



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

PLANNING DEPARTMENT

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MEMORANDUM

To: Legal and Finance Committee

From: Jeff Gies, Transportation Planning Coordinator

Date: October 3, 2001

Re: Authorize Mayor and Finance Officer to sign the professional services agreement between Interstate Engineering Inc. and the City of Rapid City to complete a Travel Demand Forecasting Model Update for an amount not to exceed \$99,955.

The original professional services agreement for the Travel Demand Forecasting Model Update was approved by the City Council on July 2, 2001. This agreement was between TranSystems Corporation and the City of Rapid City. Since Council approval on July 2, 2001, the Billings, Montana based office for TranSystems Corporation has been purchased by Interstate Engineering Inc., headquartered in Jamestown, North Dakota. TranSystems Corporation continues to retain several other offices across the United States, and will subcontract with Interstate Engineering for some of the work to be completed under the agreement. In summary, all of the consultant staff originally dedicated to this project will be retained under the new agreement.

This new contract does not change the scope, timeframe, or cost of this project. The Transportation Planning Division has the \$99,955 available under the Transportation Planning Division Budget. Approximately 82% of the cost of this project will be eligible for reimbursement by Federal Highway Administration Planning Funds. The City Attorney's Office and the South Dakota Department of Transportation have reviewed this contract, and their requested changes have been incorporated into the agreement.

Staff recommends that the City Council authorize the Mayor and Finance Officer to sign the professional services agreement between Interstate Engineering Inc. and the City of Rapid City to complete a Travel Demand Forecasting Model Update for an amount not to exceed \$99,955.

**AGREEMENT BETWEEN
THE CITY OF RAPID CITY, REPRESENTING THE RAPID CITY AREA
METROPOLITAN PLANNING ORGANIZATION
and
INTERSTATE ENGINEERING, INC.
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this _____ day of _____, 2001, by and between the City of Rapid City, representing the Rapid City Area Metropolitan Planning Organization (hereafter referred to as "CLIENT") and INTERSTATE ENGINEERING, INC (hereafter referred to as "INTERSTATE").

Whereas CLIENT intends to complete a Travel Demand Forecasting Model Update, as more fully described in the Project Understanding section set forth on Exhibit A attached hereto and incorporated herein by this reference.

Whereas CLIENT desires to engage INTERSTATE to provide and perform certain professional services in connection with the Project and INTERSTATE desires to provide and perform said professional services, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and their mutual covenants hereinafter set forth, CLIENT and INTERSTATE agree as follows:

**SECTION 1
BASIC SERVICES OF INTERSTATE**

SECTION 1.1 Basic Services. In connection with the Project, INTERSTATE shall provide for CLIENT the professional services and perform, provide, furnish or obtain from others the work and services described and referred to in Exhibit A, attached hereto and incorporated herein by reference (collectively the "Basic Services"). INTERSTATE shall provide the Basic Services for CLIENT in all phases of the Project to which this Agreement applies, all as more particularly set forth in Exhibit A.

SECTION 1.2 INTERSTATE's Duties. In addition to the general duties, obligations and responsibilities set forth elsewhere in this Agreement, the specific duties and responsibilities of INTERSTATE in performing the Basic Services under this Agreement are set forth in Exhibit A.

**SECTION 2
ADDITIONAL SERVICES OF INTERSTATE**

SECTION 2.1 Additional Services. In connection with the Project, INTERSTATE may be called on to perform, provide, or furnish services or work which are not part of, or are in addition to, the Basic Services ("Additional Services"). If authorized in writing by CLIENT and agreed to by INTERSTATE, INTERSTATE shall perform, provide, furnish or

obtain from others the agreed upon Additional Services. INTERSTATE shall not be obligated to perform, provide, furnish or obtain any Additional Services without the prior written authorization of CLIENT. Except to the extent expressly provided otherwise in Exhibit A or as otherwise agreed in writing by the parties hereto, compensation to INTERSTATE for Additional Services will be paid for by CLIENT as indicated in Section 5.

Additional Services may be any service or work not included as part of the Basic Services and may include, but are not limited to, services or work in connection with environmental or funding assistance, investigations not specifically required herein, services resulting from changes in the scope, extent or character of the project, providing renderings or computer models, services to develop alternate bids or sequencing of work, outside consultant services not specifically required herein, out-of-town travel, and preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding. "Basic Services" and "Additional Services" are sometimes collectively referred to herein as "Services".

SECTION 2.2 Changes in the Services.

SECTION 2.2.1 Agreed Upon Changes in the Services. It is the desire of the parties to keep changes in the Scope of Services at a minimum, but the parties recognize that such changes may become necessary and agree that CLIENT may initiate deletions, modifications or changes to the Services by advising INTERSTATE in writing of the change believed to be necessary. As soon thereafter as practicable, INTERSTATE shall prepare a cost estimate of the change and shall inform CLIENT of the adjustment in the compensation due INTERSTATE under Section 5 hereof ("INTERSTATE'S Compensation") and/or the Completion Date set forth in Section 4 hereof, if any, applicable to such requested change. CLIENT shall then advise INTERSTATE in writing of its approval or disapproval of the change. If CLIENT approves the change, a written contract amendment shall be executed by both parties and INTERSTATE shall perform the Services as changed and the adjustment in INTERSTATE'S Compensation and/or the Completion Date set forth in the executed contract amendment shall become effective. INTERSTATE may initiate changes in the Services by advising CLIENT in writing that in its opinion a change is necessary. If CLIENT approves, it shall so advise INTERSTATE and, thereafter, the change shall be handled as if initiated by CLIENT. If a change is not approved, or if a written contract amendment is not executed, by both CLIENT and INTERSTATE, the change shall not become effective and INTERSTATE shall not be obligated to perform the change.

SECTION 2.2.2 Constructive Changes and Other Additional Costs. In the event of (1) the CLIENT's addition to, modification or change of or deletion from the Services to be performed by INTERSTATE (other than additions, modifications, changes or deletions handled through the provisions of Section 2.1 or Section 2.2.1 above); (2) a request for or approval from CLIENT of performance of Services in excess of INTERSTATE'S standard work day or work week or such shorter times as are provided by applicable collective bargaining agreements, or on a holiday customarily observed by INTERSTATE; (3) the discovery of any subsurface or other conditions, which differ

materially from those shown in or reasonably inferable from the documents or other information on which this Agreement is based and/or those ordinarily encountered and generally recognized as inherent in the locality of the Project; (4) a modification of applicable law by which INTERSTATE is required to pay increased or additional taxes, government-regulated transportation costs, insurance or other amounts which are not required as of the date of this Agreement; (5) delay, suspension of, acceleration of or interference with, INTERSTATE'S performance of the Services by CLIENT or by any other person or entity including, but not limited to national, state or local governments; (6) wage, benefit or payroll tax increases due to governmental action or area agreements; (7) modification to or delay in furnishing design criteria or other information supplied by any person or entity, other than INTERSTATE, if INTERSTATE'S performance of the Services under this Agreement depends upon such criteria or information; and/or (8) any other increase in INTERSTATE'S costs, or the time required for completion of the Services due to "Force Majeure Event" as set forth in Section 4 hereof, a change in applicable law or any other cause beyond INTERSTATE'S reasonable control, then the INTERSTATE'S Compensation and/or the Completion Date, if any, shall be equitably adjusted and INTERSTATE shall be paid, and INTERSTATE'S Compensation shall be adjusted by, an amount equal to the additional costs to INTERSTATE resulting therefrom.

SECTION 3 CLIENT'S RESPONSIBILITIES

CLIENT shall do the following in a timely manner so as not to delay the performance of the Services by INTERSTATE:

SECTION 3.1 CLIENT Representative. Designate a person to act as CLIENT's representative with respect to the Services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define CLIENT'S policies and decisions with respect to INTERSTATE'S Services for the Project.

SECTION 3.2 Project Information. Provide all criteria, all available information pertinent to the Project, and full information as to CLIENT'S requirements for the Project. CLIENT agrees that INTERSTATE shall be entitled to rely upon all such information and the accuracy thereof in performing the terms of this Agreement. However, no party not specifically working on the Project shall be so entitled. TRANSYTEMS shall notify CLIENT upon discovery of any material errors or omissions in the information provided. .

SECTION 3.3 Project Access. Arrange for access to and make all provisions for INTERSTATE to enter upon public and private property as required for INTERSTATE to perform services under this Agreement.

SECTION 3.4 CLIENT Participation. Examine all studies, reports, sketches, drawings, specification, proposals, and other documents or requests for information presented by INTERSTATE, obtain advice of an attorney, insurance counselor and other consultants as CLIENT deems appropriate for such examination and render in writing

decisions pertaining thereto within a reasonable time so as not to delay the services of INTERSTATE.

SECTION 3.5 Notices. Give prompt written notice to INTERSTATE whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of INTERSTATE'S Services, or any defect or non-conformance in the Services by INTERSTATE (or its independent professional associates or consultants) or in the work of any contractor or other party performing or providing work or services in connection with the Project.

SECTION 3.6 Additional Services. When CLIENT deems it necessary or appropriate for Additional Services to be performed in connection with any phase of the Project, CLIENT shall furnish or direct INTERSTATE to provide, Additional Services as stipulated in Section 2 of this Agreement or other services as required.

SECTION 3.7 Licenses, Permits, etc. Provide INTERSTATE with any necessary governmental allocations or priorities, obtain all permits and licenses required to be taken out in the name of CLIENT which are necessary for the performance of the Services and, except where such permits, processes or licenses are by the terms of Exhibit A the responsibility of INTERSTATE, obtain any permits, processes and other licenses which are required for the Project or the Services;

SECTION 3.8 Other Duties. Perform any other duties, obligations or responsibilities of the CLIENT set forth elsewhere in this Agreement, including, but not limited to, the obligation to make the payments called for under Section 5 hereof and perform any responsibilities and duties of the Client which may be identified on Exhibit A, if any.

SECTION 3.9 Taxes. Pay for and be responsible for those taxes incurred in connection with the Project, where such taxes are assessed against CLIENT.

SECTION 3.10 Costs. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 PERIODS OF SERVICE, COMPLETION DATE, FORCE MAJEURE

SECTION 4.1 Period of Service. The provisions of this Section 4 and the various rates of compensation for INTERSTATE'S Services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. INTERSTATE'S obligation to render Basic Services hereunder will extend for a period which may reasonably be required for the Project including any Additional Services, extra or changed work and required extensions thereto.

