addition of over 163 single-family dwelling units and over 73 multi-family units. The majority of this growth has occurred in the north and southwest quadrant of Rapid City.

Existing retail and commercial development is primarily located along Interstate 90. However, as the population continues to expand, other properties are quickly developing along Catron Boulevard (US Highway 16B), providing new residential and commercial development opportunities and challenges. Additional growth is likely to occur in this area with the addition of a new WalMart Superstore just off Catron Boulevard.

The Dahl Fine Arts Center, the Journey Museum and the Rushmore Plaza Civic Center are all located in the downtown area. Main Street Square, located in the heart of Downtown Rapid City, is a fun-filled public space that features special events, arts and culture, live concerts, seasonal ice skating and interactive fountains. The Square is surrounded by the City of Presidents monuments and sculptures, boutiques, eateries and galleries.

There are at least five public and/or private high schools, several public and/or private middle schools and numerous elementary schools. All public schools within city limits are operated by the Rapid City Area School District. Post-secondary educational opportunities include at least three private higher education facilities, the South Dakota School of Mines and Technology, Western Dakota Technical Institute and the University Center which includes degree programs and certificates from all six South Dakota public universities working together to cooperatively deliver accessible, high-quality education in one convenient location.

Rapid City is home to the *Rapid City Journal*, a seven-day morning daily newspaper that covers the city and the surrounding metropolitan area.

Although the structure of government for the City of Rapid City is rooted in its citizen-constituents, Rapid City has a mayor/aldermanic form of government. The ten elected City Council members establish and adopt the policies, while the Mayor is charged with implementing those policies of the Council as well as overseeing the day to day operations of City government. An appointed/volunteer Planning Commission assists the City Council and staff in developing and implementing land development policies.

Over the last decade, the Planning Commission has managed growth using three basic planning tools:

- 1) Zoning Ordinance;
- 2) Subdivision Regulations; and
- 3) Comprehensive Plan.

To keep pace with development demands and maintain a high quality of life for the citizens of Rapid City, the Planning Commission and City Council have recently rewritten the Subdivision Regulations to create a more user-friendly development process.

Rapid City adopted its first City Plan in 1949. The last full update was adopted in 1981; however, the City has separately updated numerous elements of the Comprehensive Plan, including a Parks and Recreation Master Plan, a Bicycle and Pedestrian Master Plan, the Long Range Transportation Plan, the Utility Master Plan, Drainage Basin Plans and numerous Neighborhood Area Future Land Use Plans.

New development issues and technologies challenge the community; updating the Comprehensive Plan will address these challenges. The issues facing the community must be met with new ideas and continued expansion in the following areas:

- A revision of goals and objectives for the City of Rapid City;
- The continuation of the redevelopment of Downtown Rapid City;
- The establishment of a Unified Development Code;
- The establishment of Development Impact Fees;
- The establishment of a City Economic Development Strategy;
- The development of an overall Transportation Improvement Strategy;
- The development of natural Conservation Districts; and
- The preservation of our City's historic assets and natural resources.

Since the update of a true Comprehensive Plan can be a daunting task, a study advisory team will be created to assist the Planning Commission with its formation. This study advisory team, which will include a wide variety of elected officials, local business leaders, and public citizens, shall consist of approximately seven (7) members and, as such, shall be considered major shareholders in the development of this long range planning document. The comprehensive plan shall fit the future needs of our changing and dynamic community.

## **OVERVIEW**

The Request for Proposals seeks to establish a partnership with a qualified consultant to conduct Rapid City's Comprehensive Plan Update. The Plan shall define a vision for the community. The vision shall address the desired balance of land uses, their location, design character and density as applied to undeveloped and potential re-development areas, and the interconnection among land use, the built environment, the socioeconomic environment and the natural environment. The overall theme of the Plan shall be sustainability – using the classic definition of meeting the needs of the present generation without compromising the ability of future generations to meet their needs.

The consultant shall initiate the overall study, examine existing conditions, identify needs and opportunities, and prepare implementation strategies for the City of Rapid City. The consultant is expected to analyze existing conditions to update the Comprehensive Plan components. The analysis must identify emerging trends and the suitability of existing land use regulations, public/private facilities, and services to meet the growing and changing needs of the population. The Plan shall also explore where public and/or private initiatives shall be necessary to maintain and improve services and facilities.

The consultant may use information contained in the Future Land Use Plan 2008 Overview to assist with the analysis. It is expected that the Comprehensive Plan's outlook shall be 25 years. The City's existing conditions shall be analyzed through a public participation process to formulate community goals and objectives that represent the collective desires of the public. In addition to Rapid City residents, the process may include the surrounding municipalities, the county and non-resident citizens, as well as various regional agencies.

The Plan shall outline development and/or redevelopment strategies that consider preferred future land use patterns and the infrastructure improvements required to support such land use patterns. Economic, social and environmental impacts shall be addressed as well. The implementation strategies shall identify projects that shall be pursued to implement the goals of the Plan. The proposal shall contain a schedule of anticipated tasks. It is expected that the project shall be completed in approximately nine (9) months.

## **PROJECT BUDGET**

The project budget has not been established. Interested consultants shall provide a scope of work and a practical budget for undertaking the project. The consultant shall keep in mind current economic conditions and be as efficient as possible in this process.

## **PLAN ELEMENTS**

The Plan structure may follow the existing Comprehensive Plan, or innovate a new approach. Desirable modifications include updating the Future Land Use and Transportation components and introducing sustainability as a theme.

### **Citizen Participation**

The City considers citizen input essential. The Comprehensive Plan process shall be structured to maximize citizen involvement and participation. The consultant shall be responsible for designing a public participation strategy and forming a Comprehensive Plan Update study advisory team. The consultant is encouraged to propose a process that is both creative and interactive for soliciting input from a diverse participant pool with the goal of channeling this input into realistic alternatives for consideration by the public, the Planning Commission and the City Council. The

consultant shall conduct community surveys assessing attitudes and visions for the growth of the community.

