

**SUBRECIPIENT CONTRACT FOR
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING
ENTITLEMENT FUNDS CFDA# 14.253**

**SECTION I.
RECITALS**

THIS AGREEMENT, made and entered into this ____ day of _____, 2015, by and between the **City of Rapid City** ("City/Grantee,") and **Hagg Development, Inc.** ("Subrecipient,") witnesseth:

WHEREAS, the City/Grantee has, under date of **June 17, 2015** entered into an Agreement, attached hereto and incorporated herein, with the U.S. Department of Housing & Urban Development providing for financial aid to the City/Grantee under Title I of the Housing and Community Development Act of 1974, as amended to date (HCD Act), Public Law 93-383 for Community Development Block Grant (CDBG) entitlement funds CFDA # 14.253; and

WHEREAS, pursuant to such Agreement, the City/Grantee is undertaking certain activities necessary for the execution of a project situated in the project area described in the Scope of Service; and

WHEREAS, the Common Council finds it in the City/Grantee's best interest to disburse funds to the Subrecipient to execute certain projects in conjunction with such undertaking of the City/Grantee.

NOW, THEREFORE, in consideration of the mutual covenants, conditions contained herein, the City/Grantee and the Subrecipient hereby agree as follows:

**SECTION II.
RESPONSIBILITY OF THE CITY/GRANTEE**

City/Grantee shall designate representatives of the City/Grantee who will be authorized to make all necessary decisions required of the City/Grantee on behalf of the City/Grantee in connection with the execution of this Agreement and disbursing funds in connection with the program. Disbursements require prior City/Grantee Common Council approval.

**SECTION III.
SCOPE OF SERVICE**

A. Activities

The Subrecipient will be responsible for administering a **CDBG Fiscal Year 2015 Entitlement** Housing Rehabilitation Public Facility Public Improvement Public Service or Economic Development program in a manner satisfactory to the City/Grantee and consistent with any standards required as a condition of providing these funds, and consistent with all provisions of this Agreement. Subrecipient warrants

and represents it has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder.

Program Delivery

Hagg Development, Inc. shall use One Hundred Twenty Thousand Seven Hundred Twenty-one & 56/100 dollars (\$120,721.56) of Community Development Block Grant funds for **engineering reports and testing, architectural drawings, surveys and design drawings, other eligible professional services, grading and road construction, drainage systems, and/or installation of water and sewer lines to low-to-moderate income qualified housing for the creation of new housing on property located on Mall Drive. Funding used for infrastructure requires that 51% of persons benefitting are low-to-moderate income, per HUD Area Median Income Guidelines.**

Location of the property for this development is identified as:

SOUTHWEST QUARTER (SW1/4) OF SECTION NINETEEN (19), TOWNSHIP TWO NORTH (T2N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN, PENNINGTON COUNTY, SOUTH DAKOTA EXCEPTING THEREFROM FREELAND SUBDIVISION AND EXCEPTING THEREFROM PRAIRIE HILLS SUBDIVISION AND ALSO EXCEPTING THEREFROM A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER (SE1/4 SW1/4) OF SECTION NINETEEN (19), TOWNSHIP TWO NORTH (T2N), RANGE EIGHT EAST (R8E), MORE PARTICULARLY AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT FIVE (5) OF FREELAND SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER (SE1/4 SW1/4), SECTION NINETEEN (19), TOWNSHIP TWO NORTH (T2N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), THENCE DUE NORTH FORTY EIGHT FEET (N48') TO THE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED THENCE DUE NORTH TWO HUNDRED EIGHT POINT SEVEN FEET (N 208.7'); THENCE DUE EAST TWO HUNDRED EIGHT POINT SEVEN FEET (E 208.7'); THENCE DUE SOUTH TWO HUNDRED EIGHT POINT SEVEN FEET (S 208.7'); THENCE DUE WEST TWO HUNDRED EIGHT POINT SEVEN FEET (W 208.7') TO THE POINT OF BEGINNING.

Property consists of one hundred twenty-eight 128 acres, more or less,

as submitted in the application for Community Development Block Grant (CDBG) funds dated October 1, 2015.