SECTION 4.2 Completion Date. The Basic Services will be completed on or before October 31, 2002 (the "Completion Date") following the schedule of task

completion dates identified in Exhibit A, which is attached hereto and incorporated herein by reference. The Completion Date (and INTERSTATE'S obligation to complete the Basic Services by such date) is subject to reasonable extensions for the performance of Additional Services, Constructive Changes or other extra work and is subject to reasonable extensions for a Force Majeure Event.

SECTION 4.3 Force Majeure. For purposes hereof, a "Force Majeure Event" shall mean the occurrence of a failure or delay due to circumstances beyond INTERSTATE'S control including, without limitation, acts of God, acts of a public enemy, fires, floods, earthquakes, wars, civil disturbances, sabotage, accidents, insurrection, blockages, embargoes, storms, explosions, catastrophes, epidemics, damage to the Project, lack of access to Project, unavailable utilities and power, water, labor disputes, CLIENT's failure to timely perform its obligations under this Agreement, its failure to deliver information or decisions necessary for INTERSTATE to perform its services, or other causes beyond INTERSTATE'S control.

SECTION 5 INTERSTATE'S COMPENSATION

SECTION 5.1 Compensation for Services and Expenses of INTERSTATE in connection with Basic Services

SECTION 5.1.1 For Basic Services. As compensation for the performance of the Basic Services rendered by INTERSTATE under Section 1, CLIENT shall pay INTERSTATE, in accordance with the provisions of Section 5.4, an amount not-to-exceed \$99,955 on a cost-plus-fixed-fee basis, as indicated in Exhibit D--man-hour estimate and Project fee Proposal.

SECTION 5.2 Compensation for Services and Expenses of INTERSTATE in connection with Additional Services

SECTION 5.2.1 For Additional Services. As compensation for the performance of the Additional Services rendered by INTERSTATE under Section 2, CLIENT shall pay INTERSTATE, in accordance with the provisions of Sections 5.3 and 5.4.

SECTION 5.2.2 For Reimbursable Expenses in connection with Additional Services. In addition to payments provided for in paragraph 5.2.1, CLIENT shall pay INTERSTATE for all Reimbursable Expenses incurred in connection with all Additional Services at the Basic Services at the actual costs (except where specifically provided otherwise) of all Reimbursable Expenses approved by CLIENT. For purposes hereof, "Reimbursable Expenses" are those costs and expenses incurred by INTERSTATE in connection with the performance of the Services under this Agreement, including, but not limited to, the costs and expenses incurred by INTERSTATE for travel, reproduction, mailing costs, computer time, supplies and materials, taxes, transportation, telephone or

communications, independent professional associates and consultants and subconsultants.

SECTION 5.3 INTERSTATE'S Schedule of Rates and Expenses. The rates and expense provisions shall be as provided in Exhibit D. The rates and expense provisions are in effect from the date of this Agreement until December 31 of this year. INTERSTATE will revise the salary and overhead rates annually and will submit the revised rates to CLIENT in December of each year that this Agreement is in effect and such revised rates shall automatically become effective with regard to this Agreement and the Services performed under this Agreement on January 1st of the next calendar year.

SECTION 5.3.1 Direct Labor Costs and Overhead. Direct labor costs and overhead shall be paid at a rate equal to INTERSTATE salary cost times a factor of 2.35 for all Basic Services rendered on the project. Salary costs for anticipated project personnel are included in Exhibit D.

SECTION 5.3.2 Reimbursable Expenses. CLIENT shall pay INTERSTATE the actual costs (except where specifically provided otherwise) of all Reimbursable Expenses approved by CLIENT, as provided in Exhibit D. For purposes hereof, "Reimbursable Expenses" are those costs and expenses incurred by INTERSTATE in connection with the performance of the Services under this Agreement, including, but not limited to, the costs and expenses incurred by INTERSTATE for travel, reproduction, mailing costs, computer time, supplies and materials, taxes, transportation, and telephone or communications, independent professional associates and consultants and subconsultants

SECTION 5.4 Monthly Invoices. INTERSTATE shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon the amount of time spent and costs and expenses incurred by INTERSTATE during the period covered by each such statement. CLIENT shall make prompt monthly payments in response to INTERSTATE'S monthly statements.

SECTION 5.5 Other Provisions Concerning Payments.

SECTION 5.5.1 Interest, Suspension of Services. If CLIENT fails to make any payment due INTERSTATE for services and expenses within thirty (30) days after receipt of INTERSTATE'S statement therefore, INTERSTATE shall be entitled interest on the unpaid amounts due INTERSTATE at the lesser of: i) 1.5 % per month; or, ii) the highest rate of interest allowed under applicable law. The entire unpaid balance due INTERSTATE shall bear said rate of interest from the thirtieth day after CLIENT'S receipt of INTERSTATE'S statement, until the entire unpaid balance has been paid to INTERSTATE. In addition to being entitled to interest, INTERSTATE may, after giving seven (7) days written notice to CLIENT, suspend services under this Agreement until INTERSTATE has been paid in full all amounts due for Services, expenses, and charges.

SECTION 5.5.2 Payments after Termination by CLIENT. In the event of termination by CLIENT under paragraph 6.1 upon the completion of any phase of the Basic Services, payments due INTERSTATE for all Services rendered and expenses incurred through such phase shall constitute total payment for such Basic Services. In the event of such termination by CLIENT during any phase of the Basic Services, INTERSTATE will be paid for Services rendered and expenses incurred during that phase through the date of termination on the basis of INTERSTATE'S Schedule of Rates and Expenses. In the event of any such termination (whether at the completion of a phase or otherwise), INTERSTATE shall also be reimbursed for the charges of independent professional associates and consultants employed by INTERSTATE to render Basic Services or Additional Services and all reasonable demobilization costs incurred by INTERSTATE including any cancellation charges by independent professional associates, consultants and others performing or furnishing Services on the Project through INTERSTATE and INTERSTATE shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

SECTION 5.5.3 Payments after Termination by INTERSTATE. In the event of termination by INTERSTATE under paragraph 6.1, INTERSTATE will be paid for all Services rendered and expenses incurred during that phase through the date of termination on the basis of INTERSTATE'S Schedule of Rates and Expenses to the extent those Services are deemed useful by the City, in its sole discretion, to the ultimate completion of the contemplated Project by another entity. In addition, INTERSTATE shall also be reimbursed for the charges of independent professional associates and consultants employed by INTERSTATE to render Basic Services or Additional Services and all reasonable demobilization costs incurred by INTERSTATE, including any cancellation charges by independent professional associates, consultants and others performing or furnishing Services on the Project through INTERSTATE, and INTERSTATE shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

SECTION 5.5.4 Records. Records of INTERSTATE'S salary costs pertinent to INTERSTATE'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. If Client desires to have copies of such records, copies will be made available to CLIENT upon Client's request prior to final payment for INTERSTATE'S services.

SECTION 5.5.5 Cost Factors. Whenever a factor is applied to salary costs or other expenses in determining compensation payable to INTERSTATE, that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by INTERSTATE and consistent with INTERSTATE'S overall compensation practices and procedures.

SECTION 6 GENERAL CONSIDERATIONS

SECTION 6.1 Termination. The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

Section 6.2 Termination for Cause. In the event the services of INTERSTATE are terminated by the CLIENT for fault on the part of INTERSTATE, the agreement shall be null and void, and, the CLIENT shall be entitled to recover payments made to INTERSTATE on the work which is the cause of the at-fault termination. INTERSTATE shall be paid only for work satisfactorily performed and delivered to the CLIENT up to the date of termination. After audit of INTERSTATE actual costs to the date of termination and after determination by the Project Manager of the amount of work satisfactorily performed, the Project Manager shall determine the amount to be paid to INTERSTATE.

SECTION 6.3 Reuse of Documents. All documents, drawings, sketches, studies, analysis, information, schedules, estimates, reports and other items prepared or furnished by CLIENT pursuant to this Agreement, including, but not limited to Drawings and Specifications, are instruments of service in respect of the Project and CLIENT shall retain sole ownership and property interest therein whether or not the Project is completed. Any reuse without written permission of CLIENT will be at INTERSTATE'S sole risk and without liability or legal exposure to CLIENT, or to CLIENT's independent professional associates or consultants, and INTERSTATE does hereby, to the fullest extent permitted by law, indemnify and hold harmless CLIENT, CLIENTS' officers, employees and agents and CLIENTS' independent professional associates and consultants from all claims, suits, demands, damages, liabilities, losses, expenses and costs, including but not limited to reasonable attorney's fees and other costs of defense, arising out of or resulting therefrom. The provisions of this Section 6.2 shall survive the termination of this Agreement.

SECTION 6.4 Use of Electronic Media. CLIENT shall be entitled to rely on the electronic media as accurate at the time of delivery to CLIENT. However, INTERSTATE shall not be responsible for any and all claims suits, demands, damages, liabilities, losses, expenses and costs, including but not limited to reasonable attorney's fees and other costs of defense, arising out of or resulting from any use, misuse, alteration, or modification of INTERSTATE'S instruments of professional service delivered to the CLIENT in electronic media form.

SECTION 6.5 Standard of Practice, Warranties. Services performed by INTERSTATE under this Agreement will be conducted in a manner consistent with the level of care, diligence and skill ordinarily possessed and exercised by members of the profession currently practicing in the same locality under similar conditions. TRANSYTEMS agrees that the Project will be completed in accordance with Exhibit A and further agrees that the Project will be designed to reasonably meet the requirements of the CLIENT as stated in the Scope of Work.

SECTION 6.6 Limitation of Responsibility, Job Site Safety/Techniques. INTERSTATE shall not have control over or charge of and shall not be responsible for

construction means, methods, techniques, sequences or procedures, nor for safety precautions and programs (including, but not limited to, any shoring, bracing, scaffolding or other safety systems or programs) in connection with the Project or any contractor, subcontractor, vendor or other Project participant, not under contract to INTERSTATE (collectively the "Other Project Parties"). In addition, INTERSTATE shall not be responsible for: i) the failure of any of the Other Project Parties to fulfill their respective contractual responsibilities and obligations to CLIENT or to comply with federal, state or local laws, rules, regulations or codes; ii) for the schedules of any of the Other Project Parties or the failure of any of the Other Project Parties to carry out their work in accordance with their respective agreements. INTERSTATE shall not have control over or charge of and shall not be responsible for acts or omissions of the Other Project Parties, or their agents or employees, or of any other persons performing portions of the work on the Project.

SECTION 6.7 Insurance.