The surveys shall identify the community's perception of and satisfaction with existing services. Additionally, the survey results shall yield conclusions based on the community opinion regarding future policies on issues such as land use patterns, transportation, economic development, housing (including underserved housing niches), public safety, parks, community facilities, and environmental issues. The citizen participation process shall specifically gauge the public's acceptance of sustainable practices. The Plan shall provide recommendations related to: energy conservation, alternative energy, alternative transportation, public health, density and building requirements (LEED). The consultant shall maintain a project web page to communicate the project schedule, upcoming meeting dates, and links to various contact persons. The use of other forms of social media is anticipated. The consultant shall post and provide web ready graphics and maps as they are produced.

### **Demographics and Socioeconomics**

The Plan shall reflect current and projected demographic and socioeconomic trends and their implications on land use patterns and public services planning. The consultant shall endeavor to obtain current and accurate demographic and socioeconomic data upon which policy recommendations shall be based.

### **Existing Land Use**

City Staff has developed a detailed existing land use database that shall be incorporated in the Land Use Element and may be used to assist in the development of an updated Future Land Use Plan and Map.

### **Future Land Use Plan**

The Future Land Use Plan shall incorporate the residential and commercial development and the review of a potential expansion of the extraterritorial jurisdiction. This element shall also provide an outlook projection based on recent development and economic trends.

The Plan shall address the relationship between the environment and human activities. A general inventory of the City's natural resources shall be established and measured against current development policies and practices. This element shall address the interconnectivity of the built and natural environments, and provide policy recommendations that shall improve the state of balance.

### **Community Character and Urban Design**

The Plan shall set out policies that address community gateways, community image, integration of major roadway corridors, and the preservation of community attributes. Development densities shall be an important focus of this element. This element shall be a tool to direct the continuing use or further development of existing design standards and guidelines, potentially expanding into a unified smart development code.

### **Housing and Neighborhood**

The housing element provides an opportunity to set policy direction relative to the range of housing products offered in Rapid City and to address housing affordability, diversity, and density. This element shall look beyond housing as an independent module and toward cohesive neighborhood planning.

### **Transportation**

The Plan shall evaluate the City's existing transportation system independently and integrally as part of the regional and state wide system. The Plan shall assess multi-modal and multi-purpose transportation options, with special attention on mass transit and non-vehicular travel modes. This

element shall also include forecasts for the long-term transit needs of the community and suggestions for procuring these services. The full update to the Long Range Transportation Plan shall be accomplished through a separate planning process.

### **Economic Development**

The Plan shall address a range of policies that preserve and strengthen business and commerce in the City. This element shall characterize the unique attributes of local business districts and provide an evaluation of under-utilized commercial and retail space and opportunities within the City. Projected employment and ratios of employment to housing units shall be discussed.

### **Parks and Open Space**

The Plan shall integrate facility inventories (conducted in other studies), trail connectivity, park accessibility, and recreational goals that have been identified by the City, maintaining and expanding the open space created adjacent to Rapid Creek.

### **Public Facilities and Utilities**

The Plan shall address a wide range of governmental services including infrastructure. Goals shall address maintaining the high standards of public safety and crime prevention in the City. Service capacities of City utilities shall be central to this element in addition to being an important input to the direction and phasing of the land use element. Master water and wastewater plans shall be discussed in this element, and shall consider any impacts on existing and planned public facilities.

## ***ADDITIONAL RESOURCES***

Additional material available for background gathering:

- Future Land Use Plan 2008 Overview
- Existing Zoning Map
- 2012 Aerial Photography
- ArcGIS Existing Land Use Database
- Parks and Recreation Master Plan
- Utilities Master Plan
- Rapid City Area Schools Facilities Plan
- Bicycle/Pedestrian Master Plan
- Floodplain Development Policy
- Drainage Basin Plans

## ***DELIVERABLES***

- The Comprehensive Plan format shall consist of both text (Microsoft Word) in an 8 ½ by 11 (vertically oriented) three ring binder format that lends itself to amendments. Maps shall be produced in ArcGIS v 9 or higher format of 36" by 60", and with the capability of being legibly reduced to 11 by 17 for inclusion into the binder. The consultant shall deliver the draft and final documents in both hard copy and electronic formats to allow for reproduction, revision and direct web posting.
- Prepare Key Plan Element drafts for citizens and Planning Commission review.
- Digitize new maps, input data and create new ArcGIS layers, and incorporate selected maps from existing work products to produce ArcGIS maps.
- Prepare Comprehensive Plan
- Produce all materials for public presentations.
- Provide digital, web ready drafts of the Plan for posting on the City's website as well as the required Study website.

- Produce final copies for approval and adoption by the City Council.
- Provide the City with a reproducible hard and digital copy of the adopted Plan. Digital documents and maps shall be easily editable and provided in the following file formats:
  - ✓ Comprehensive Plan text and maps shall be provided in Adobe PDF.
  - ✓ Comprehensive Plan text shall be provided in Microsoft Word format.
  - ✓ All final maps and overlays must be delivered in a geodatabase using ArcGIS v 9 or higher, along with map templates generated throughout the process. All final maps and source data files shall be provided to the City.

***PROPOSED PROJECT SCHEDULE***

The overall timeline for the development of the Comprehensive Plan shall be nine (9) months (not including the adoption process). As a submittal requirement, the applicant shall submit a project schedule showing key task target dates, including public meetings and hearings and estimated task duration. Variations from the City’s intended timeline shall be discussed in the Request for Proposals.

***PROPOSAL FORMAT***

Limit the total length of the proposal to **25 pages maximum**. Each proposer must demonstrate in their proposal that they have the professional capabilities needed to accomplish this study. The proposal should contain all information relevant to indicate the consultant team’s abilities to successfully complete this update and give the study advisory team a better understanding of the consultant team’s qualifications.

At a minimum, the proposal should contain the following:

- A. **Statement of Study Approach:** Describe the proposed Operation Plan including an explanation of technical approaches and a detailed outline of the proposed services for executing the requirements of the Proposed Scope of Services.
- B. **Proposed Study 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.

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.

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.

Project management including:

- 1. Project organizational chart including key staff to be assigned;
- 2. Location of office from which the management of the project shall be performed; and
- 3. 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).
- 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 citizen participation program; the individual elements of the Comprehensive Plan; 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. A proposed work task plan, detailing specific tasks within each phase and element. The City reserves the right to negotiate work tasks prior to finalizing a contract with the selected firm.
- H. Budget: Show the estimated cost for 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/>.