General Administration

To complete this **design and infrastructure project**, the major tasks that the Subrecipient will perform include, but are not necessarily limited to, the following:

1. **Work write-ups:** the Subrecipient will complete detailed work write-ups for work to be performed, including estimated costs of each activity, materials to be used, industry or regulatory standards to be met for each eligible engineering report or design, soils testing, drainage systems, water and sewer line installations, environmental and other studies, resource identification and the development of plans and strategies.
2. **Solicitation and selection of engineers, architects, surveyors, and contractors:** the Subrecipient shall follow applicable procurement requirements, in accordance with the requirements of 24 CFR 84.40-48, OMB Circular A-110, Procurement Standards for identifying and selecting engineers, architects, surveyors, and contractors for any work to be conducted. Davis Bacon regulations will be followed and wage determination utilized by contractors. Subrecipient is responsible for notifying City/Grantee and providing professional service's information, prior to contracts being executed with General or Subcontractors or work being started, so that Davis Bacon regulations may be reviewed with Subrecipient and contractors and debarment checks may be accomplished, per HUD 24 CFR 84.13 requirements. Project must be submitted, reviewed and approved by all applicable City Departments, and comply with all Federal, State, and local ordinances and codes.
3. **Periodic and final inspections:** the Subrecipient will perform periodic site visits to ascertain that approved and contracted work is proceeding properly and satisfactorily, and ensure that all Federal, State, and Local inspection requirements are met.
4. **Approval of contractor payments:** as the infrastructure progresses and as invoices are submitted by engineers, architects, surveyors, and contractors, the Subrecipient will verify that the expenses are reasonable and the work has been completed properly, and will authorize drawdown of funds from the City/Grantee, and disbursement to the engineers, architects, surveyors, and contractors.
5. **Maintenance of case files and other records:** for each applicant, the Subrecipient will maintain case files, including application and documentation of eligibility, work write-ups, documentation of liens and any other forms of security, engineers, architects, surveyors, and contractors selection criteria, copy of those contracts, documentation on all necessary licenses and permits, site visit/inspection reports (including final inspection and certificate of occupancy), final approval from City Planning Department, and approved engineers, architects, surveyors, and contractors invoices for payment. The Subrecipient will also maintain appropriate information on persons residing in the property, including a list or lists identifying persons in a project immediately before the project, after project completion, and those moving in during the project (per 24

CFR 570.606 and 24 CFR part 24). The Subrecipient will maintain these and other program and financial records in accordance with the general requirements for record keeping in Section IX of this Agreement.

B. National Objective Compliance

All activities funded with CDBG funds must meet one of the H.U.D. Community Development Block Grant Program National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet the following H.U.D. National Objective:

- Benefit low- and/or moderate-income persons;**
- Aid in the elimination of slums or blight;
- Meet a community development need of particular urgency, as defined in 24 CFR 570.208

Failure by the Subrecipient to fulfill the national objective shall result in grant funds being disallowed and required to be returned to the City/Grantee.

1. Subrecipient shall provide the City/Grantee an Irrevocable Letter of Credit (“ILOC”) in an amount equal to the Community Development Block Grant fund expenditures contemplated under this Agreement, which is **One Hundred Twenty Thousand Seven Hundred Twenty-one & 56/100 dollars (\$120,721.56)**, payable to the City to secure Subrecipient’s full and faithful compliance with the Community Development Block Grant Program National Objectives, including but not limited to the compliance requirement that the above-stated H.U.D. National Objective be met via completion of a dwelling or dwellings contemplated under Section C. below, such dwelling(s) to be available for occupation by low- and/or moderate-income person(s) within three years of the date of execution of this Agreement (the “Completion Requirement”).
 - a. In the event the Subrecipient defaults under this paragraph B. by failure of the Completion Requirement, subject to any timeframe adjustments agreed upon in writing by the City/Grantee and the Subrecipient, the City/Grantee may use the ILOC to recover the funds granted to Subrecipient under this Agreement.
 - b. The City/Grantee will provide written notice of such default on the Completion Requirement and intent to recover at Subrecipient’s last known address by first class mail. The Subrecipient may be provided an opportunity to cure such default at the sole discretion of the City/Grantee.
 - c. The ILOC shall be maintained in full force and effect for the duration of this Agreement, or until the Completion Requirement has been met, whichever

comes first.

- d. The form and provisions of the ILOC shall be acceptable to the City/Grantee, in its sole discretion.