SECTION 6.7.1 INTERSTATE Insurance. INTERSTATE shall maintain throughout the duration of this Agreement insurance in the following amounts and will, upon execution of this agreement furnish a copy of certification thereof:

- (a) Worker's Compensation and Employer's Liability

Worker's Compensation	Statutory
Employer's Liability	\$500,000/\$500,000/\$500,000

- (b) Comprehensive Automobile Liability

\$1,000,000 combined single limit Bodily Injury and Property Damage

- (c) Comprehensive General Liability

\$1,000,000 -	per occurrence
\$2,000,000 -	annual aggregate
\$2,000,000 -	product / completed operations per occurrence
\$1,000,000 -	personal injury / advertising liability

- (d) Umbrella/Excess Liability

\$1,000,000 -	per occurrence
\$1,000,000 -	annual aggregate

(e) Professional Liability Insurance in an amount of \$1,000,000 per claim and annual aggregate

SECTION 6.7.2 CLIENT Insurance. If CLIENT is required to obtain certain insurance coverages, CLIENT agrees to obtain and maintain throughout the duration of this Agreement (or, as applicable, cause its contractors to obtain and maintain) such insurance in the coverages and the amounts required. CLIENT will furnish INTERSTATE

with a copy of certification of such insurance at TRANSYSTEM'S request. INTERSTATE'S interests shall be covered under any such insurance coverage.

SECTION 6.8 Liability and Indemnification.

SECTION 6.8.1 General. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and INTERSTATE'S Compensation for the performance of the Services, and in consideration of the promises contained in this Agreement, CLIENT and INTERSTATE agree to allocate and limit such liabilities in accordance with the provisions of this Section 7.7.

SECTION 6.8.2 INTERSTATE Indemnification. In addition to its other indemnification obligations under this Agreement, INTERSTATE hereby agrees to indemnify and hold harmless the CLIENT and any of its officers or employees from all loss, damage, cost or expense arising out of (and to the extent caused by):

1. INTERSTATE'S negligent performance of Services under this Agreement;
2. Claims, suits or actions of every kind and description when such suits or actions are caused by negligent acts, errors or omissions of INTERSTATE, its employees or subcontractors; or
3. Injury or damages received or sustained by any party because of the negligent acts, errors or omissions of INTERSTATE, its employees or subcontractors.

In the event losses, damages, costs or expenses are caused by the joint or concurrent negligence of INTERSTATE and CLIENT, such losses, damages, costs and expenses shall be borne by each party in proportion to its own negligence.

SECTION 6.8.3 CLIENT Indemnification. In addition to its other indemnification obligations under this Agreement, CLIENT hereby agrees to indemnify and hold harmless INTERSTATE and any of its officers or employees from all loss, damage, cost or expense arising out of (and to the extent caused by):

1. CLIENT'S negligent acts, errors or omissions of CLIENT, its employees or contractors; or
2. Injury or damages received or sustained by any party because of the negligent acts, errors or omissions of CLIENT, its employees or contractors.

In the event losses, damages, costs or expenses are caused by the joint or concurrent negligence of INTERSTATE and CLIENT, such losses, damages, costs and expenses shall be borne by each party in proportion to its own negligence.

SECTION 6.8.4 Employee Claims. INTERSTATE shall indemnify CLIENT against any loss, damage, cost or expense arising out of claims by INTERSTATE'S

employees (unless such claim arises out of or as a result of the negligence of CLIENT, its employees, agents or contractors). CLIENT shall indemnify INTERSTATE against any loss, damage, cost or expense arising out of claims by CLIENT'S employees (unless such claim arises out of or as a result of the negligence of INTERSTATE, its employees, agents or subcontractors).

SECTION 6.8.5 Consequential Damages. To the fullest extent permitted by law, INTERSTATE shall not, in any event, be liable to CLIENT for any special, indirect, incidental or consequential damages, including, but not limited to, damages from delay, distribution, loss of product, loss of use, loss of profits or revenue or increased cost of operation, the cost of capital or the cost of purchased or replacement equipment, systems or power.

SECTION 6.8.6 Limitation of Liability. To the fullest extent permitted by law, INTERSTATE'S total liability to CLIENT for all claims, losses, damages and expenses resulting or arising in any way from the performance of the Services (including INTERSTATE'S indemnity obligations hereunder) shall not exceed the total compensation received by INTERSTATE under this Agreement or to the extent of coverage limits actually payable under any professional liability insurance required by CLIENT to be maintained by INTERSTATE, whichever is greater.

SECTION 6.8.7 Survival. The terms and conditions of this Section 6.7 shall survive the termination of this Agreement and/or the completion of the Services.

SECTION 6.9 Proprietary and Patent Rights. INTERSTATE and CLIENT agree that if patentable discoveries or inventions should result from the study conducted under this Agreement, the provisions of Exhibit B, which is incorporated herein by reference, shall apply.

SECTION 6.10 Nondiscrimination / ADA. INTERSTATE and all Subconsultants agree to comply with the requirements of Title 49, CFR Part 21 and the Title VI of the Civil Rights Act of 1964, the latter identified as Exhibit C attached hereto and hereby, by this reference, made a part of this Agreement. INTERSTATE agrees to provide services in compliance with the Americans with Disabilities Act of 1990.

SECTION 6.11 Personnel Employment. INTERSTATE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for INTERSTATE, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for INTERSTATE, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CLIENT 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 fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 7 SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

SECTION 7.1 Special Provisions. This Agreement is subject to no special provisions.

SECTION 7.2 Contract Documents. This Agreement consists of this contract document and the following Exhibits and Schedules, which are attached to and made a part of this Agreement:

Exhibit A - Project Description and Basic Services Scope of Work

Exhibit B – Proprietary and Patent Rights

Exhibit C - Consultant Assurance With Regard To The Civil Rights At Of 1964 and U.S. Department Of Commerce Regulations, 15 C.F.R., Part 8

Exhibit D – Man-hour Estimate and Project Fee Proposal

SECTION 7.3 Entire Agreement. This Agreement together with the Exhibits and Schedules identified above constitute the entire agreement between CLIENT and INTERSTATE and supersede all prior written or oral understandings. This Agreement and said Exhibits and Schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

SECTION 7.4 Hazardous Materials. Unless otherwise provided in this Agreement, INTERSTATE shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site. However, INTERSTATE shall report to CLIENT the presence and location of any hazardous material which it notices or which an engineer of similar skill and experience should have noticed.

SECTION 7.5 Disputes. In the event a dispute arises between INTERSTATE and CLIENT regarding the application or interpretation of any provision of this Agreement, or quality of Services by INTERSTATE, the aggrieved party shall promptly notify the other party to this Agreement of the dispute, but in no event more than 20 days after such dispute arises. If the parties fail to resolve the dispute within 20 days after receipt of such notice, each party shall, within five days thereafter, proceed to non-binding mediation, with each party to bear its own costs and attorneys' fees and the parties shall share equally in the cost of the mediator. Mediation shall take place in Rapid City, South Dakota. In the event that the mediation is unsuccessful, the aggrieved party may elect to litigate its dispute with the other party. All disputes shall be governed by the laws of the State of South Dakota and the jurisdiction and venue for litigation between the parties shall be solely and exclusively in Pennington County, South Dakota, or the United States District Court for the District of South Dakota. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties hereto shall be referred to the State's Secretary of Transportation or his duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to this agreement.

SECTION 7.6 Independent Contractor. INTERSTATE shall be an independent contractor with respect to the Services to be performed hereunder. Neither INTERSTATE, nor its independent professional associates, consultants or subcontractors, nor the employees of any of the foregoing shall be deemed to be the servants, employees or agents of CLIENT.

SECTION 7.7 Representations and Remedies. INTERSTATE makes no representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth herein. The parties' rights, liabilities, responsibilities and remedies with respect to the Services, whether in contract or otherwise, shall be exclusively those expressly set forth in this Agreement.

SECTION 7.8 Assignment, Subcontractors. This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party, or to a person, firm or corporation acquiring all or substantially all of the business assets of such party or to a wholly owned subsidiary of either party, but such assignment shall not relieve the assigning party of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the assignee. This Agreement shall be binding upon and shall inure to the benefit of the INTERSTATE'S and CLIENT'S respective successors and assigns. Nothing in this Section 7.9 shall prevent or be deemed to prevent INTERSTATE from employing, contracting with or engaging independent professional associates, consultants and other subcontractors to perform or assist in the performance of the Services. All subcontracts shall contain all of the required provisions of this agreement.

SECTION 7.9 Notices. All notices or communications pertaining to this Agreement shall be in writing and shall be sufficient when mailed or delivered to the address specified below:

If to CLIENT:

City of Rapid City
Planning Department
300 Sixth Street
Rapid City, SD 57701-2724_____

Attention: Mr. Kip Harrington_____

If to INTERSTATE:

Interstate Engineering, Inc.
1505 Avenue D, Suite 210
P.O. Box 30215
Billings, MT 59107_____

Attention: Mr. Charles Strum _____

Nothing in this Section 7.9 shall be construed to restrict the transmission of routine communications between representatives of CLIENT and INTERSTATE.

SECTION 7.10 Interpretation.

(a) This Agreement shall be governed by and interpreted in accordance with the laws of South Dakota.

(b) Headings and titles of sections, paragraphs and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

(c) In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall effect the intent of the parties as set forth in this Agreement.

(d) The parties agree to look solely to each other with respect to the performance of this Agreement and the Services to be provided hereunder. This Agreement and each and every provision hereof is for the exclusive benefit of CLIENT and INTERSTATE and not for the benefit of any third party, and no third party shall be entitled to rely upon or enforce the terms of this Agreement, or to be a third party beneficiary thereof.

(e) No failure by either party to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Agreement, and no waiver of any breach shall constitute a waiver of any other or subsequent term, condition, instruction, breach, right or privilege.

(f) The parties acknowledge and agree that the terms and conditions of this Agreement, including but not limited to those relating to allocations and assumptions of, releases from, exclusions against and limitations of liability, have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement they have relied solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statements made by any other party or its counsel. No provision in this Agreement is to be interpreted for or against any party because that party or its counsel drafted such provision.

SECTION 8 AUDIT AND RECORDS RETENTION

SECTION 8.1 Audit and Records Retention. INTERSTATE shall maintain an accurate cost accounting system for all costs incurred under this agreement and costs shall be clearly identified with activities performed under this agreement. Upon

reasonable notice, INTERSTATE will allow State or U.S. Department of Transportation representatives to examine all records of INTERSTATE related to this agreement during INTERSTATE's normal business hours. All records shall be kept by INTERSTATE for a period of three (3) years after the date of final payment by CLIENT under this agreement. Allowable costs will be determined in accordance with 48 CFR Part 31.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the _____ day of _____ 2001.