Total funding should not exceed the amount indicated as "Funds Available" on the Request for Proposal. This amount represents what the City feels the study merits and what level of funding should be necessary to complete the work. Proposers should set the scope and depth of study accordingly. Because of budget constraints, additional funding is highly unlikely. No budget expansions should be anticipated.

- I. Proposals shall bear the following information on the outside of the packaging:
  - 1. PROPOSAL FOR COMPREHENSIVE PLAN
  - 2. YOUR COMPANY NAME

Seven paper copies and one digital copy (CD) of the proposals are required. The proposals shall be retained by the City of Rapid City and shall not be returned.

### SAMPLE BUDGET

Item	FY2013			FY2014			Total
	Rate	Total Estimate Hours	Total Estimated Cost	Rate	Total Estimate Hours	Total Estimated Cost	
<b>Salaries</b>							
Name - Title or ID#	\$20.00	90	\$1,800.00	\$20.60	125	\$2,575.00	
Name - Title or ID#	\$18.00	45	\$810.00	\$18.54	50	\$927.00	
Name - Title or ID#	\$25.00	20	\$500.00	\$25.75	20	\$515.00	
Name - Title or ID#	\$15.00	10	\$150.00	\$15.45	10	\$154.50	
Name - Title or ID#	\$11.50	5	\$57.50	\$11.85	15	\$177.68	
Subtotal:			\$3,317.50			\$4,349.18	\$7,666.68
<b>Fringe Benefits<sup>1</sup></b>			\$829.00			\$1,087.00	\$1,916.00
<b>Overhead / Indirect Costs</b>			\$2,654.00			\$3,479.00	\$6,133.00
<b>Fixed Fee</b>			\$680.00			\$892.00	\$1,572.00
<b>In-State Travel</b>			\$1,250.00			\$2,500.00	\$3,750.00
<b>Out-of-State Travel</b>			\$0.00			\$0.00	\$0.00
<b>Equipment Purchase<sup>2</sup></b>			\$0.00			\$0.00	\$0.00
<b>Expendable Supplies<sup>3</sup></b>			\$350.00			\$710.00	\$1,060.00
<b>Subcontracts</b>			\$0.00			\$0.00	\$0.00
<b>Computer Time<sup>3</sup></b>			\$0.00			\$700.00	\$700.00
<b>Report Publication<sup>3</sup></b>			\$0.00			\$1,200.00	\$1,200.00
<b>TOTAL</b>			\$9,080.50			\$14,917.18	\$23,997.68

- 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

### **SUBMITTAL DEADLINE AND METHOD**

Proposals shall be accepted at the Community Planning and Development Services Department, Long Range Planning Division, 300 Sixth Street, Rapid City, South Dakota 57701 until **4:00 p.m., January 16, 2013.**

**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 Patsy Horton, Division Manager, Community Planning and Development Services Department, Long Range Planning Division, 300 Sixth Street, Rapid City, South Dakota 57701, by calling (605)-394-4120, or by sending an email to [patsy.horton@rcgov.org](mailto:patsy.horton@rcgov.org).

### **EVALUATION AND CONSULTANT SELECTION**

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

The evaluation shall consider but not be limited to the following:



- A. Overall proposal quality and the proposal's responsiveness to the Request for Proposals, including but not limited to the completeness, clarity, conciseness, and the comprehension of the scope of work and meeting the stated purpose and needs of the City of Rapid City;
- B. The qualifications and experience of personnel committed to the project;
- C. Demonstrated experience with relevant projects and quality of past work products;
- D. The proposal's uniqueness or innovativeness; and
- E. Ability to collaborate with City staff and representatives.

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 no later than January 24, 2013.

### ***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.

### ***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.

Patsy Horton  
Community Planning and  
Development Services Department  
300 Sixth Street  
Rapid City, SD 57701  
(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.

## **APPENDIX A**

### **Scope of Services**

The Consultant will, to the maximum extent feasible, utilize existing information, reports, studies on file with the City and/or provided by the City. The Consultant will work closely with the Study Advisory Team and the Department to:

- conceive a structure and schedule of Comprehensive Plan public participation activities;
- assemble and analyze available data;
- synthesize information gained into a "Comprehensive Plan" document that is formatted for easy reading and viewing on screens; and
- make recommendations for zoning amendments to implement Plan recommendations.

The Consultant will lead the committee and public meetings. The number of public meetings requiring the Consultant's attendance will be mutually negotiated, but is expected to be around 20. The Consultant will work with staff to keep the community well informed as the process moves forward implementing a successful community outreach program.

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

#### **A. Community Vision, Goals, Policies:**

This plan element establishes an overall vision for Rapid City and establishes goals and policies by which future physical development will be guided. The vision, goals and policies will be consistent with the values of the Rapid City community, as developed and confirmed through a community participatory process. A facilitated community conversation using brainstorming, design charrettes, the *World Café* method, visioning or other comparable small group participation technique, will be the kick-off event for the Comprehensive Plan, and is intended to result in a major expression of the community's vision and goals to guide policies. The consultant will propose methods for discerning the community's vision for the future. This element is critically linked with public participation. The consultant will deliver Comprehensive Plan Goals and Policy Statement at the end of this phase.

#### **B. Public Participation:**

The credibility and utility of the Comprehensive Plan process and the prospect for its adoption and implementation will rest heavily on strong public participation including development of a set of common values and goals shared by a diverse range of Rapid City residents and property owners.

The consultant shall work with the Advisory Committee to develop a public participation plan and schedule to ensure broad community engagement and significant community input and awareness of the planning process. This element will include the following:

1. **Methods:** The Consultant will propose a wide range of methods and techniques for developing commonly-held community values that will be the foundation of the Comprehensive Plan and techniques to ensure a high rate of public input, subcommittee decision-making, and official endorsement of the plan elements.