C. Level(s) of Performance & Accomplishment - Goals and Performance Measures

The major goal of the Subrecipient's efforts under this Agreement will be to provide infrastructure to a property; including engineering, survey and design, and grading and road construction for the construction of affordable platted lots which may ultimately include up to 300 residential dwellings, with a contemplated mix of 100 new apartment units, 75 single family homes, 50 town homes and 75 tiny homes or any combination thereof for multi-level income families for rent or purchase, with at least 51% percent of the occupants having incomes at or below 80% of the HUD Area Median Income (AMI). **In addition to the normal administrative services required as part of this Agreement, the Subrecipient agrees to provide monthly reports on achievements and program impact to include the following Units of Service information:**

- 1) **Progress on completion of eligible required engineering, testing, surveys and design;**
- 2) **Progress on Infrastructure to include, but not limited to, grading, drainage, road construction, installation of sewer and water lines;**
- 3) **Construction of apartments and homes;**
- 4) **Occupancy of apartments and homes**

Activity	Monthly Completion %	Year-to-date %
Engineering/Design progress		
Survey progress		
Installation of drainage		
Installation of water and sewer lines		
Grading and Road Construction progress		
Construction of new single family homes		
Construction of apartment units		
Construction of tiny apartment units		
Construction of townhomes		
Construction of tiny homes		
Impact Results		
Number of new clients benefiting from affordable housing		
Number of affordable apartment units		
Number of market rate apartment units		
TENANTS		
Number with incomes at 80% area median income		
Number with incomes at 50% area median income		
Number with incomes at 30% area median income		
HOMEOWNERS		
Number with incomes at 80% area median income		
Number with incomes at 50% area median income		
Number with incomes at 30% area median income		

Program Impact:

- 1) Clients obtain affordable housing.**
- 2) Clients obtain permanent housing.**

Narratives

Narrative section may be used to explain goals, accomplishments, activities, issues or any other information pertinent to your agency’s activities in meeting your program objectives.

- 1. Provide affordable housing for persons without homes and low-to-moderate income individuals and families.**

- 2. Clients obtain permanent housing and become self-sufficient.**

D. Personnel Assigned to Scope of Work

Personnel Assigned to Scope of Work			
Staff Member	Job Title	General Program Duties	Est. Time Allocation Per Week
Kent Hagg	Manager/Owner	Owner/General Contractor	As needed
Deb Curns	Process draws	Record Keeper	As needed

Any changes to the program goals, scope of services, schedule or budget, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and the City/Grantee. Changes to key Personnel assigned or their general responsibilities under this project are subject to notification and approval from the City/Grantee.

E. Performance Monitoring

The City/Grantee reserves the right to monitor and evaluate the progress and performance of the Subrecipient to assure the terms of this Agreement are being satisfactorily met in accordance with HUD, City/Grantee and other applicable monitoring and evaluating criteria and standards. Subrecipient shall cooperate with the City/Grantee relating to such monitoring and evaluation.

The City/Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the City/Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City/Grantee, Agreement suspension or termination procedures will be initiated.

F. Project Schedule/Milestones

The Subrecipient is required to provide the City/Grantee with a written project schedule as Exhibit B of this Agreement. The project schedule is an estimate of project completion, and the start date is contingent upon prompt return of signed contracts from the Subrecipient. The Subrecipient agrees to expend all funds by the end of the CDBG year. Subrecipient will also submit request for proposals public notice ads, *prior to publication*, for review by the Community Development Division for compliance with Davis Bacon and Related Acts and HUD guidelines.

G. Time of Performance

Hagg Development, Inc. shall perform the services set out above, and shall expend the Community Development Block Grant funding provided for above **between April 1, 2015 and March 31, 2016**. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

H. Budget

Hagg Development, Inc. shall use **One Hundred Twenty Thousand Seven Hundred Twenty-one & 56/100 (\$120,721.56)** of Community Development Block Grant funds provided for above as follows:

Program/Administrative Costs:

Salaries	\$ _____	
Office Space (Program only)	\$ _____	
Utilities	\$ _____	
Communications	\$ _____	
Reproduction & Printing	\$ _____	
Supplies & Materials	\$ _____	
Mileage	\$ _____	
Other (Specify below)	\$ _____	
Indirect Costs (Specify below)	\$ _____	\$ _____
Construction/Equipment:		\$ _____
Engineering and/or Infrastructure and/or Professional Service and/or Architectural Costs:		<u>\$120,721.56</u>
Land/Home Acquisition or Rehab or Down Payment/Closing Cost Assistance		\$ _____
Total Grant		<u>\$120,721.56</u>

Other: **Program Delivery Costs not to exceed \$0.**

Indirect costs: None.