**CITY OF RAPID CITY, ADMINISTRATOR OF THE RAPID CITY AREA MPO
MAYOR OF RAPID CITY**

By: _____
Printed Name: Jerry Munson
Title: Mayor of Rapid City

Attest: _____
Printed Name: _____
Title: Finance Officer

INTERSTATE ENGINEERING, INC.

By: _____
Printed Name: _____
Title: _____

CERTIFICATION OF CONSULTANT

I hereby certify that I am the Principal, and duly authorized representative of the firm INTERSTATE Corporation Consultants, whose address is 207 N Broadway, Suite MZ-9, Billings, MT 50101, and that neither I nor the above firm I here represent has:

1. Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or our consultants) to solicit or secure this contract.
2. Agree, as an expressed or implied condition for obtaining this contract, to employ or retain the service of any firm or person in connection with carrying out the contract; except as here expressly stated (if any);

I acknowledge that this certificate is to be furnished to the State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws (both criminal and civil).

Date

Brian Milne, P.E., Vice President
Interstate Engineering, Inc.

CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal 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 any federal contract, grant, loan, or cooperative agreement.
2. 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 federal agency, a Member or 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub grants, and contracts and subcontracts under grants, sub grants, loans, and cooperative agreements) which exceed \$100,000, and that all such sub recipients 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 of not less than \$10,000 and not more than \$100,000 for each such failure.

Interstate Engineering, Inc.

By: _____
Brian Milne, P.E.,
Vice President

ATTEST: _____

DATED: _____

Exhibit A

Rapid City Travel Demand Model Update Basic Services Scope of Work

Project Understanding

This Travel Demand Forecasting Model Update is intended to provide a travel demand model tool to the City and MPO that can integrate travel demand forecasting with the geographic information system currently being implemented using Arc/INFO.

This model update will provide the opportunity to make a comprehensive examination of the modeling processes used in the Rapid City Urbanized Area and determine the most appropriate improvements. More than just a conversion of the existing TModel2 data and procedures to the new TransCAD platform, this model update will take advantage of the opportunity to review existing model assumptions and parameters for continued relevance. It will be an opportunity to explore alternative methods of addressing transit and non-motorized travel demand, an opportunity to explore new methodologies for trip generation, trip distribution and assignment. We also anticipate the model developed through this project will model “peak season” conditions rather than annual average conditions. The development of a peak season model acknowledges conditions present in Rapid City where the transportation systems in the urban area receives heavy summer tourist demand for substantial portions of the year.

Overall, this project will be a combined effort of several jurisdictions requiring efficient and continuing communications. We will establish a Working Group to enable the project to progress in an open process with input and evaluations from a variety of jurisdictions, including the Rapid City Area MPO, the City of Rapid City, the South Dakota Department of Transportation, and the Federal Highway Administration. Model development will also occur in a “teaching environment” to enable City and MPO staff to understand model operating procedures and input/output manipulation.

This project will have two major components:

1. Conversion of the existing TModel2 to TransCAD (including calibration/validation and development of a future year 2025 data set), and
2. Recommendations of additional travel demand-related studies to further enhance travel demand modeling in the Rapid City urban area.

Each of these components will be carefully documented to provide a record of model development and procedures utilized. Model development documentation will also serve as a valuable “users guide” for future modeling efforts. The documentation will also provide recommendations for potential future model modifications and additional studies that may be beyond the scope of this project.

Project Approach

The INTERSTATE team will work with City, State, Federal and MPO staff to develop a specific Working Group of all affected and cooperating agencies. This group will have direct oversight and provide technical guidance for the project. We anticipate periodic meetings with the Working Group to present and discuss study progress, results and recommendations. We will present results of the study analysis and model development in periodic Working Papers, a Draft Final Report and the Final Report. We will provide technical working papers periodically for review and comment, to allow regular, ongoing input and guidance to the project. We are proposing a closely integrated team of planning and engineering staff for this project.

Project Scope of Work

Task 100 – Data Collection

Data required to develop the TransCAD travel demand model for Rapid City includes the following (to be provided by the City):

- Existing TModel2 data and control files
- Model base year (2000) traffic count data, including daily traffic and peak hour traffic volume.
- Land use data for model base year and forecast year, including population, occupied households by type (single family or multi-family), employment by type (retail, service, military, school, etc.), school enrollment and temporary housing data (hotels/motels).
- Roadway data for all roads included in the model base year network, to include functional classification, number of lanes, free-flow speeds, permitted flow directions (one-way or two-way), and intersection turn prohibitions.
- Roadway data for planned facilities and improvements to existing facilities.

INTERSTATE will develop written requests for data necessary for project execution. We anticipate that roadway data will be made available as Arc/Info Ungenerate or Export E00 files and that land use data will be available as ASCII files or other file type compatible with Microsoft applications. We also understand that employment data may be supplied in terms of square feet of a particular type of employment rather than the number of employees. For this case, INTERSTATE will utilize federal conversion factors supplied by the City to calculate the number of employees from the square footage data. We understand that Traffic Analysis Zone (TAZ) boundary files are available as ArcView Shape files, or will be provided as AutoCAD DXF format files.

INTERSTATE acknowledges it has received electronic files and hard copy documentation for the existing TModel2 travel demand model.

Task 200 – Data Review & TModel2 Evaluation

The project will begin with a comprehensive evaluation of the existing TModel2 travel demand model. We anticipate examining all related model documentation and control/data files to gain a working understanding of the operation of, and philosophy behind the existing model. Specific evaluations of existing model procedures will include the following:

- Evaluation of existing TAZ structure to examine coordination with census blocks, block groups and tracts as well as future land use City neighborhood structure. TAZ structure will also be evaluated considering current and planned growth of the Rapid City urban area to ensure adequate coverage and appropriate level of detail.
- Evaluation of Trip Generation procedures (methods) and input data requirements. Considered will be the ability of City/MPO staff to easily update land use data and/or utilize data available from other sources (US Census, Bureau of Labor, etc.). Also considered will be the number of trip purposes modeled and how to model/classify tourist trips present during the peak season. Methods of estimating zonal productions and attractions will be explored, including cross-classification, regression and ITE attraction rate methods.
- Traffic Assignment procedures currently employed and similar procedures available within the TransCAD platform, including the desirability of including turn penalties to model delay or turn prohibitions at intersections.

Based on our examination of the existing model, we will develop alternatives for improvements to the model procedures. We anticipate potential improvements may impact areas of Trip Generation, Trip Distribution, Mode Split and Traffic Assignment modules. Opportunities for improvements or enhancements to travel demand modeling in Rapid City will be detailed in a Working Paper that will clearly document the existing procedure and the proposed alternative(s). The working paper will detail the implications of alternatives, including changing data requirements or operational procedures. Opportunities to integrate model data requirements with the on-going GIS system implementation will be fully explored.

Conversion of model operational or data requirements will not proceed until concurrence is received from the project working group.

Deliverable:

- Model Evaluation and Recommendations Working Paper
- Working Group consensus for new model development

Task 300 – Data Conversion

Once the working group has reached consensus on modeling procedures and operational philosophy, we will initiate conversion of the TModel2 data to a format compatible with the TransCAD platform and the Arc/INFO system maintained by the City/MPO. The conversion will proceed with the objective of developing a

calibrated/validated base-year (year 2000) time-of-day regional model. The conversion process may be as simple as using existing model procedures and data in the TransCAD platform, or may be as complex as developing entirely new data sets and developing entirely new model procedures.

Demographic Land Use Data: Conversion of demographic data will first consider any changes to the existing TAZ structure boundaries. Changes to TAZ structure boundaries will require re-distributing and updating the 1995 data available from the TModel2, or will require development of completely new year-2000 data (anticipated model base year). We anticipate that the City/MPO will develop and provide land use data for base year and future year conditions for the selected TAZ structure.

The GIS land use file will begin with the TAZ boundary file for the current model provided by the City/MPO. INTERSTATE will make changes to the boundary file as recommended and agreed by the Working Group and prepare the file for acceptance of land use data. INTERSTATE will join land use demographic data to TransCAD boundary file and format for use with the travel demand model.

Street Network Data: Conversion of the TModel2 network directly to TransCAD is not supported. We anticipate receiving GIS-centerline files from the City/MPO for use with developing the model network. We understand the City/MPO will deliver street centerline files complete with basic data necessary for development of the model network (functional class, number of lanes, speeds, etc.). INTERSTATE will work with the City/MPO by providing guidance for development of centerline data.

INTERSTATE anticipates the need to perform a thorough check on the street centerline files to ensure data coverage accuracy and link connectivity. We will develop summary tables and graphics to show data features and anticipate forwarding these elements to the City/MPO for concurrence. We also anticipate developing centerline coverage and data input for planned future streets and improvements.

Based on the network coverage utilized for the existing TModel2, INTERSTATE will code centerline files to indicate which streets will be utilized for the model network for both existing and future conditions modeling. We anticipate establishing a data field for this network identifier and providing the data to enable “extraction” of a network from the completed street centerline file.

INTERSTATE will also establish TAZ centroid connectors within the street centerline file to enable loading of TAZ generated trips to the model network. Unless the TAZ or network structure is changed during the course of the review of those elements, centroid connector locations used in the TModel2 will be used for the TransCAD model as well.

Model Procedures: Some procedures and processes currently utilized in the TModel2 may not have a direct conversion in the TransCAD platform, or it may be determined that TModel2 procedures should be updated or revised with development of the

TransCAD model. “Conversion” of model operating procedures will primarily involve developing TransCAD routines to implement operational decisions reached in Task 200 and documented in the Task 200 Working Paper.

Model procedures will be developed to create a time-of-day model to model discrete periods of an average day separately. As opposed to a daily model, a time-of-day model allows modeling of street and intersection congestion more accurately than a daily model. We anticipate three periods will be utilized:

- AM Peak Period
- PM Peak Period
- Off Peak Period

We anticipate performing Trip Generation on a daily basis, then factoring daily trips to create time-of-day trip tables. The factoring process will discretely estimate the fraction of trip origins and destinations for each trip purpose for each time-of-day period.

It is anticipated that the time-of-day factoring and Auto Occupancy will be performed separately for each trip purpose.

Trip Distribution, Mode Split and Traffic Assignment functions will also be performed for three discrete time-of-day periods. To obtain data for an all-day period, the discrete time-of-day model results will typically be added together (to determine average daily traffic volume, for instance).

Deliverable: Working Paper to report results of model data conversion and network preparation. Also included will be documentation of model procedure development.