2. **Scheduling:** The Consultant will work with staff to propose a schedule of notices, submittals, meetings, and hearings for each of the various elements of this project (i.e. economic development element, land use element, etc.) in order to fulfill the goals of this project.
3. **Outreach Program:** The consultant will advise staff in developing and implementing an outreach plan to encourage community and neighborhood participation as well as that of municipal departments, committees, commissions, and other community organizations.
4. **Internet Component:** The consultant will develop an on-line method (web page, Facebook, Twitter, Blog, etc.) to invite community participation in the comprehensive planning process. The Consultant will also be responsible for postings, at a minimum on a bi-weekly basis, of a Comprehensive Plan newsletter or progress report. The Consultant shall communicate with the Project Manager to determine how best to accomplish these tasks.
5. **Priorities:** The consultant will work with staff and the Advisory Committee to identify community priorities for the next ten years which will serve as the yardstick against which the City can measure proposed recommendations and strategies across all elements of the plan.

**C. Land Use:**

The Consultant, with staff assistance, will identify all present land uses and recommend a future land use plan for areas where change may be guided toward realizing shared Rapid City values and goals rather than reacting to unpredictable, uncoordinated development change. Existing land use maps (ArcMap geodatabase available) will be provided by the City. In this element, the Consultant will:

1. Identify priority redevelopment areas where well designed increased density is desired and appropriate, based on community preferences and surrounding land uses.
2. Identify priority preservation areas where no development is appropriate, based on community preferences and surrounding land use.
3. Make recommendations for future land use and redevelopment reflecting the goals established in the visioning process.
4. Suggest changes to the Zoning Ordinance, including Form-Based zoning, based on desired outcomes.
5. Deliverables: zoning diagnosis, visual preference survey, fiscal analysis of redevelopment alternative forms in business districts/key parcels, an accompanying map of the Land Use Element recommendations in a GIS format.

**D. Public Services and Facilities:**

This element of the Comprehensive Plan will address the future needs for public services and facilities under existing conditions and future development and population growth scenarios. This element should aid the City in developing a capital improvement and real estate asset management plan with appropriate budgeting. The Consultant will:

1. Inventory with Staff assistance existing City owned land and facilities, including police, fire, public works and highway, library, school, and other municipal offices. Map and base data will be provided by the City.
2. Determine adequacy of existing public facilities and services for future needs in relation to the goals of the Comprehensive Plan.

3. Identify appropriate locations for additional facilities if needed.
4. Evaluate school enrollment projections and compare to existing school facilities and identify options for expansion if necessary.
5. Provide an accompanying map of the Public Services and Facilities Element recommendations in a GIS format.

**E. Housing:**

This section of the plan will identify current and future housing needs in Rapid City based on economic and demographic trends, and shall identify programs, policies and strategies by which Rapid City can meet the housing goals established in the Comprehensive Plan, in association with the adopted Consolidated Plan.

The housing element of the Comprehensive Plan will include:

1. Analyzing existing housing stock, including age, type, location and cost.
2. Forecasting future housing needs based on census and demographics.
3. Identifying strategies to encourage housing that meets future needs for affordability, economic diversity, and changing demographics.
4. Investigating existing resources for appropriateness.
5. Provide an accompanying map of the Housing Element recommendations in a GIS format.

**F. Economic Development:**

Rapid City is part of the Black Hills region, and enjoys a strong and healthy economic base of agriculture and tourism, as well as diversifying into other economic sectors including science, medicine, engineering, technology, military-related and the energy industry. The consultant will analyze various neighborhoods for their potential for new industries considering Rapid City's land resources, the parcel's redevelopment potential, regional transportation resources and the educational attainment of the population. The consultant will propose strategies to increase the City's business tax base.

This element will include:

1. Review existing economic development reports and recommendations.
2. Identify impediments to economic development found in the current zoning ordinance. Make recommendations on reform, including possible changes to parking and landscaping requirements in the zoning ordinance, and consideration of Form Based Code and mixed use development.
3. Draft a statement of economic development goals, reflecting the goals established in the visioning process.
4. Make recommendations for diversifying business and industry, encouraging mixed use and workspaces for entrepreneurs, such as business incubators and cooperative work space.
5. Work with the Rapid City Economic Development Partnership and the Rapid City Area Chamber of Commerce, to develop a plan to promote tourism based businesses.
6. Work with the local business community and artists, to develop a plan to promote public art, arts and culture business.
7. Identify areas of the city most suitable for future business activity. Assess specific business opportunities that match Rapid City's assets and objectives and population/ labor/ entrepreneurial attributes. Parcel database and aerial photography to be provided by the City.
8. Identify appropriate Federal and State Economic Incentive programs (TIF, BID, etc.) and how they can be utilized by the City to encourage economic development. Identify steps or actions the City must take to implement programs.

9. Provide an accompanying map for Economic Development in a GIS format, working with City staff and the Economic Development Partnership staff.

#### **G. Transportation and Circulation:**

This component analyzes the City's current and proposed future transportation circulation system, focusing on its major streets and roads, public transportation, pedestrian circulation, parking, bicycle circulation, and the coordinated interaction of all modes. Rapid City is served by 6 bus routes, para-transit services and a trolley route that operates during the summer months. There are an increasing number of bicycle commuters throughout the community. The mountain bike trails extend into the hogback separating the community and are an extension of the numerous miles of bike paths and sharrows located throughout the community.

The Rapid City Area Metropolitan Planning Organization's Citizen's Advisory Committee (CAC) and the Technical Coordinating (TCC) are comprised of pedestrian and bicycle advocates, transportation advocates, experienced transportation planners and engineers, and will assist the consultant in preparing this element. This Plan element will include:

1. Identification and assessment of circulation system problems and needs.
2. Identification of policies and other means of addressing problems, including traffic control, and parking enforcement.
3. Identification of ways the City can support public transit and mode shift and easing conflicts between users of different modes.
4. Facilitate the visioning portion of the Long Range Transportation Plan Update, anticipated to begin in 2013.
5. Provide an accompanying map of the Transportation and Circulation Element recommendations in a GIS format.