Any Indirect costs charged must be consistent with the conditions of this Agreement. See Section IX. C, 2. In addition, the City/Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City/Grantee.

Any amendments to this budget must be approved in writing by the City/Grantee and Subrecipient.

I. Compensation and Method of Payment

If Subrecipient is not in default hereunder, and subject to City/Grantee's receipt of the U.S. Department of Housing & Urban Development Community Development Block Grant funds, and provided the Agreement and Scope of Service are eligible expenditures of Community Development Block Grant funds, the City/Grantee agrees to pay the Subrecipient an amount not to exceed **One Hundred Twenty Thousand Seven Hundred Twenty-One & 56/100 (\$120,721.56)**. Of that amount, eligible program delivery costs will not exceed **\$18,108.00**. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III H herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III H and in accordance with performance.

1. Draw-down requests may be submitted to the Community Development Manager on a monthly basis.

Draw-down requests must be in writing and accompanied by acceptable documentation supporting the draw-down amount, per the Payment Procedures outlined in Section IX. C, 3.

Documentation should include, at a minimum, the following information:

- 1. Invoice itemizing amounts requested;**
- 2. Supporting documentation for each item;**
- 3. Real Estate Broker statement or appraisal showing value;**
- 4. Bills for survey or other program delivery costs;**

Additional documentation may be requested as needed for clarification.

Payment requests require City/Grantee Council approval prior to disbursement.

2. Special Conditions for Release of Funds

Funding in the amount stipulated in Section III of this Agreement will not be released to the Subrecipient by the City/Grantee until the following special conditions for release of funds are met, and the City/Grantee reserves the right to terminate this Agreement if these special conditions are not met within ninety (90) days of the Agreement execution date:

a) Environmental Review

An Environmental Review must be completed prior to the Subrecipient committing or expending any Community Development Block Grant funds.

Environmental Reviews must be requested using the attached Exhibit C (Environmental Review Request form). The City/Grantee will conduct the Environmental Review and provide documentation of the findings to the Subrecipient upon its completion. **The Subrecipient may not proceed with any services until receipt of written notification of the Environmental Review findings by the City/Grantee.** Housing projects will require environmental reviews to be conducted on each property as it is identified. If the Environmental Review requires mitigation, no funds may be expended until mitigation has been accomplished and certified as completed and meeting HUD minimum standards by an acceptable source to the City/Grantee. Documentation evidencing the Subrecipient's completion of its responsibilities and compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of federal law as specified in 24 C.F.R. Part 58 which furthers the purposes of NEPA.

b) Procurement Standards and Code of Conduct

Documentation shall be required evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in the Office of Management and Budget (OMB) Circular A-102, Attachment O and 24 C.F.R. Part 570.

- c) Fair Housing
Documentation shall be required that the Subrecipient has specifically provided a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing. (Applicable to housing projects)
- d) Implementation Schedule
CDBG Subrecipient to complete and submit to the City/Grantee the Implementation Schedule form.
- e) Sources and Uses of Funds
Listing of funding sources being utilized for the funded project.
- f) Other Special Conditions
(Insert other special conditions, if any).

J. Notices

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this Agreement shall be directed to the following agreement representatives:

City/Grantee:

City of Rapid City
Community Development Division
Attn: Barbara Garcia
300 Sixth Street (Mail)
333 Sixth Street (Office)
Rapid City, SD 57701

Barbara.Garcia@rcgov.org
Tel. Number (605) 394-4181
Fax Number (605) 355-3520

Subrecipient:

Hagg Development, Inc.
Attn: Kent Hagg
601 West Blvd
Rapid City, SD 57701

Tel. Number (605) 391-2205
Fax Number (605) 348-9744

**SECTION IV.
GENERAL CONDITIONS**

A. General Compliance

The Subrecipient hereby agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including Subpart K of these regulations), except that (1) the Subrecipient does not assume the City/Grantee's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the City/Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other

applicable federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement.