Task 400 – Base Year Model Development

The goal of this task is to develop a calibrated/validated base year (year 2000) model. Calibration/validation procedures will examine travel demands not only on individual roadway segments, but also across screen lines representing travel corridors. Network assignment results will be calibrated to acceptable accuracy standards defined by NCHRP Report 255, including calibration of external trips (how the model interacts with the rest of the world). Primary calibration will consider a comparison of assigned link volumes to counted link volumes. In the absence of travel survey data, we anticipate calibrating trip-making parameters to similar parameters of the existing TModel2 (trip length frequency distribution, vehicle miles of travel, etc.).

During the base year model development process, we anticipate leading a working session with the City/MPO working group to illustrate model operation and analysis of results. This working session will be conducted in a “teaching” format intended to provide City/MPO staff with a working knowledge of model operation and analysis. This working session will also include a review of model data development and model procedure execution.

Deliverable:

- Working Paper detailing calibration of base year model with summary tables and graphics and complete documentation of model procedures and all inputs.

Task 500 – Future Year Model Development

Although development of portions of the future year 2025 model can begin early in the project, only when an accurate base year model has been developed will development of the future year 2025 model begin in earnest. Before the model procedures, variables and parameters have been calibrated, only land use data and roadway network elements of the future year model be developed.

Once base year model development and calibration has been completed, the future land use data and future transportation network (planned improvements) will be utilized to perform modeling of future conditions. INTERSTATE, in conjunction with the City/MPO Working Group will consider model procedures and associated factors/variables for continued applicability to future conditions and make adjustments where deemed appropriate.

We also anticipate developing a post-processing procedure to adjust future model assignments prior to reporting. This post-processing procedure will utilize procedures detailed in NCHRP 255 in a spreadsheet format to adjust assigned volumes based on observed counts on a screen line or individual link basis. Post-processing is recommended since models are generally good at a corridor or regional basis, but can give less reliable results on an individual link bases. Post-processing allows for adjustment of raw model assignments prior to releasing projections for use with other planning applications or to general public.

Deliverable:

- Working Paper documenting operation of the travel demand model for future conditions and operation of post-processing applications.
- Plots and tables of future traffic projections with sample thematic maps showing capabilities of TransCAD for displaying model results and system parameters.

Task 600 – Model Delivery & Maintenance

INTERSTATE will develop procedures and establish a system to allow the City/MPO to maintain GIS-system data for street systems and land use data to enable on-going updates to these critical databases remain compatible with modeling needs. Procedures will allow ease and accuracy of maintenance of model-related data with on-going maintenance and updates to the City/MPO GIS.

Following development of the travel demand model, INTERSTATE will format model files and procedures for delivery to the City/MPO. Individual Working Papers will be combined to form documentation of model development and an operations manual for model execution. All model procedures and data requirements/formats will be detailed in the documentation. Base year model calibration/validation results will also be documented.

A draft of the final model development/operations document will be submitted to the City/MPO Working Group for review. We anticipate delivering up to ten (10) copies of the draft document to the City/MPO for distribution to all review parties. The City/MPO will collect and combine review comments from all review agencies and submit changes to INTERSTATE. Upon receipt and incorporation of review comments into the draft document, a final draft will be submitted to the City/MPO for a final check prior to publication. INTERSTATE anticipates delivering ten (10) copies plus a camera-ready original of the final document to the City/MPO.

INTERSTATE will write all model and related data files to CD for delivery with the final model documentation. We also will provide an electronic file of the final report in both Adobe Acrobat (.PDF) and MSWord (.DOC) format on the CD.

Task 600 shall be completed by October 31, 2002.

Task 700 – Travel Demand Related Studies

Travel demand related studies can be extremely useful for developing accurate models specifically “tuned” to a particular community. Origin-destination studies, travel time studies, auto occupancy studies, and volume studies are all useful to assist with validation of travel demand models.

Based on our assessment of the existing model and results of the TransCAD model, we will formulate recommendations regarding the need for additional study data. An examination of model results will be performed to assess areas of significant error or areas where assumptions were required to obtain acceptable model results. This examination will be used to formulate an opinion about the need for additional data, and to develop recommendations for specific studies needed to obtain desired data.

The assessment of need for travel demand related studies would begin with the compilation of a matrix of the “universe” of potential studies and the use of resulting study data. This matrix will be paired with the list of additional desired data developed from a review of the model development process to determine the most likely candidate studies for consideration in Rapid City.

Candidate studies will be evaluated in relation to the Rapid City area needs to estimate the cost and magnitude of each particular study, and the expected benefit should a particular study be conducted. A recommendation will be formulated based on the

evaluation and documented in a separate Technical Memorandum presented to the Working Group.

Deliverable:

- Technical Memorandum documenting potential travel demand related studies and detailing studies recommended for the Rapid City area.
- Working Group consensus on study recommendation.

Project Schedule

INTERSTATE has examined the scope of work for this project and has developed a schedule for completion that shows completion of base year model, future year model, travel demand study recommendation and project documentation within a period of 12 months from receipt of notice to proceed.

Meetings & Presentations

Development of the Rapid City travel demand model will require several project meetings and/or meetings with the proposed Working Group. We also anticipate that presentations to City Council will be required as well. We anticipate the need to conduct four (4) Working Group meetings throughout the course of the project. Working Group meeting dates will be set at least three (3) weeks in advance through agreement between INTERSTATE and the City/MPO. The City/MPO will provide notification to coordinating agencies (FHWA, SDDOT, etc.) and will arrange for meeting locations. Agendas for Working Group meetings will be prepared by INTERSTATE and, once approved by the City/MPO, will be distributed to the Working Group at least one week in advance of the meeting.

INTERSTATE also anticipates the need for four (4) additional meetings in Rapid City for project coordination and/or presentations to City Council and/or County Commissioners. These meetings will also be scheduled at least three (3) weeks in advance with meeting facilities provided by the City/MPO. Any equipment required for council/commissioner presentations (overhead projectors, computer projectors, etc.) will be furnished by the City/MPO unless otherwise agreed at the time a meeting agenda and location are set.

Task 800 – Additional Travel Demand Modeling (Additional Services)

Following development of a calibrated/validated base year model, and development of a future year model, INTERSTATE will be available to assist Rapid City with execution of the model for various projects and purposes. The models will be able to ascertain transportation system impacts of various land use growth scenarios, street network development scenarios or significant changes to mode split (transit service) or auto occupancy (HOV lane development).

The modeling assistance provided by INTERSTATE during this period will also be structured in a “teaching environment” where the City/MPO can learn model operations and develop proficiency with various scenario model operations. In addition to operation of the model(s), INTERSTATE will provide hands-on assistance and guidance with procedures previously established to enable easy maintenance of model data sets.

INTERSTATE will separately evaluate each modeling “task” request from the City/MPO and will formulate a task-specific scope of work and fee estimate for approval prior to task execution. We estimate additional travel demand modeling activities can be accomplished for a fee of \$95/hour.

Deliverable:

- Additional travel demand modeling will be documented with individual Technical Memorandums for each task. The technical memorandums will discuss model task purpose and results.
- TransCAD data files produced as a result of additional travel demand modeling tasks will be written to CD and delivered with the task documentation (Technical Memorandum).

Task 800 shall be completed as necessary.

EXHIBIT B

PROPRIETARY AND PATENT RIGHTS

1. All data provided to INTERSTATE is copyrighted and is and shall remain the exclusive property of CLIENT. TRANSYSTEMS may not use the data for any purpose other than the Project. To the extent the Project integrates or relies on such data, all such elements of the Project, to the fullest extent of the law, shall become and remain the exclusive property of the CLIENT.
2. INTERSTATE agrees to disclose each subject invention to the CLIENT within a reasonable time after it becomes known to INTERSTATE personnel responsible for the administration of patent matters, and that the CLIENT shall receive title to any subject invention not disclosed to it within such time.
3. INTERSTATE agrees to make a written election within two years after disclosure to the CLIENT (or such additional time as may be approved by the CLIENT) whether INTERSTATE will retain title to a subject invention: provided, that in any case where publication, on sale, or public use, has initiated the one year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the CLIENT to a date that is not more than sixty days prior to the end of the statutory period: and provided further, that the CLIENT may receive title to any subject invention in which INTERSTATE does not elect to retain rights or fails to elect rights within such times.
4. When INTERSTATE elects rights in a subject invention, it agrees to file a patent application prior to any statutory bar date that may occur under 35 USCS Section 1 et seq. due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the CLIENT may receive title to any subject inventions in the United States or other countries in which INTERSTATE has not filed patent applications on the subject invention within such times.
5. With respect to any invention in which INTERSTATE elects rights, the CLIENT and the United States Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the CLIENT or the United States Government any subject invention throughout the world: provided, that the funding agreement may provide for such additional rights; including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the CLIENT or United States Government as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreement relating to weapons development and production.
6. The CLIENT retains the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by INTERSTATE or his licensees or assignees:

provided, that any such information as well as any information on utilization or efforts at obtaining utilization obtained as art of the proceeding under 35 USCS Section 203 shall be treated by the CLIENT as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under 5 USCS Section 552.

7. INTERSTATE agrees that in the event a United States patent application is filed by or on its behalf or by any assignee of INTERSTATE there shall be included within such application and any patent issuing thereon, a statement specifying that the invention was made with CLIENT support and that the CLIENT has certain rights in the invention.

8. The requirements of 35 USCS Sections 203 and 204 apply to this research.

9. If INTERSTATE does not elect to retain title to a subject invention in cases subject to this section, the CLIENT may consider and after consultation with INTERSTATE grant requests for retention of rights by the inventor subject to the provisions of 35 USCS Section 202 and regulations promulgated hereunder.

EXHIBIT C

CONSULTANT ASSURANCE WITH REGARD TO THE CIVIL RIGHTS ACT OF 1964 AND U.S. DEPARTMENT OF COMMERCE REGULATIONS, 15 C.F.R., PART 8

During the performance of the Agreement, Contractor and any subcontractors, for themselves, their assignees and successors in interest (hereinafter referred to as the "Contractor"), agree as follows:

Compliance with Regulations: The Contractor will comply with the regulations of the Department of Commerce relative to nondiscrimination in federally assisted programs of the Department of Commerce (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, age, disability, religion, sexual orientation, or national origin in the selection and retention of subcontractor, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the contract covers a program set forth in the Appendix A-II of the Regulations.

Solicitations for Subcontractor, Including Procurement 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 procurement of materials and 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, or national origin.