#### **H. Natural, Cultural and Historic Resources:**

Rapid City has many active arts, performance, and cultural institutions, including the Journey Museum, the Museum of Geology, the Dahl Arts Center, theatres, an orchestra, artists' studios and galleries. Many artists and craftspeople live or work in Rapid City. Rapid City has two local historic districts. The Historic Preservation Commission maintains an inventory of historically significant properties, and assists property owners in historical interpretation of properties. Rapid City has become the City of Presidents and has a bronze presidential statute on each of the downtown corners to promote this designation. It also has a vibrant farmer's market and Main Street Square in downtown Rapid City, as well as numerous annual events in the beautiful green belt traversing along Rapid Creek.

This element shall include:

1. Inventory cultural and historic resources, with staff assistance.
2. Identify cultural and historic resources needing protection and promotion.
3. Identify weaknesses, conflicts or ways to streamline regulations while maintaining support for cultural and historic resources.
4. Identify opportunities to promote cultural and historic resources, including public art, for economic development and tourism.
5. Provide an accompanying map of the Natural, Cultural and Historic Resources Element recommendations in a GIS format.

#### **I. Open Space and Recreation:**

Rapid City's recreational facilities are widely scattered throughout the community and heavily used. There is a dearth of land available for additional recreational development. The City's resources are largely focused on maintaining existing open spaces. Perhaps the most heavily

used open spaces are Sioux Park and Memorial Park, connected by the green belt corridor, including the bike path used as both a commuter path and a recreational path. The City adopted a Parks and Recreation Master Plan in 2007.

This plan element shall include:

1. Identify under-utilized open space, and opportunities to expand and connect open space, whether public, private, non-profit or shared. The City will provide a geodatabase with ownership to determine public and private open space.
2. Identify additional resources for better management.
3. Analyze existing programs for implementing Open Space and Recreation objectives.
4. Set priorities for implementation of an Open Space and Recreation Plan.
5. Provide an accompanying map of the Open Space and Recreation Element recommendations in a GIS format.

#### **J. Implementation:**

The Consultant will develop a strategy for implementing the Vision of the Comprehensive Plan and recommendations of the plan elements. The strategy will include actions steps, time frame or schedule, responsible parties, procedures, and analysis of the City's capacity to implement. The implementation section is intended to address the priorities raised in all elements of the Plan. The consultant will present the draft and final Comprehensive Plan recommendations to the Planning Commission and City Council.

#### **Staff role:**

City staff will be closely involved, but the consultant is expected to devote the time needed to conduct research, write documents, and participate in meetings as needed with the Study Advisory Committee, subcommittees, and the public. Staff will take primary responsibility for scheduling and posting meetings and will attend all meetings. Staff will provide base data and maps.

#### **Project Schedule:**

Work is expected to start in February 2013 and the finished product shall be ready for Council adoption in late 2013. Biweekly progress meetings shall be held and may be conducted through video conferencing and/or webinars, set up and organized by the consultant. The Consultant is expected to attend all scheduled public participation activities and present the draft and final Plan to the Planning Commission and City Council.

The Consultant should demonstrate the ability to complete the project on schedule or explain why a departure from the proposed schedule is recommended. If the Consultant believes that the Project, or specific Project Components, can be accelerated in advance of the schedule above, the accelerated schedule should be outlined in the Response.

Access to plans and studies can be located at [www.rcgov.org](http://www.rcgov.org). Please contact Patsy Horton at (605) 394-4120 or by email at [patsy.horton@rcgov.org](mailto:patsy.horton@rcgov.org) for all study related questions. Interviews with prospective consultants will be scheduled in February 2013.

#### **Deliverables:**

1. **Goals and Policies Statement; Draft Comprehensive Plan Report of Initial Findings**  
Using information gathered from the visioning and goal setting phases, the consultant will identify key issues that need to be addressed by the Comprehensive Plan, and present possible alternatives for a broad-based, informed public discussion. Responses to this

RFP should address how the Consultant proposes to ensure that the Draft Comprehensive Plan Initial Findings receives an adequate amount of public scrutiny in order to maximize broad community support for subsequent phases of planning and implementation.

**2. Rapid City Comprehensive Plan and Implementation Plan**

The consultant will prepare a plan to achieve approval and adoption of the Comprehensive Plan by the Planning Commission and City Council. All elements of the Comprehensive Plan outlined above will be included. The Implementation Plan will (i) define the specific municipal actions necessary to achieve the objectives of each element of the comprehensive plan (ii) prioritize implementation activities and (iii) include a schedule and key dates for action. As necessary, the implementation plan will be linked to the City's capital improvements program and/or operating budgets and other related sources of funding.

**3. Zoning Diagnosis and Proposed Changes to the Zoning Ordinance (Chapter 17) of the Rapid City Municipal Code**

The consultant will deliver a diagnosis of the provisions in Rapid City's Zoning Ordinance preventing desirable outcomes, and will propose amendments to the zoning ordinance to facilitate implementation of the Comprehensive Plan recommendations, including consideration of form-based zoning, mixed-use, and up-zoning where appropriate.

**4. Design Visual Preference Survey**

The consultant will design a survey of the public's design preference for future development and redevelopment. The consultant will deliver the results of that survey with visual examples of the design forms desired in Rapid City.

**5. Deliverable Materials**

- Goals and Policies Statement; Draft Comprehensive Plan Report of Initial Findings
- Approval and adoption plan
- Rapid City Comprehensive Plan – Draft and Final
- Implementation Plan – Draft and Final
- Biweekly progress meeting minutes
- Public comment summary
- Open house comments/concerns and consultant's recommendations for inclusion or exclusion
- Committee, Planning Commission and City Council meetings as required
- Zoning Diagnosis and Proposed Changes to the Zoning Ordinance (Chapter 17) of the Rapid City Municipal Code
- Visual examples of the design preference survey
- One digital reproducible copy of the draft Rapid City Comprehensive Plan and Implementation Plan
- Twenty-five (25) color copies and one unbound version of the final Plan is required. The final version of each deliverable shall be submitted in electronic format on a CD, DVD, or USB compatible hard drive and contain a Microsoft Word compatible version, and a PDF version. All images, tables and graphs used in the draft and final version shall be in Microsoft format. All maps used in the public participation process, committee meetings, and the draft and final version shall be delivered, created, and include all ArcGIS data and map templates created and presented to the public by the consultant for all public gatherings, the draft and the final version. All materials will become the property of the City of Rapid City.