The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an “independent contractor” with respect to services to be performed under this Agreement. The City/Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker’s Compensation Insurance, as the Subrecipient is an independent contractor. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

C. Hold Harmless

Subrecipient further agrees to indemnify, defend and hold harmless the City/Grantee, its officers, agents and employees, from and against any and all claims, liabilities, costs, expenses, penalties or attorney fees, arising from such injuries to persons, or damages to property, or based upon or arising out of the performance or non-performance of this Agreement by Subrecipient, or out of any violation of Subrecipient of any local, state, or federal statute, ordinance, rule or regulation.

D. Worker’s Compensation

The Subrecipient shall provide Workers’ Compensation Insurance coverage in the amount required by law, for all of its employees involved in the performance of this Agreement.

E. Insurance and Bonding

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City/Grantee. The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. City/Grantee Recognition

The Subrecipient shall ensure recognition of the role of the City/Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to the funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The City/Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each party, and approved by the

City/Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City/Grantee or Subrecipient from its obligations under this Agreement.

The City/Grantee may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both City/Grantee and Subrecipient.

SECTION V. LIABILITY

Subrecipient agrees to assume the risk of all personal injuries, including death resulting therefrom, to persons, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of the performance or non-performance of this Agreement by Subrecipient, or by the conditions created thereby.

SECTION VI. SUSPENSION OR TERMINATION FOR CAUSE

In accordance with 24 CFR 85.43, the City/Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include but are not limited to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement;
4. Submission by the Subrecipient to the City/Grantee reports that are incorrect or incomplete in any material respect; or
5. Financial instability of the Subrecipient organization that will affect the abilities of the organization to carry out or complete the stated activities and scope of work.

In the event of agency financial instability, a default or violation of the terms of this Agreement by the Subrecipient, or failure to use the grant for only those purposes set forth, the City/Grantee may take the following actions:

A. Suspension for Cause

After notice to the Subrecipient, the City/Grantee may suspend the Agreement and withhold any further payment or prohibit the Subrecipient from incurring additional obligations of grant funds, pending corrective action by the Subrecipient or a decision to terminate.

B. Termination for Cause

This Agreement may be terminated, in accordance with 24 C.F.R. 85.43, if the Subrecipient materially fails to comply with any term of the Agreement or applicable federal regulations. The City/Grantee may terminate the Agreement upon ten (10) days written notice, together with documentation of the reasons therefore, and after an opportunity for a hearing is afforded. The determination of the City/Grantee as to the cause of termination and the appropriateness thereof shall be final and binding upon both City/Grantee and Subrecipient. In the event projects are delayed, the Subrecipient shall notify the City/Grantee in writing, informing the City/Grantee of the issues surrounding the delay of the project. In cases where the project is not moving forward, the City/Grantee shall notify the Subrecipient of termination of the funding.

In the event of termination, all finished or unfinished documents, data, studies and reports prepared by the Subrecipient under this Agreement shall, at the option of the City/Grantee, become its property and the Subrecipient shall be entitled to receive just and equitable compensation for satisfactory work completed on such materials for which compensation has not previously been paid.

**SECTION VII.
TERMINATION FOR CONVENIENCE**

This Agreement may be terminated for convenience in accordance with 24 C.F.R. 85.44 by either the City/Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City/Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City/Grantee may terminate the award in its entirety.

**SECTION VIII.
TERMINATION OF CITY/GRANTEE'S OBLIGATIONS**

The City/Grantee's obligations under this Agreement will terminate in the event of suspension or non-receipt of Community Development Block Grant funds by the City/Grantee.

SECTION IX.
ADMINISTRATIVE REQUIREMENTS

A. Financial Management

Records of the Subrecipient and reimbursable expenses pertaining to the Scope of Services and records of accounts between the City/Grantee and the Subrecipient shall be kept on a generally recognized accounting basis.