Information and Reports: The Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to its books, records, determined by the State Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refused to furnish this information, the Contractor shall so certify to the State Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State 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, withholding of payments to the Contractor under the contract until the Contractor

complies, and/or cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions: The Contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issues pursuant hereto. The Contractor will take such action with respect to any subcontract or procurement as the State Department of Transportation or Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or suppliers as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**SUBCONTRACT AGREEMENT BETWEEN
INTERSTATE CORPORATION AND CONSULTANT
FOR
PROFESSIONAL SERVICES**

THIS SUBCONTRACT AGREEMENT (the "Agreement") is made as of _____, 2001, by and between Interstate Engineering, Inc. ("INTERSTATE") and TranSystems Corporation ("CONSULTANT").

WHEREAS, INTERSTATE has entered into an agreement dated _____, 2001, ("Prime Agreement") with the City of Rapid City, representing the Rapid City Area Metropolitan Planning Organization ("OWNER") which provides for INTERSTATE performing professional services in connection with the project commonly known as Travel Demand Forecasting Model Update ("Project") as defined in the Prime Agreement; and

WHEREAS, INTERSTATE hereby engages CONSULTANT to perform certain services in connection with the Project (the "Services"); and

WHEREAS, CONSULTANT represents that it has reviewed the portions of the Prime Agreement applicable to such Services and further represents that it is ready, willing, licensed and qualified to perform such Services;

NOW, THEREFORE, in consideration of the covenants and promises contained in this Agreement, INTERSTATE and CONSULTANT agree as follows:

**SECTION 1
BASIC SERVICES OF CONSULTANT**

1.1 Basic Services. In connection with Project, CONSULTANT shall provide the professional engineering and other services described in Exhibit A, Scope of Services, for INTERSTATE in all phases of the Project to which this Agreement applies. These services include professional engineering consultation and advice to INTERSTATE, and through or with the knowledge of INTERSTATE, to OWNER and other concerned parties as required to be provided by INTERSTATE under the Prime Agreement.

1.2 Information. CONSULTANT is responsible for obtaining all data and information (other than that specifically designated herein or in the Prime Agreement to be furnished by INTERSTATE or OWNER) necessary for the performance of the required engineering services.

1.3 Communication. CONSULTANT shall communicate with OWNER, INTERSTATE's other independent professional associates and consultants, or

other parties involved in the Project only through or with the knowledge of INTERSTATE.

SECTION 2 ADDITIONAL SERVICES OF CONSULTANT

2.1 Additional Services. In connection with the Project, CONSULTANT may be called upon to furnish additional services that are not included as part of the Basic Services. If authorized in writing by INTERSTATE, the CONSULTANT shall perform, provide, furnish or obtain from others such requested Additional Services. Compensation to CONSULTANT for such Additional Services will be paid in accordance with Section 5 of this Agreement.

2.2 Definition. Additional Services shall be any service or work not included in the Basic Services and which are ordered or authorized in writing by INTERSTATE. Such Additional Services may include, but are not limited to, additional field explorations, laboratory testing, analyses, consultations, review or monitoring or services provided in connection with unforeseen conditions encountered during construction such as assistance to INTERSTATE in any redesign, work directive changes or change orders. Additional Services shall also include preparing to serve or serving as a consultant or witness at INTERSTATE's request for INTERSTATE or OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project.

2.3 Payments for Additional Services. Notwithstanding any provision in this Section, INTERSTATE shall not be liable to CONSULTANT for compensation for such Additional Services for a sum greater than INTERSTATE obtains from OWNER for such Additional Services, less reasonable overhead and profit to INTERSTATE. Any payments to CONSULTANT shall be conditional upon prior receipt of same by INTERSTATE from OWNER.

SECTION 3 INTERSTATE'S RESPONSIBILITIES

INTERSTATE shall do the following in a timely manner so as not to delay the services of CONSULTANT:

3.1 Information. Provide all information and criteria known to INTERSTATE concerning the Project which INTERSTATE and CONSULTANT consider pertinent to CONSULTANT's Services.

3.2 Representative. Designate a person to act as INTERSTATE's representative who shall have the authority to transmit instructions, receive

information, and render decisions with regard to CONSULTANT's Services for the Project.

3.3 Access. Request OWNER to arrange for CONSULTANT's access to the Project, as may be necessary for CONSULTANT to perform the Services under this Agreement.

3.4 Notice. Give prompt notice to CONSULTANT whenever INTERSTATE observes any development that affects the Scope or timing of CONSULTANT's Services.

SECTION 4 PERIOD OF SERVICE

4.1 Period of Service. CONSULTANT's obligation to render services hereunder shall extend for a period which may reasonably be required for the design and construction of the Project, including extra work and required extensions thereto. If a fixed date for completion of Services is set forth in Exhibit A, Scope of Services, CONSULTANT shall complete the Services by such date.

4.2 Timely Performance. CONSULTANT recognizes that the services of INTERSTATE and others involved in the Project are dependent upon the timely performance of the Services under this Agreement. Unless otherwise provided in Exhibit A, Scope of Services, or elsewhere in this Agreement, CONSULTANT shall perform such Services in the same character, timing and sequence as INTERSTATE is required to perform services under the Prime Agreement. If in Exhibit A, Scope of Services, specific periods of time for rendering Services are set forth or specific dates by which Services are to be completed are provided, and if such time periods or dates are exceeded through no fault of CONSULTANT, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment. CONSULTANT's failure to perform in a timely manner shall be considered a material breach of this Agreement.

4.3 Tests. The field explorations, tests and analyses, if any, will be completed and the Report, if any, shall be submitted within the period stipulated in Exhibit A.

4.4 Time Adjustment. If OWNER or INTERSTATE suspends services, requests significant modifications or changes in the extent of the Project, authorizes Additional Services, or if progress is delayed through no fault of CONSULTANT, the time of performance of CONSULTANT's Services shall be adjusted appropriately.

4.5 Delay. If CONSULTANT's performance under this Agreement is delayed or suspended in whole or in part by OWNER or INTERSTATE for reasons beyond CONSULTANT's control, CONSULTANT shall on written demand to INTERSTATE be reimbursed as provided in Section 5. If such delay or suspension extends for more than one year for reasons beyond CONSULTANT's control, or if CONSULTANT for any reason is required to render services more than one year after Substantial Completion of the Services of this Agreement, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment. However, if CONSULTANT's performance under this Agreement is delayed by OWNER, and not by INTERSTATE, the CONSULTANT shall, on written demand to INTERSTATE, be reimbursed only to the extent INTERSTATE receives reimbursement from OWNER less reasonable overhead and profit of INTERSTATE.

SECTION 5 PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services of CONSULTANT.

5.1.1 For Basic Services. INTERSTATE shall pay CONSULTANT for all Basic Services rendered under Section 1, on a cost-plus-fixed-fee basis, a amount not-to-exceed \$32,876 as indicated in Exhibit D – man-hour estimate and Project fee Proposal, hereto attached and incorporated herein by this reference.

5.1.2 For Additional Services. Subject to the limitation set forth in Section 2.3, INTERSTATE 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 Section 2 on the basis of the schedules of personnel and equipment charges shown in Exhibit B.

5.1.2.2 Serving as a Witness. For services rendered by CONSULTANT's principals and employees as consultants or witnesses at the request of INTERSTATE, in any litigation, arbitration or other legal or administrative proceeding as provided in Section 2, on the basis of the schedules of personnel charges shown in Exhibit D.

5.1.3 Reimbursable Expenses. In addition to the payments provided for in paragraphs 5.1.2.1 and 5.1.2.2, INTERSTATE shall pay CONSULTANT the actual costs (except where specifically provided otherwise) of all Reimbursable Expenses incurred in connection with all Basic Services and Additional Services.

5.1.4 Definitions.

5.1.4.1 “Direct Labor Costs” used as a basis for payment shall mean salaries and wages (basic and incentive) paid to all CONSULTANT’s personnel engaged directly on the Project, including, but not limited to, engineers, geologists, drillers, laboratory technicians, other technical and business personnel; but does not include indirect payroll related costs or fringe benefits. For the purposes of this Agreement, the rates and expenses shall be as provided in Exhibit D. The rates and expense provisions are in effect from the date of this Agreement until December 31 of this year. INTERSTATE will revise the salary and overhead rates annually and will submit the revised rates to CLIENT in December of each year that this Agreement is in effect and such revised rates shall automatically become effective with regard to this Agreement and the Services performed under this Agreement on January 1st of the next calendar year.

5.1.4.2 “Reimbursable Expenses” shall mean the actual expenses incurred by CONSULTANT (without markup) directly in connection with the performance of the Services under this Agreement, such as expenses for: subsistence and transportation authorized in advance by INTERSTATE; providing and maintaining field office and field laboratory facilities including furnishings, laboratory equipment and supplies, and utilities; toll telephone calls and telegrams; reproduction of reports; Drawings, Specifications, Bidding Documents and similar Project-related items in addition to those required under Section 1; and if authorized in advance by INTERSTATE, overtime work requiring higher than regular rates. In addition, if authorized in advance by INTERSTATE, 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.

5.2 Times of Payments.

5.2.1 Monthly Invoices. Unless otherwise provided in this Agreement, CONSULTANT shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The monthly statements shall be submitted no later than the tenth (10th) day of the following month. The statements will be based upon the total services actually completed and Reimbursable Expenses incurred at the time of billing. If INTERSTATE objects to any statement submitted, INTERSTATE shall so advise CONSULTANT in writing giving reasons therefor.

5.2.2 Condition Precedent. INTERSTATE shall bill OWNER monthly on account of CONSULTANT’s services and expenses and shall pay CONSULTANT

within fourteen (14) days of the time INTERSTATE received payment from OWNER on account thereof. CONSULTANT agrees that INTERSTATE'S receipt of payment from OWNER shall be a condition precedent before payment will be made to CONSULTANT. It is intended that payments to CONSULTANT will be made as INTERSTATE is paid by OWNER under the Prime Agreement and that INTERSTATE shall exert reasonable and diligent efforts to collect prompt payment from OWNER.

5.2.3 Supporting Data. All monthly billings shall contain supporting data and progress reports as may be required by INTERSTATE or the Prime Agreement, such as lien releases and waivers as may be executed by CONSULTANT and any sub-consultant and invoices of sub-consultant.

5.3 Other Provisions Concerning Payments.

5.3.1 Termination Period. If this Agreement is terminated prior to the completion of Basic Services and INTERSTATE has received an acceptable billing statement from CONSULTANT (as provided in paragraph 5.2.1), CONSULTANT will be paid on the basis shown in Exhibit B for all unpaid Basic and Additional Services performed to the date of termination and for completion of analyses, records and written report as provided in paragraph 6.3, plus all unpaid Reimbursable Expenses incurred to the date of termination. CONSULTANT agrees that INTERSTATE's receipt of payment from OWNER shall be a condition precedent before any payment pursuant to this Section 5.3.1 will be made to CONSULTANT.