## APPENDIX B

### Consultant Evaluation Forms

#### PROPOSAL EVALUATION FORM (25 Total Points Possible)

**Project Name:** \_\_\_\_\_ **Interviewer:** \_\_\_\_\_

**Firm Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

PROPOSAL EVALUATION CRITERIA	Scoring (Circle One)
<p><b>P1: Firm's Project Team - 25% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> Size of the contract as compared to the size or ability of the firm and its' associate firms and consultants as one team to handle the project;</p> <p><b>B.</b> The education, experience, and qualifications of the personnel within the submitting firm; and by attachment that of its' associate firm(s), if any. These are the Key Designers, Construction Inspectors, and Sub-consultants. Should include professional registrations, education, certifications, and other pertinent qualifications of the indicated individuals;</p> <p><b>C.</b> Name, experience and past performance of person(s) to be assigned as project manager(s) and will have direct contact with City staff. These typically are the Design Project Manager and Construction Administration Project Manager. These are in addition to those indicated in item B. above;</p> <p><b>D.</b> Names of firm's key staff to be assigned to project with description of each person's experience and how it relates to this project's specific requirements;</p> <p><b>E.</b> Ability to expand the firm's capabilities by working with other consultants or branch offices (if required).</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P2: Firm's Experience with Similar Projects and Other Relevant Agencies within the Past 5 Years – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> A summary of similar work that has been done in-house over the past five years; as it pertains to municipal engineering, operations, maintenance, replacement, planning, design surveying, construction staking, construction administration, GIS, finance, economics, and other; P6</p> <p><b>B.</b> Prior experience with other relevant agencies for the past five years such as other municipalities, South Dakota DOT, South Dakota DENR, and others.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P3: Firm's Experience and Familiarity with Rapid City Design Criteria and Standards – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b> If the firm's familiarity with the City's design criteria and standards and City bidding, contracting methodology, and construction administration processes is limited then the firm's familiarity with other municipalities' and agencies' shall be considered.</p> <p><b>A.</b> Firm's staff's direct experience (in-house capability) with this type of project</p> <p><b>B.</b> Firm's familiarity with City design criteria and standards.</p> <p><b>C.</b> Other information to consider would be the firm's experience, knowledge, and understanding of City bidding and contracting methodology and City construction administration processes and the firm's experience with other City Departments and Divisions.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

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

<p><b>P4: Firm's Management Procedures – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> Firm's organizational structure must be clearly defined with personnel qualifications and where actual work will be done;</p> <p><b>B.</b> A statement regarding whether any litigation is pending or underway regarding activities of the firm or its principals within the last five years and the circumstances of the litigation;</p> <p><b>C.</b> A current certificate of insurance, including errors and omissions, executed by the insurance carrier's authorized agent;</p> <p><b>D.</b> Firm's Management Procedures; Past performance meeting budgets &amp; schedules, including methodology and procedures used to accomplish this objective. Successful QA/QC processes, and accuracy of construction cost estimates. The firm's history in meeting project design budgets, construction budgets, and schedules. The firm's ability to provide accurate construction cost estimates throughout the design process (preliminary submittal through bid opening). The firm's QA/QC methodology and procedures including personnel responsible for QA/QC. The firm's methodology, procedures and ability to meet project schedules.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P5: Office Location – 10% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p>Indicate the office location of the project manager, key designers, sub-consultants, and construction staff for the project?</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>P6: Quality of Proposal – 5% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category.</b></p> <p>Proposal should be clear, concise, well written, well organized, utilize correct spelling, proper grammar, exemplify the characteristics of a professional document, and address the "Proposal Evaluation Criteria".</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

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

**INTERVIEW EVALUATION FORM (75 Total Points Possible)**

**Project Name:** \_\_\_\_\_ **Interviewer:** \_\_\_\_\_

**Firm Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

INTERVIEW EVALUATION CRITERIA	Scoring (Circle One)
<p><b>I1: Project Approach and Demonstration of Project Understanding and Issues – 45% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b>  <b>A.</b> Familiarization and understanding of the project and project issues including potential alternatives;  <b>B.</b> Approach toward project design and construction administration;  <b>C.</b> Experience with key project elements;  <b>D.</b> Project components including constructability, project phasing and sequencing;  <b>E.</b> Innovative design and construction administration techniques and methods;  <b>F.</b> Approach toward public involvement as it pertains to easement/ROW negotiations, public meetings, and dealing with individuals. Approach toward dealing with other governmental entities and City Departments &amp; Divisions;  <b>G.</b> Understanding of the project schedule and critical milestones;  <b>H.</b> Identification or recognition of potential project pitfalls and challenges.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>I2: Past Design and Construction Administration Performance – 20% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category: If the firm’s prior assignments with the City are limited then the firm’s prior assignments with other municipalities’ and agencies shall be considered.</b></p> <p><b>A. Design</b> - has the firm’s prior work products demonstrated the following:  <b>a.</b> Ability to meet design budgets;  <b>b.</b> Ability to meet design timelines/milestones/completion dates;  <b>c.</b> Ability to produce complete and understandable submittal documents;  <b>d.</b> Ability to stay within scope;  <b>e.</b> Ability to obtain easements and ROW;  <b>f.</b> Ability to produce accurate construction cost estimates;  <b>g.</b> Effectiveness in working with the public;  <b>h.</b> Past work products (drawings and specifications) have limited review comments and red lines;  <b>i.</b> Adhered to City design criteria and standards and produced documents that are legible and organized.</p> <p><b>B. Construction</b> - has the firm’s prior work products demonstrated the following:  <b>a.</b> Past work products (drawings and specifications) have limited unnecessary construction change orders?  <b>b.</b> Effectiveness in working with the public;  <b>c.</b> Ability to produce accurate and timely contractor pay applications;  <b>d.</b> Ability to effectively coordinating with the contractor;  <b>e.</b> Ability to verify contract obligations (Final Inspection compliance with drawings and specifications);  <b>f.</b> Ability to successfully coordinate and verify startups for electrical and mechanical types of facilities;  <b>g.</b> Ability to produce complete and understandable drawings and specifications;  <b>h.</b> Ability to verify that shop drawings, product literature, and submittals comply with City specifications, drawings, and supplemental provisions  <b>i.</b> Ability to produce accurate, detailed, quality construction deliverables (construction diaries, quantity books, and construction documentation including photos, as-built drawings, etc);  <b>j.</b> Ability to produce drawings and specifications that minimize field orders;  <b>k.</b> Ability to produce drawings and specifications that minimize Contractor questions and uncertainties;  <b>l.</b> Ability to mitigate construction problems from escalating;  <b>m.</b> Ability to effectively keep the City’s PM apprised of construction issues and potential project cost savings and increases;</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