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation & Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:

- a) Records providing a full description of each activity undertaken;
- b) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c) Records required to determine the eligibility of activities;
- d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f) Financial records as required by 24 CFR Part 570.502 and 24 CFR 84.21-28, OMB Circular A-110;
- g) Other records as necessary to document compliance with Subpart K of 24 CFR 570; and
- h) Real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR 570.505 as applicable.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years. The retention period begins on the date of submission of the City/Grantee's Consolidated Annual Performance and Evaluation Report (CAPER) to HUD in which the activities assisted under the

Agreement are reported on for the final time. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such information shall be made available to City/Grantee monitors or their designees for review upon request. Such data shall include, but not be limited to:

- a) Client name;
- b) Client address;
- c) Client/Household income level or other basis for determining eligibility;
- d) Description of services provided;
- e) Dates services provided;
- f) Beneficiary information (ethnicity, income, sex, female head of household, elderly, disabled, etc.); and
- g) Household/Family size.

Such information shall be made available to City/Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City/Grantee's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/ guardian.

5. Close-outs

The Subrecipient's obligation to the City/Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City/Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income. All financial records pertaining to this Agreement upon completion shall remain the property of the City/Grantee.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City/Grantee, grantor agency, and the Comptroller General of the United States or any authorized representatives thereof, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City/Grantee policy concerning Subrecipient audits and OMB Circular A-133.

Upon completion of the aforementioned required annual financial audit, Subrecipients shall notify City/Grantee in writing of any A-133 audit findings within five (5) business days of Subrecipient receiving notification of such findings. Further, as soon as thereafter as is practicable, Subrecipient shall notify City/Grantee in writing of all steps taken or to be taken to resolve such A-133 audit findings, and the final resolution of such findings.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall immediately report and return to the City/Grantee all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. Program income generally means gross income received by the Subrecipient, directly generated from the use of CDBG funds, with some exceptions which are detailed in 24 C.F.R. §570.500.

Program income includes, but is not limited to:

- a) Payments of principal and interest on loans made using CDBG funds;
- b) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- c) Proceeds from the disposition of equipment purchased with CDBG funds;
- d) Interest earned on program income pending its disposition; and
- e) Interest earned on CDBG funds held in a revolving loan fund's cash balance interest bearing account.

Receipt of program income funds shall be reported, in writing, at the time of receipt, along with supporting documentation.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the City/Grantee for approval, in a form specified by the City/Grantee. In addition, the City/Grantee may require a more detailed budget

breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City/Grantee.

3. Payment Procedures

Draw-downs for the payment of eligible expenses and general administration items shall be made against the line item budgets specified in the Scope of Service, Paragraph H, and in accordance with performance. Payments shall be made upon presentation of invoices that Subrecipient certifies are true and correct copies of payments due on behalf of the Subrecipient for an activity covered by this Agreement and made in accordance and compliance with the Scope of Service. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City/Grantee in accordance with advance fund and program income balances available in the Subrecipient account. In addition, the City/Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by the City/Grantee on behalf of the Subrecipient. Subrecipient monthly or quarterly reports shall be submitted, as stated in Section IX.C, 4. Payment may be suspended by the City/Grantee in the event of nonperformance by the Subrecipient.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 C.F.R. 84.21.

4. Progress Reports

The Subrecipient shall submit monthly progress reports to the City/Grantee in the form and content as required by the City/Grantee. The Fiscal Year runs from April 1, 2015 to March 31, 2016. Monthly progress reports are due by the 5th of each month, and shall report the progress of the previous month until the end of the fiscal year of the completion of the project .

Progress reports should include, but are not limited to: progress on goals to be achieved by program; total number of people assisted for the month; total number of people assisted year-to-date; and demographic information of people assisted by the program. A brief narrative should also be included to cover any additional information about your program, progress, issues and accomplishments not addressed on the progress report form. *Reporting Forms attached hereto as Exhibit B (Program Goals & Accomplishments and the Monthly Report) and Exhibit B1 (Monthly Closing Housing Report) and incorporated herein shall be used in conjunction with the Logic Model submitted with application. Reporting forms submitted must be complete or they will be returned for completion and draws suspended until receipt of a complete report.*

Additional documentation may be requested as needed for clarification.

D. Procurement

1. Compliance

The Subrecipient shall comply with current City/Grantee policies concerning the purchase of equipment and shall maintain inventory records of all non-expendable property as defined by such policies as may be procured with funds provided herein. All program assets (unexplained program income, property, equipment, etc.) shall revert to the City/Grantee upon termination of this Agreement.