5.3.2 Cost Factors. Whenever a factor is applied to Direct Labor Costs in determining compensation payable to CONSULTANT, that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by CONSULTANT and consistent with CONSULTANT's overall compensation practice and procedures.

SECTION 6 GENERAL CONSIDERATIONS

6.1 Controlling Law. This Agreement is to be governed by the laws of the State of Missouri.

6.2 Termination.

6.2.1 The obligation to provide further services under this Agreement may be terminated by either party upon thirty days written notice in the event of

substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2.2 This Agreement will terminate automatically upon termination of the Prime Agreement. INTERSTATE will notify CONSULTANT promptly of such termination.

6.2.3 Notwithstanding any other provisions herein, INTERSTATE may terminate or suspend performance of this Agreement for INTERSTATE'S convenience upon written notice to CONSULTANT. Upon receipt of notice, CONSULTANT shall terminate or suspend performance of the Services on a schedule acceptable to INTERSTATE and may submit a statement to INTERSTATE for services performed and reasonable termination or suspension expenses. Any payments to CONSULTANT shall be conditional upon prior receipt of same by INTERSTATE from OWNER.

6.2.4 In the event the services of TRANSYSTEMS are terminated by INTERSTATE for fault on the part of TRANSYSTEMS, the agreement shall be null and void, and, INTERSTATE shall be entitled to recover payments made to TRANSYSTEMS on the work which is the cause of the at-fault termination. TRANSYSTEMS shall be paid only for work satisfactorily performed and delivered to INTERSTATE up to the date of termination. After audit of TRANSYSTEMS actual costs to the date of termination and after determination by the whoever's in charge of contract at INTERSTATE of the amount of work satisfactorily performed, the in charge INTERSTATE person shall determine the amount to be paid to TRANSYSTEMS.

6.3 Completion of Records. In the event of termination by either party prior to completion of Basic Services, CONSULTANT shall complete such analyses and records as are necessary to complete CONSULTANT's files and present to INTERSTATE a written report on the services performed to the date of notice of termination.

6.4 Retention of Records. CONSULTANT shall retain all boring logs, field data, laboratory test data, calculations, notes and other records (except cost records) related to the Project in legible form for a period of five years following the completion or termination of services under this Agreement. Copies of such records will be made available to OWNER or INTERSTATE upon request at the cost of reproduction.

6.5 Fiscal Records. Fiscal records of CONSULTANT's costs and expenses pertaining to the Project will be kept on a generally recognized accounting basis and made available on INTERSTATE's request for examination and audit, and as required by the Prime Agreement.

6.6 Ownership of Documents. All documents, including but not limited to, drawings, specifications, software, and reports prepared by CONSULTANT for the Project pursuant to this Agreement, shall be owned and be the property of OWNER.

6.7 Opinions of Cost. Since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, any opinions of probable construction cost presented by CONSULTANT, or comments on opinions of probable construction cost or estimates of others, are to be made on the basis of CONSULTANT's experience as a qualified professional engineer familiar with the construction industry; but CONSULTANT cannot and does not guarantee that proposals, bids, or actual costs will not vary from the opinion of probable cost presented.

6.8 Insurance.

6.8.1 Insurance Coverage. CONSULTANT shall maintain throughout the duration of this Agreement insurance of the following types and minimum amounts:

- (a) Worker's Compensation and Employer's Liability
 - Worker's Compensation Statutory
 - Employer's Liability \$500,000/\$500,000/\$500,000

- (b) Commercial Automobile Liability
 - \$1,000,000 combined single limit Bodily Injury and Property Damage

- (c) Commercial General Liability
 - \$1,000,000 - per occurrence
 - \$2,000,000 - annual aggregate
 - \$2,000,000 - product / completed operations per occurrence
 - \$1,000,000 - personal injury / advertising liability

- (d) Umbrella/Excess Liability
 - \$1,000,000 - per occurrence

\$1,000,000 - annual aggregate

(e) Professional Liability Insurance in an amount of \$1,000,000 per claim and annual aggregate

(f) If Geotechnical services are being provided by Consultant under this Agreement, Consultant shall provide Contractors Pollution Liability coverage in an amount not less than \$1,000,000 per claim and annual aggregate

The coverage amounts for the insurance required under parts (a), (b) and (c) above may be achieved by a combination of primary and excess coverages.

The insurance described above are the minimums that must be carried by CONSULTANT and if different or additional types or amounts of insurance are required of INTERSTATE or of its subcontractors or consultants under the Prime Agreement, then Consultant shall maintain such additional amounts and types of insurance as are required under the Prime Agreement.

6.8.2 Certificates of Insurance. CONSULTANT shall provide INTERSTATE with certificates of insurance reflecting that CONSULTANT has obtained the coverage required by this Agreement and the Prime Agreement. Further, such coverage and certificates of insurance shall identify INTERSTATE and OWNER as an Additional Insured with respect to auto liability and general liability insurance, and if provided, with respect to the contractor's pollution liability insurance. The Certificates of Insurance shall reflect that there will be no cancellation or nonrenewal of CONSULTANT's insurance without at least 30 days written notice to INTERSTATE and OWNER.

6.8.3 Insurance of Subcontractors. CONSULTANT will also cause other independent professional associates and consultants retained by CONSULTANT for the Project to procure and maintain comparable insurance coverage of the types and amounts required herein.

6.9 Standard of Care. CONSULTANT shall perform the services under this Agreement with the care and skill required of INTERSTATE under the Prime Agreement or the care and skill ordinarily used by members of the profession practicing under similar conditions at the same time and in the same or a similar locality, whichever is greater. INTERSTATE and CONSULTANT agree that subsurface conditions may vary from those encountered in borings, surveys or explorations, and that conclusions must be based upon such information as is available. However, CONSULTANT shall be liable for the results of professional errors, omissions or negligence of CONSULTANT in the performance of services under this Agreement.

6.10 Indemnity. CONSULTANT shall indemnify, defend and hold harmless INTERSTATE and OWNER from and against all losses, claims, damages, or expenses to the extent such losses, claims, damages, or expenses are caused or alleged to be caused by any negligent act, error, or omission of CONSULTANT or any person or organization for whom CONSULTANT is legally liable, including but not limited to, sub-consultants, employees, agents, or representatives.

6.11 Independent Contractors. CONSULTANT is an independent contractor for purposes of its performance on the Project. INTERSTATE shall be the general administrator and coordinator of CONSULTANT's Services and shall facilitate the exchange of information among the independent consultants employed by INTERSTATE as necessary for the coordination of their Services.

6.12 Confidentiality. CONSULTANT shall consider all information provided by INTERSTATE and OWNER and all drawings, reports, studies, design calculations, specifications, and other documents resulting from the CONSULTANT's performance of the Services to be proprietary. CONSULTANT shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of INTERSTATE. The preceding restriction shall not apply to information which is in the public domain, was previously known to CONSULTANT, was acquired by CONSULTANT from others who have no confidential relationship to INTERSTATE with respect to same, or which, through no fault of CONSULTANT, comes into the public domain. CONSULTANT shall not be restricted in any way from releasing information, including proprietary information, in response to a subpoena, court order, or other legal process. CONSULTANT shall not be required to resist such subpoena, court order, or legal process, but shall promptly notify INTERSTATE in writing of the demand for information before CONSULTANT responds to such demand. INTERSTATE may, at its sole discretion, seek to quash such demand.

6.13 Waiver. A waiver by either INTERSTATE or CONSULTANT of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

6.14 Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. INTERSTATE and CONSULTANT further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this

Section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

6.15 Changes. It is the desire of the parties to keep changes in the Scope of Services at a minimum, but the parties recognize that such changes may become necessary and agree that INTERSTATE may initiate deletions, modifications, or changes to the Services by advising CONSULTANT, in writing, of the change believed to be necessary--at the sole discretion of INTERSTATE. As soon thereafter as practicable, CONSULTANT shall prepare a cost estimate of the change and shall inform INTERSTATE of the adjustment in the compensation due CONSULTANT under Section 5 hereof and/or the date of completion as may be provided in this Agreement. INTERSTATE shall then advise CONSULTANT, in writing, of its approval or disapproval of the change. If INTERSTATE approves the change, a written Contract Amendment shall be executed by both parties and CONSULTANT shall perform the Services as changed and the adjustment in CONSULTANT's compensation and/or completion date shall be set forth in the executed Contract Amendment. CONSULTANT acknowledges and agrees that INTERSTATE shall not be liable to CONSULTANT for a sum greater than INTERSTATE obtains from OWNER for such changes, less reasonable overhead and profit to INTERSTATE. Any payments to CONSULTANT for such changes shall be conditioned upon a prior recovery therefor by INTERSTATE from OWNER. If there is a dispute as to such changes, deductions, alterations or extra or additional work, then CONSULTANT shall proceed with such work or services as directed by INTERSTATE and proceed simultaneously in accordance with the Disputes provision herein.

6.16 Disputes. In the event a dispute arises between INTERSTATE and CONSULTANT regarding the application or interpretation of any provision of this Agreement, or quality of Services by CONSULTANT, the aggrieved party shall promptly notify the other party to this Agreement of the dispute, but in no event more than 20 days after such dispute arises. If the parties fail to resolve the dispute within 20 days after receipt of such notice, each party shall, within five days thereafter, proceed to non-binding mediation, with each party to bear its own costs and attorneys' fees and the parties shall share equally in the cost of the mediator. In the event the mediation is unsuccessful, the aggrieved party may elect to litigate its dispute with the other party. All disputes shall be governed by the laws of the State of Missouri and the jurisdiction and venue for litigation between the parties shall be solely and exclusively in Jackson County, Missouri, or the United States District Court for the Western District of Missouri.

6.17 Subcontractors/Sub-Consultants. CONSULTANT shall not employ independent consultants, associates, subcontractors or sub-consultants to assist in the performance of CONSULTANT's Services without the prior written consent of INTERSTATE. Such prior written consent shall not be unreasonably withheld by

INTERSTATE. All subcontracts shall contain all of the required provisions of this agreement.

6.18 Assignments. CONSULTANT shall not assign any rights or duties under this Agreement without the prior written consent of INTERSTATE. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the CONSULTANT from any obligation under this Agreement.

6.19 Successors and Assigns. INTERSTATE and CONSULTANT each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all provisions of this Agreement.