<p><b>I3: Past Performance of Quality Control and Quality Assurance (QA/QC) – 15% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> Completeness of submittals, drawings and specifications;</p> <p><b>B.</b> Minimizing the number and frequency of design errors;</p> <p><b>C.</b> Project Constructability - Successfully addressed project constructability, sequencing, and phasing;</p> <p><b>D.</b> Clarity - the contractor easily understands the intent of the project and what is being conveyed in the drawings and specifications;</p> <p><b>E.</b> Expectations - the project meets the owner's objectives and intent for the project;</p> <p><b>F.</b> Quality - past deliverables are of high quality (adherence to City design criteria and standards as well as general document legibility and organization).</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>I4: The Firm's Project Team and Task Assignment Summary – 15% of total</b></p> <p><b>The evaluator should consider the following information when scoring this category:</b></p> <p><b>A.</b> If a consortium of individuals or firms, amount and type of work to be done in respective offices and how quality and schedule of work will be controlled by assigned project manager(s);</p> <p><b>B.</b> Name, experience and past performance of person(s) to be assigned as project manager(s) and to have direct contact with City staff (Design and Construction);</p> <p><b>C.</b> Names of firm's staff to be assigned to project tasks with description of each person's experience and how it relates to this project's specific requirements. The firm shall indicate the project team members assigned to each task identified in the RFP draft scope of services. The firm shall provide the proposed billing rates for each team member proposed to be working on the project for design and construction services.</p>	<p>1 2 3 4 5 6 7 8 9 10</p>
<p><b>I5: Quality of Interview – 5% of total</b></p> <p>The evaluator should consider the following information when scoring this category. The firm's interview should be articulate, clear, concise, and organized. The firm should communicate project issues, ideas, alternatives, and address the "Interview Evaluation Criteria".</p>	<p>1 2 3 4 5 6 7 8 9 10</p>

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

## APPENDIX C

### **AGREEMENT For PROFESSIONAL SERVICES Rapid City Comprehensive Plan Update**

THIS AGREEMENT made on this \_\_\_\_\_ day of (First Day after City Council meeting), 2013 between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and \_\_\_\_\_ (Consultant), hereinafter referred to as CONSULTANT. This project will encompass the preparation of the Rapid City Comprehensive Plan Update for the City of Rapid City.

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

#### **SECTION 1 - BASIC SERVICES TO CONSULTANT**

##### **1.1 General**

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 structure and schedule of comprehensive planning public participation activities by assembling and analyzing available data, synthesizing information gained into a "Comprehensive Plan" document formatted for easy reading and viewing on screens, and making recommendations for zoning amendments to implement the Plan recommendations.

#### **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; these will be paid for by OWNER as indicated in Section 5.

2.1.1 Services resulting from significant changes in the general scope, extent or character of the Project including, but not limited to, changes in size, complexity, or method of financing; and revising previously accepted studies, reports or design documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents.

2.1.2 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining

financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

- 2.1.3 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, mechanical and electrical engineering and customary architectural design incidental thereto).
- 2.1.4 Services during out-of-town travel required of CONSULTANT other than visits to the site, attendance at OWNER'S office as required by Section 1, or other services as detailed in Exhibit A.
- 2.1.5 Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and providing other special field surveys.
- 2.1.6 Preparing to serve or serving as consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services).
- 2.1.7 Additional services in connection with the Project, excluding services which 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 Planning and Development Services Director or their designee shall act as OWNER'S representative with respect to the services to be rendered under this Agreement. The Community Planning and Development Services 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

- 4.1 The CONSULTANT'S period of service shall complete the scope of work stated in Exhibit A by December 30, 2013, provided a written "Notice to Proceed" is issued by March 6, 2013. The CONSULTANT'S services shall be provided in general accordance with the schedule as defined in Exhibit B.

## SECTION 5 - PAYMENTS TO CONSULTANT

### 5.1 Methods of Payment for Services and Expenses of CONSULTANT

- 5.1.1 *For Basic Services.* OWNER shall pay CONSULTANT for Basic Services rendered under Section 1 as detailed in Attached Exhibit A in an amount not-to-exceed \_\_\_\_\_), **including reimbursable expenses**, as detailed in attached Exhibit D "Cost Estimate".

5.1.1.1 *Direct Labor Costs and Overhead.* Direct labor costs and overhead shall be paid at a rate equal to CONSULTANT'S salary cost time the allowable overhead rate as determined by audit, in accordance with 48 CFR Part 31 as shown on attached Exhibit C "Billing Rates" for all Basic Services rendered on the Project.

5.1.1.2 The approval and acceptance of the billing rates as detailed in attached Exhibit "C" will be contingent upon CONSULTANT providing the required cost breakdowns to verify that costs are in compliance with 48 CFR Part 31 and 23 CFR Part 172.

5.1.1.3 OWNER shall pay CONSULTANT the actual costs (except where specifically provided otherwise) of all Reimbursable Expenses approved by OWNER. The term Reimbursable Expenses has the meaning assigned to it in paragraph 5.4 in accordance with 48 CFR Part 31.

- 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 paragraphs 5.1.1.1, 5.1.1.2 and 5.1.1.3.

### 5.2 Times of Payments

- 5.2.1 CONSULTANT shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to CONSULTANT'S monthly statements.

For these services the OWNER shall make prompt monthly payments to the CONSULTANT based on monthly billings submitted by the CONSULTANT up to 90% of the maximum fee for each Task as shown on Exhibit D, "Cost Estimate". The remaining 10% shall be due upon approval of the Final Report for the Project as accepted by OWNER.