2. OMB Standards

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48, OMB Circular A-110, Procurement Standards, and shall subsequently follow Property Management Standards as modified by 24 CFR 84.31-84.37 (as modified by 24 CFR 570.502(b)), covering utilization and disposal of property.

3. Travel Expenses

Travel and related expenses for travel outside the city limits of the City of Rapid City, South Dakota, shall not be paid with funds provided under this Agreement without written approval from the City/Grantee.

E. Use & Reversion of Assets

Subrecipient hereby agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development Block Grant funds, as set forth in the Scope of Service. In the event Subrecipient ceases to use a personal asset or real property acquired or improved with Community Development Block Grant funds, in accordance with the Scope of Service, the use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- 1. The Subrecipient shall transfer to the City/Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.**
- 2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of Fifteen Thousand Dollars (\$15,000) shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until thirty (30) years after expiration of this Agreement. Real property acquired or improved, in whole or in part, with funds under this Agreement between Seven Thousand and One Dollars (\$7,001) and Fifteen Thousand Dollars (\$15,000) shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until ten (10) years after expiration of this Agreement.**
- 3. Subrecipient hereby agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development**

Block Grant funds, as set forth in the Scope of Service. In the event Subrecipient ceases to use a personal asset or real property acquired, or improved, with Community Development Block Grant funds, in accordance with the Scope of Service, the Subrecipient shall return the personal asset or real property to the City/Grantee, or pay to the City/Grantee, a sum equal to its fair market value, less any portion of the value attributable to expenditures of non-Community Development Block Grant funds for the acquisition of, or improvement to, the asset or property. The Subrecipient shall transfer to the City/Grantee any Community Development Block Grant funds on hand at the time of expiration of this Agreement and any accounts receivable of Community Development Block Grant funds.

Subrecipient also hereby agrees to enter into an Indenture of Restrictive Covenants Agreement (“Indenture”) with the City/Grantee at the time of real property purchase. In this Indenture, Subrecipient agrees to represent, warrant and covenant throughout the term of the Indenture that the land and/or facility purchased with CDBG funds will be used in accordance with Section 42 of the United States Code. Further, Subrecipient agrees that the use of such property may not change from that for which the acquisition was made unless the Subrecipient and/or homeowner provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either (1) the new use of such property qualifies as meeting one of the national objectives in Volume 24 of the Code of Federal Regulations, Section 570.208 (24 CFR, § 570.208), or (2) if the Subrecipient and/or homeowner determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under 24 CFR, Section 570.208, it may retain or dispose of the property for the changed use if the Subrecipient’s CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

- a) The Indenture of Restrictive Covenants shall terminate in the year designated in the Restrictive Covenant according to the terms stated in paragraph E 2. above, based on the dollar amount of the funds granted, after the first day of the Compliance Period (such period being herein referred to as the “Compliance Period” or the “Extended Use Period”);
- b) Notwithstanding paragraph above, the Compliance period for any building that is part of the Project shall terminate on the date the Project is acquired by foreclosure or transferred by a deed or other instrument in lieu of foreclosure unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with Subrecipient a purpose of which is to terminate such Compliance Period.

- 4. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income** (prorated to reflect the extent that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be:

- a. Transferred to the City/Grantee for the CDBG program, or
- b. Retained after compensating the City/Grantee (an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment).

SECTION X.
RELOCATION, REAL PROPERTY ACQUISITION AND
ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with:

A. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b);

B. The requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (42 USC 5304(d)); and

C. The requirements in 24 CFR 570.606(d) governing optional relocation policies. [The City/Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b) (2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable City/Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

SECTION XI.
ASSURANCES

The Subrecipient hereby agrees to use Community Development Block Grant funds for the purposes authorized by the Rapid City/Grantee Common Council. The Subrecipient further hereby agrees to comply with the assurances in Section XII, XIII, and Exhibit A (Certifications) attached hereto and incorporated herein which are required by the U.S. Department of Housing & Urban Development for all Community Development Block Grant projects. These include Federal Labor Standards requirements.

SECTION XII.
PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient hereby agrees to comply with all applicable state, local and civil rights laws and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the

Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination

The Subrecipient hereby agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in 42USC 5309(a) are still applicable. Sub-recipients must comply with state and local civil rights laws proscribing housing discrimination based on sexual orientation or gender identity.

