

AGREEMENT NUMBER _____

AGREEMENT BETWEEN THE CITY OF RAPID CITY, SOUTH DAKOTA
AND THE SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
FOR ACCOMPLISHING THE RAPID CITY AREA
METROPOLITAN PLANNING PROCESS

THIS AGREEMENT made this 1st day of January, 2006, by and between the State of South Dakota, acting by and through the State Department of Transportation, hereinafter referred to as STATE, and the City of Rapid City, South Dakota, hereinafter referred to as CITY, is for the purpose of providing partial funding of the regional area study activities scheduled to be performed during Calendar Year 2006 as approved in the CY 2006 Unified Planning Work Program (UPWP), using planning funds made available from apportionment's for Metropolitan Planning under 49 U.S.C. 5303.

WHEREAS, the Governor has designated CITY as being the Metropolitan Planning Organization (MPO) responsible for carrying out the provisions of 49 U.S.C. 5303; and

WHEREAS, Section 5303 Metropolitan Planning Funds have been apportioned to STATE for reimbursement of CITY activities, and

WHEREAS, CITY, acting on behalf of the area local units of government, and STATE desire to cooperatively work on objectives and work program activities leading toward a uniform Metropolitan Planning process.

NOW, THEREFORE, the parties agree as follows:

1. Scope of Work

A. The work to be performed under the terms of this AGREEMENT for the Rapid City Area Metropolitan Planning Process will be conducted in accordance with the approved 2006 UPWP.

B. CITY Responsibility

1. CITY, acting through CITY's Executive Policy Committee, is responsible for administration of the Metropolitan Planning process under Section 5303.

2. CITY shall assure the accomplishment of those tasks as outlined in the UPWP which are CITY's responsibility.

3. CITY shall arrange for and conduct meetings and conferences, pertaining to Section 5303 Metropolitan Planning and to review work details and make presentations to the principal participants and other interested groups as will best effect cooperation and understanding in the Metropolitan Planning Process.

4. CITY shall disseminate information on all Metropolitan Planning documents prepared under this AGREEMENT to local government members and to STATE for their review and comments.

C. STATE Responsibility

1. STATE shall administer the funds apportioned to South Dakota by the Federal Transit Administration (FTA) under the Section 5303 program.
2. STATE shall provide staff assistance to CITY as necessary to implement the UPWP. STATE may charge an amount up to Eight Thousand Dollars (\$8,000) against this AGREEMENT in carrying out Rapid City Transit activities. STATE shall provide the twenty percent (20%) matching share of the \$8,000.
3. STATE shall submit transit documents from CITY to FTA if required. STATE will review these submissions to assure that any concerns of STATE have been properly addressed in either the STATE transmittal letter or in the transit documents. STATE's review shall be in the spirit of joint cooperation with CITY.
4. STATE shall transmit to CITY, pertinent STATE Metropolitan Planning documents for CITY's review prior to submittal to FTA in order to assure that the local concerns are properly recognized.

2. Duration of Agreement

- A. This AGREEMENT covers the period from January 1, 2006 to December 31, 2006.

3. Payment Procedures

- A. CITY may voucher STATE for Eighty Percent (80%) of the actual costs of CITY's work performed, under the 2006 UPWP, in an amount up to, but not to exceed, Eighty Thousand, Six Hundred Two Dollars (\$80,602.00). CITY shall be responsible for Twenty Percent (20%) of actual costs. State reimbursement of the Eighty Percent (80%) share of actual costs is contingent upon FTA funds being made available to STATE.
- B. Eligible costs are defined in 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Payments will be made to CITY not more than once every four weeks and shall be for costs incurred for services performed under this AGREEMENT. The direct vouchers shall be the basis of payment. Payment shall be made subject to audit by duly authorized representatives of STATE. STATE, upon receipt of the direct vouchers, shall make every reasonable effort to provide prompt payment to CITY.

- D. CITY agrees that employees of CITY or sub-contractors to CITY, whose times are directly assignable to the UPWP, shall keep and sign a time record showing work elements of the UPWP, date and hours worked, and title of employee position.
 - E. CITY will charge against specific UPWP work items as contained in the CY 2006 UPWP. CITY will provide each STATE with yearly progress report.
4. Travel
- A. All travel by CITY, which utilizes funds authorized under this AGREEMENT, shall be on the basis of CITY's officially adopted, written travel policies and procedures. A copy of CITY's travel policy shall be provided to STATE upon execution of this AGREEMENT.
5. UPWP Acceptance and Modification
- A. Changes in the UPWP may be made only after consultation with, and approval in writing by, the parties to this AGREEMENT.
6. Audits
- A. CITY shall permit STATE, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives to audit the books, records, and accounts of CITY pertaining to AGREEMENT. This AGREEMENT is subject to the provision of the U.S. Office of Management and Budget Circular A-133, if the CITY expends Five Hundred Thousand Dollars (\$500,000) or more in any federal funds during the CITY's fiscal year covered, in whole or in part under this AGREEMENT period. If CITY expends less than Five Hundred Thousand Dollars (\$500,000) in federal funds during CITY fiscal year, the STATE may perform a Performance Review and Management Audit or Review related to the completion of PROJECT objective, the allowability of service or costs and adherence to AGREEMENT provisions.
 - B. All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD, 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. Audits shall be filed with and approved by the Auditor General by the end of the ninth month following the end of the fiscal year of the entity being audited over 30 days after receipt of the auditor's report, whichever is earlier.