6.20 Compliance with Laws. In performance of the Services, CONSULTANT shall comply with applicable regulatory requirements including federal, state, and local laws, rules, regulations, orders, codes, and standards. CONSULTANT shall procure the permits, certificates, and licenses necessary to allow CONSULTANT to perform the Services. CONSULTANT shall not be responsible for procuring permits, certificates, and licenses required for any construction services unless such responsibilities are specifically assigned to CONSULTANT in Exhibit A, Scope of Services.

SECTION 7 SPECIAL PROVISION, EXHIBITS AND SCHEDULES

7.1 This Agreement is subject to the following special provisions:

[NONE]

7.2 The following exhibits and schedules are attached to and made a part of this Agreement:

Exhibit A - Project Description and Basic Services Scope of Work
Exhibit B – Proprietary and Patent Rights
Exhibit C - Consultant Assurance With Regard To The Civil Rights At Of 1964 and U.S. Department Of Commerce Regulations, 15 C.F.R., Part 8
Exhibit D – Man-hour Estimate and Project Fee Proposal

7.3 This Agreement (consisting of pages 1 to 12 inclusive), together with the exhibits and schedules identified above constitute the entire agreement between INTERSTATE 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 by a duly executed written instrument.

**SECTION 8
AUDIT AND RECORDS RETENTION**

SECTION 8.1 Audit and Records Retention. TRANSYSTEMS shall maintain an accurate cost accounting system for all costs incurred under this agreement and costs shall be clearly identified with activities performed under this agreement. Upon reasonable notice, TRANSYSTEMS will allow State or U.S. Department of Transportation representatives to examine all records of TRANSYSTEMS related to this agreement during TRANSYSTEMS normal business hours. All records shall be kept by TRANSYSTEMS for a period of three (3) years after the date of final payment by INTERSTATE under this agreement. Allowable costs will be determined in accordance with 48 CFR Part 31.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

INTERSTATE ENGINEERING, INC.

TRANSYSTEMS CORPORATION

By: _____

By: _____

Printed Name: _____

Printed Name: Jeff D. McKerrow

Title: _____

Title: Assistant Vice President

Address for Giving Notices:

Address for Giving Notices:

2400 Pershing Road, Suite 400

Kansas City, MO 64108

Exhibit A

Rapid City Travel Demand Model Update Basic Services Scope of Work

Project Scope of Work

Task 100 – Data Collection

Data required to develop the TransCAD travel demand model for Rapid City includes the following (to be provided by the City and INTERSTATE):

- Existing TModel2 data and control files
- Model base year (2000) traffic count data, including daily traffic and peak hour traffic volume.
- Land use data for model base year and forecast year, including population, occupied households by type (single family or multi-family), employment by type (retail, service, military, school, etc.), school enrollment and temporary housing data (hotels/motels).
- Roadway data for all roads included in the model base year network, to include functional classification, number of lanes, free-flow speeds, permitted flow directions (one-way or two-way), and intersection turn prohibitions.
- Roadway data for planned facilities and improvements to existing facilities.

TRANSYSTEMS will assist INTERSTATE in developing written requests for data necessary for project execution as outlined in the PRIME CONTRACT.

TRANSYSTEMS acknowledges it has received electronic files and hard copy documentation for the existing TModel2 travel demand model.

Task 200 – Data Review & TModel2 Evaluation

TRANSYSTEMS will assist INTERSTATE in Task 200 as outlined in the PRIME CONTRACT. All work conducted using the existing TModel2 network will be completed by TRANSYSTEMS.

TRANSYSTEMS will review the existing TModel2 traffic demand model and summarize the existing practices related to land use data and/or socio-economic data, trip generation, modal splits and trip assignment currently used by the model. TRANSYSTEMS will deliver to INTERSTATE a technical memorandum

outlining the findings which will be incorporated in the “Model Evaluation and Recommendations Working Paper” described in the PRIME CONTRACT.

TRANSYSTEMS will review the alternatives developed by INTERSTATE for the new modeling procedures and will attend one meeting with the WORKING GROUP to build consensus for the new model development.

Task 300 – Data Conversion

TRANSYSTEMS will assist INTERSTATE in the conversion of data to a format compatible with TransCAD as per the PRIME AGREEMENT. Work will include identifying appropriate structures for Demographic Land Use Data and Street Network Data and may include redefinition of Traffic Analysis Zones (TAZ’s), the refinement and/or development of trip generation, modal split, trip distribution methodology and refinements of the street and highway networks included in the model.

Task 400 – Base Year Model Development

TRANSYSTEMS will assist INTERSTATE in the base year model development as described in the PRIME AGREEMENT. TRANSYSTEMS role will be that of a peer review with INTERSTATE during this Task and will include reviewing the model results with the existing TModel2 model and existing data for calibration and validation.

Task 500 – Future Year Model Development

TRANSYSTEMS will assist INTERSTATE in the future year model development as described in the PRIME AGREEMENT. TRANSYSTEMS role will be that of a peer review with INTERSTATE during this Task and will include reviewing the model results and post-processing procedures. TRANSYSTEMS will attend one meeting with the WORKING GROUP to review the future year model development.

Task 600 – Model Delivery & Maintenance

TRANSYSTEMS will assist INTERSTATE in the development of procedures and establishment of a system to allow the City/MPO to maintain GIS-system data for street systems and land use data to enable on-going updates to these critical databases remain compatible with modeling needs. Procedures will allow ease and accuracy of maintenance of model-related data with on-going maintenance and updates to the City/MPO GIS.

TRANSYSTEMS will review the model files and procedures developed by INTERSTATE prior to delivery to the City/MPO. Individual Working Papers will be combined to form documentation of model development and an operations manual for model execution. All model procedures and data

requirements/formats will be detailed in the documentation. Base year model calibration/validation results will also be documented.

Task 700 – Travel Demand Related Studies

Travel demand related studies can be extremely useful for developing accurate models specifically “tuned” to a particular community. Origin-destination studies, travel time studies, auto occupancy studies, and volume studies are all useful to assist with validation of travel demand models.

TRANSYSTEMS will assist INTERSTATE in the assessment of the existing model and results of the TransCAD model, and will help to formulate recommendations regarding the need for additional study data. An examination of model results will be performed to assess areas of significant error or areas where assumptions were required to obtain acceptable model results. This examination will be used to formulate an opinion about the need for additional data, and to develop recommendations for specific studies needed to obtain desired data.

Project Schedule

TRANSYSTEMS has examined the scope of work for this project and has developed a schedule for completion that shows completion of base year model, future year model, travel demand study recommendation and project documentation within a period of 12 months from receipt of notice to proceed.

Meetings & Presentations

TRANSYSTEMS will attend up to four (4) meetings in Rapid City as directed by INTERSTATE. INTERSTATE will provide at least three (3) weeks notice prior to any meetings to arrange for travel.

EXHIBIT B

PROPRIETARY AND PATENT RIGHTS

1. All data provided to TRANSYSTEMS is copyrighted and is and shall remain the exclusive property of OWNER. TRANSYSTEMS may not use the data for any purpose other than the Project. To the extent the Project integrates or relies on such data, all such elements of the Project, to the fullest extent of the law, shall become and remain the exclusive property of the OWNER.

2. TRANSYSTEMS agrees to disclose each subject invention to the OWNER within a reasonable time after it becomes known to TRANSYSTEMS personnel responsible for the administration of patent matters, and that the OWNER shall receive title to any subject invention not disclosed to it within such time.

3. TRANSYSTEMS agrees to make a written election within two years after disclosure to the OWNER (or such additional time as may be approved by the OWNER) whether TRANSYSTEMS will retain title to a subject invention: provided, that in any case where publication, on sale, or public use, has initiated the one year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the OWNER to a date that is not more than sixty days prior to the end of the statutory period: and provided further, that the OWNER may receive title to any subject invention in which TRANSYSTEMS does not elect to retain rights or fails to elect rights within such times.

4. When TRANSYSTEMS elects rights in a subject invention, it agrees to file a patent application prior to any statutory bar date that may occur under 35 USCS Section 1 et seq. due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the OWNER may receive title to any subject inventions in the United States or other countries in which TRANSYSTEMS has not filed patent applications on the subject invention within such times.

5. With respect to any invention in which TRANSYSTEMS elects rights, the OWNER and the United States Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the OWNER or the United States Government any subject invention throughout the world: provided, that the funding agreement may provide for such additional rights; including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the OWNER or United States Government as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of

understanding, or similar arrangement, including military agreement relating to weapons development and production.

6. The OWNER retains the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by TRANSYSTEMS or his licensees or assignees: provided, that any such information as well as any information on utilization or efforts at obtaining utilization obtained as art of the proceeding under 35 USCS Section 203 shall be treated by the OWNER as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under 5 USCS Section 552.

7. TRANSYSTEMS agrees that in the event a United States patent application is filed by or on its behalf or by any assignee of TRANSYSTEMS there shall be included within such application and any patent issuing thereon, a statement specifying that the invention was made with OWNER support and that the OWNER has certain rights in the invention.

8. The requirements of 35 USCS Sections 203 and 204 apply to this research.

9. If TRANSYSTEMS does not elect to retain title to a subject invention in cases subject to this section, the OWNER may consider and after consultation with TRANSYSTEMS grant requests for retention of rights by the inventor subject to the provisions of 35 USCS Section 202 and regulations promulgated hereunder.

EXHIBIT C

CONSULTANT ASSURANCE WITH REGARD TO THE CIVIL RIGHTS ACT OF 1964 AND U.S. DEPARTMENT OF COMMERCE REGULATIONS, 15 C.F.R., PART 8

During the performance of the Agreement, Contractor and any subcontractors, for themselves, their assignees and successors in interest (hereinafter referred to as the "Contractor"), agree as follows:

Compliance with Regulations: The Contractor will comply with the regulations of the Department of Commerce relative to nondiscrimination in federally assisted programs of the Department of Commerce (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, age, disability, religion, sexual orientation, or national origin in the selection and retention of subcontractor, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the contract covers a program set forth in the Appendix A-II of the Regulations.

Solicitations for Subcontractor, Including Procurement 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 procurement of materials and 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, or national origin.

Information and Reports: The Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to its books, records, determined by the State Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refused to furnish this information, the Contractor shall so certify to the State Department of Transportation, or the Federal Highway Administration as

appropriate, and shall set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State 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, withholding of payments to the Contractor under the contract until the Contractor complies, and/or cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions: The Contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issues pursuant hereto. The Contractor will take such action with respect to any subcontract or procurement as the State Department of Transportation or Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or suppliers as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.