### 5.3 Other Provisions Concerning Payments

- 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 In the event of termination by OWNER upon completion of any phase of Basic Services, progress payments due CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, CONSULTANT also will be reimbursed for the charges of independent professional associates and consultants employed by CONSULTANT to render Basic Services incurred through such phase. In the event of any such termination, CONSULTANT will be paid for unpaid Reimbursable Expenses previously incurred.
- 5.3.3 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.
- 5.3.4 *Records.* The CONSULTANT shall maintain an accurate cost keeping system as to all costs incurred in connection with the subject to this Agreement and shall produce for examination books of accounts, bills, invoices and other vouchers or certified copies there under if originals be lost at such reasonable time and place as may be designated by the OWNER and 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 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 Agreement is made and all other pending matters are closed.

- 5.3.5 *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.
- 5.3.6 *Audits.* The CONSULTANT shall, with reasonable notice, afford representatives of the OWNER reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require; shall produce and exhibit such books, accounts, documents and property as he may determine necessary to inspect and shall, in all things, aid him in the performance of his duties.



- 5.3.7 Payment shall be made subject to audit by duly authorized representatives of the OWNER. Payment as required in 49 CFR 26.29:

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.

- 5.3.8 In the event the service to the contract is terminated by the OWNER for fault on the part of the CONSULTANT, the agreement shall be null and void, and, the OWNER shall be entitled to recover payments made to the CONSULTANT on the work which is the cause of the at-fault termination. The CONSULTANT shall be paid only for work satisfactorily performed and delivered to the OWNER up to the date of termination. After audit of the CONSULTANT'S actual costs to the date of termination and after determination by the OWNER of the amount of work satisfactorily performed, the OWNER shall determine the amount to be paid the CONSULTANT.

## **5.4 Definitions**

- 5.4.1 Reimbursable Expenses means the actual expenses incurred by CONSULTANT or CONSULTANT'S independent professional associates or consultants directly in connection with the Project, including expenses for: transportation and subsistence incidental thereto; reproduction of reports, graphics, and similar Project related items; and if authorized in advance by OWNER, overtime work requiring higher than regular rates. In addition, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expenses of photographic production techniques times a factor of 1.0 as determined in accordance with CONSULTANT'S normal accounting practices. All costs must be accumulated and segregated in accordance with Consultant's normal business practice and FAR Part 31

## **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 Nondiscrimination/ADA**

The CONSULTANT agrees to comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964. The CONSULTANT agrees to submit upon request quarterly Title VI (Civil Rights) State of Contractor reports to the State. The CONSULTANT agrees to provide services in compliance with the Americans With Disabilities Act of 1990.

## **5.11 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 performance of professional services by, the CONSULTANT, its employees, agents, subcontractors or assignees.

To the extent authorized by law, the OWNER shall indemnify and hold harmless the CONSULTANT, 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 OWNERS negligent acts in connection with the PROJECT and acts of 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.

### **5.12 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.

### **5.13 Termination or Abandonment**

The CONSULTANT and the OWNER share the right to terminate this Agreement upon giving thirty (30) days written notice of such cancellation to the other party. If this Agreement is terminated under this paragraph, CONSULTANT shall deliver to OWNER all work product produced up to the time of termination. OWNER shall reimburse CONSULTANT for all work completed to the date of termination.

In the event the CONSULTANT breaches any of the terms or conditions hereof, this Agreement may be terminated by the OWNER at any time with ten (10) days written notice and an opportunity to cure. If termination for such a default is effected by the OWNER, any payments due to CONSULTANT at the time of termination may be adjusted to cover any additional costs to the OWNER because of CONSULTANT'S default. Upon termination the OWNER may take over the work and may award another party an agreement to complete the work under this Agreement. If after the OWNER terminates for a default by CONSULTANT it is determined that CONSULTANT was not at fault, then the CONSULTANT shall be paid for eligible services rendered and expenses incurred up to the date of termination.

## **SECTION 6 – GOVERNING LAW**

This agreement and any dispute arising out of this agreement shall be governed by the laws of the State of South Dakota.

### **6.1 Forum Selection**

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

### **6.2 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 7 – MERGER CLAUSE**

This written agreement including Exhibit A Scope of Work, Exhibit B Schedule, Exhibit C Billing Rates and Exhibit D Cost Estimate constitute the entire agreement of the parties. No other promises or consideration are a part of this agreement.

## **SECTION 8 – 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 9 – NON-DISCRIMINATION/AMERICANS WITH DISABILITIES ACT**

The Metropolitan Planning Organization will comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964, the latter identified as **Appendix A**, attached to and made a part of this Agreement. The Metropolitan Planning Organization will submit, upon request, quarterly Title VI (Civil Rights) State of Contractor reports to the STATE. The Metropolitan Planning Organization will provide services in compliance with the Americans With Disabilities Act of 1990, and any amendments.

## **SECTION 10 – 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 11 – 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 \$500,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
- D. Worker's Compensation Insurance: CONSULTANT shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

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

## **SECTION 12- 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 13 – 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.

CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.

**SECTION 14 - 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.

**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**

\_\_\_\_\_  
Mayor Date

APPROVED AS TO FORM

\_\_\_\_\_  
Carla Cushman Date  
Assistant City Attorney

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, a Notary Public, personally appeared Sam Kooiker, 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: \_\_\_\_\_

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, a Notary Public, personally appeared \_\_\_\_\_, known to me to be a Principal of \_\_\_\_\_, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

\_\_\_\_\_

Notary Public

My Commission Expires:

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(SEAL)

**Address for Giving Notices:**

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

**Address for Giving Notices:**

APPENDIX A to the

**AGREEMENT  
For PROFESSIONAL SERVICES  
Rapid City Comprehensive Plan Update**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended (hereinafter referred to as the "Regulations"), incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, religion, national origin, sex, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, national original, sex, age or disability.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the South Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the South Dakota Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain this information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the South Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
  - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives pursuant thereto.



The contractor shall take such action with respect to any subcontract or procurement as the South Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event of a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the South Dakota Department of Transportation to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter such litigation to protect the interests of the United States.