- C. Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.

7. Ownership of Data

- A. Documents and all products of this AGREEMENT are to be the joint property of those participating in this AGREEMENT.

8. Publication or Release of Information

- A. CITY shall be free to copyright material developed under this AGREEMENT with the provisions that STATE and FTA reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for public purposes.
- B. All parties to this AGREEMENT may initiate a request for publication of any report or portions thereof. In the event of failure of agreement between STATE and CITY, each party reserves the right to publish independently, in which event nonconcurrence of the other party shall be set forth, if requested.
- C. All reports published by the STATE and/or CITY shall contain a credit reference to FTA such as "prepared in cooperation with the U.S. Department of Transportation, Federal Transit Administration."

9. Claims

- A. CITY agrees to indemnify, save and hold harmless STATE, and all its agents and employees, of and from any and all claims, demands, actions or causes of action of whatever nature or character arising out or by reason of, the work to be performed by CITY as a result of this AGREEMENT. It is further agreed that any and all employees of either party, while engaged in the performance of any work or services, shall not be considered employees of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees, while so engaged on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the other party.

10. Subcontracting

- A. CITY, with its own staff, and/or by subcontract, shall perform work contained in UPWP. All agreements or subcontracts pertinent to the UPWP, and subject to partial reimbursement under this AGREEMENT, shall be submitted in writing to STATE for review and approval prior to final execution.

11. Nondiscrimination
 - A. CITY agrees to comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964, the latter identified as Attachment A attached hereto and hereby made a part of this AGREEMENT. CITY agrees to submit, upon request, Title VI reports to STATE. CITY agrees to provide services in compliance with the Americans With Disabilities Act of 1990.

12. Assurances Regarding Pertinent Federal Laws and Regulations
 - A. CITY agrees to conform to the Federal statutes and regulations which are pertinent to Metropolitan Planning activities funded through Section 5303 under the approved CY 2006 UPWP.

 - B. No 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 of Congress, an officer or employee of Congress, or an employee or 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.

 - C. 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 of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

13. Debarment and Suspension
 - A. CITY will comply with the Federal requirement for debarment, suspension and other responsibility matters. CITY has signed the certification for debarment, suspension and other responsibility matters (Attachment B) to this effect and Attachment B is attached to, and hereby made a part of this AGREEMENT.

14. Questions of Fact
 - A. Any question of fact in with this work not disposed of by agreement between parties shall be referred to the Program Manager, Office of Air, Rail and Transit, South Dakota Department of Transportation, for determination. His decision shall be final and conclusive to the parties of this AGREEMENT.

15. Termination or Abandonment

- A. STATE and CITY share the right to terminate this AGREEMENT through a 30-day written notice, mailed First Class, U.S. Postal Service, by either party to the other party.

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

IN WITNESS WHEREOF, the parties have hereto caused this AGREEMENT to be executed by their proper officers and representatives.

APPROVED AS TO FORM:

Assistant Attorney General

SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

By: _____
Bruce E. Lindholm, P.E., Project Manager
Office of Air, Rail and Transit

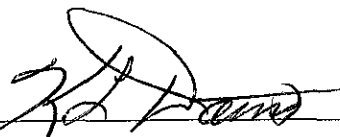
Dated: _____

Attest: _____
City Finance Officer

CITY OF RAPID CITY, SOUTH DAKOTA

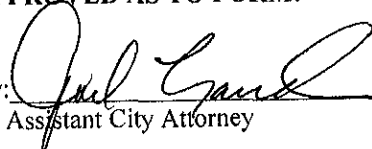
By: _____
Mayor

Dated: _____

By:  _____
Chairman,
Executive Policy Committee

Dated: 12-1-05

APPROVED AS TO FORM:

By:  _____
Assistant City Attorney

ATTACHMENT A

ASSURANCE WITH REGARD TO THE CIVIL RIGHTS ACT OF 1964 AND THE U.S. DEPARTMENT OF TRANSPORTATION, TITLE 49, CODE OF FEDERAL REGULATIONS, PART 21

During the performance of this AGREEMENT, CITY agrees as follows:

- (1) Compliance with Regulations: CITY shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: CITY, with regard to the work performed by it during the AGREEMENT shall not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CITY for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by either party of their obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
- (4) Information and Reports: CITY shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by STATE or FTA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CITY is in the exclusive possession of another who fails or refuses to furnish this information, CITY shall so certify to STATE, or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of CITY's noncompliance with the nondiscrimination provisions of this contract, STATE shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to,
- (a) withholding of payments to either party under the contract until the party complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: CITY will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. CITY shall take such action with respect to any subcontract or procurement STATE or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event either party becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, either party may request STATE to enter into such litigation to protect the interests of the STATE, and, in addition, either party may request the United States to enter into such litigation to protect the interests of the United States.

ATTACHMENT B

CERTIFICATION FOR DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS

The (City of Rapid City), as an applicant for an FTA grant, certifies to the best of its knowledge and belief the following:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (federal, state or local) terminated for cause or default.

The (City of Rapid City) certifies that if it becomes aware of any later information that contradicts the statements of paragraph (1) through (4) above, it will promptly inform FTA or SDDOT.

The (City of Rapid City) certifies or affirms the truthfulness and accuracy of the contents of the statements submitted.

Authorized Official

Title

Date