3. Land Covenants

This Agreement is subject to the requirements of 42USC 2000(d) et.seq. and 24 CFR 570.601 and 570.602. In regard to the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City/Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. The City/Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient hereby agrees that it shall be committed to carry out pursuant to the City/Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in Executive Order 11246 of September 24, 1966. The City/Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women-and Minority-Owners Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this agreement, the terms, "small business" means a business that meets the criteria

set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51%) percent owned and controlled by minority group members or women. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City/Grantee, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the Subrecipient’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of paragraphs XII. A., Civil Rights, and XII. B, Affirmative Action in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, inherently religious activities, lobbying, political patronage, and nepotism activities.

2. Labor Standards

The Subrecipient hereby agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon and related Acts as amended (40 USC 3141 et seq.), the provisions of Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the

Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City/Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the City/Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29CFR Parts 1,3,5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended (12 USC 1701u), and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the City/Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. The Subrecipient certifies and hereby agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic

opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction projects are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction projects to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located and to low- and very low-income participants in the HUD programs. The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker’s representative of its commitments under this Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City/Grantee provided however, that claims for money

due or to become due to the Subrecipient from the City/Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be promptly furnished in writing to the City/Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the prior written consent of the City/Grantee prior to the execution of the agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City/Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient hereby agrees that no funds provided, nor personnel employed under this Agreement, shall in any way or to any extent engage in the conduct of political activities in violation of (5 USC 1 sol et seq.).

4. Conflict of Interest

The Subrecipient hereby agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds;
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved;
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with

respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes but is not limited to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City/Grantee, the Subrecipient, or any designated public agency; and

- d. The Subrecipient covenants that neither it nor any member of its Board of Directors, officers, or employees presently have any interest in any project to be financed under the Scope of Service, and shall not acquire any interest therein which would conflict with the performance of the Scope of Service required under this Agreement or applicable statute, rule or regulation. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm/household selected for award. The Subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements during office tenure or for one year after the closeout of the grant. This stipulation must be included in all other contracts and subcontracts to this grant.

5. Lobbying

The Subrecipient certifies, to the best of its knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid 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 this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Subrecipient shall require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and co-operative agreements) and that all Subrecipient shall certify and disclose accordingly.
- d. 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.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this Agreement results in any copyrightable material or inventions, the City/Grantee reserves the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient hereby agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

SECTION XIII. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient hereby agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- 1. Clean Air Act, 42 U.S.C., 7401, et seq.;**
- 2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq.,** as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 308, and all regulations and guidelines issued thereunder; and
- 3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50,** as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for the activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35.100 et seq. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners,

and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

**SECTION XIV.
ENERGY EFFICIENCY**

The Subrecipient agrees to incorporate Energy Star products and green building processes whenever financially feasible in order to improve long term affordability of energy costs.

**SECTION XV.
SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**SECTION XVI.
SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**SECTION XVII.
WAIVER**

The City/Grantee's failure to act with respect to a breach by the Subrecipient shall not result in a waiver of its rights to act with respect to subsequent or similar breaches. The

failure of the City/Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

SECTION XVIII.
ENTIRE AGREEMENT

The provisions set forth in Items I-XVIII, and all attachments of this Agreement constitute the entire agreement between the parties hereto and no statement, promise, conditions, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall not be binding or valid.

Date: _____

IN WITNESS WHEREOF, the Subrecipient and the City/Grantee have executed this agreement as of the date first above written and under the laws of the State of South Dakota.

The City/Grantee may undertake any legal or equitable action available to enforce the provisions of this Agreement. Subrecipient hereby agrees the City/Grantee may recover from it the City/Grantee’s reasonable expenses, including attorney’s fees incurred in respect to such actions.

The parties hereby agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of law, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

CITY OF RAPID CITY

SUBRECIPIENT

Hagg Development, Inc.

By: Steve Allender
Its: Mayor

By: Kent Hagg
Its: Board President/Owner

ATTEST:

ATTEST:

By: Pauline Sumption
Its: City Finance Officer

By:
Its:

Federal I.D. #: 46-6000380

Federal I.D. # 20-0843179

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

AFFIRMATIVE ACTION APPROVAL

By:
Its: City Attorney

Contract Compliance Supervisor