

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

THIS AGREEMENT, entered into by the South Dakota Department of Transportation, hereinafter referred to as the "STATE", and the City of Rapid City, hereinafter referred to as the "MPO", is for the purpose of providing partial funding of the metropolitan planning area study activities scheduled to be performed during calendar year 2008 as outlined in the CY 2008 Unified Planning Work Program attached to this Agreement, using planning funds available from apportionments made under Title 23, United States Code, Section 104, subsection f(4) and Title 49, United States Code, Section 5303.

WHEREAS, the Governor has designated the MPO as being responsible for carrying out the provisions of Section 134 of Title 23 of the U.S.C. and Section 5303 of Title 49 of the U.S.C.; and

WHEREAS, Federal-Aid Highway Planning Funds and Section 5303 Federal Transit Planning Funds have been apportioned to the STATE for reimbursement of MPO activities; and

WHEREAS, the MPO, acting on behalf of the local units of government, and the STATE desire to cooperate to reach formal agreement on the objectives, organization, work program preparation, and Federal-Aid reimbursements for the Transportation Planning Process; and

WHEREAS, the MPO and the STATE will prepare a mutually acceptable Unified Planning Work Program which must be adopted by the MPO;

NOW, THEREFORE, in consideration of the foregoing, 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 Metropolitan Transportation Planning Process will be conducted in accordance with the CY 2008 Unified Planning Work Program incorporated herein by reference as Attachment

B.

## B. MPO Responsibility

- 1) The MPO, acting through the Executive Policy Committee, is responsible for administration of the planning process in accordance with Section 134 of Title 23 of the U.S.C and Section 5303 of Title 49 of the U.S.C.
- 2) The MPO shall provide a Secretary for the Citizens Advisory Committee, the Technical Advisory Committee, and the Executive Policy Committee meetings (held for purposes of Transportation Planning relative to Section 134 of Title 23 of the U.S.C. and Section 5303 of Title 49 of the U.S.C.) to record committee action and to distribute meeting minutes to committee members and other interested persons.
- 3) The MPO shall assure the accomplishment of work activities identified in the Unified Planning Work Program.
- 4) The MPO shall schedule and conduct meetings and conferences pertaining only to Transportation Planning relative to Section 134 of Title 23 of the U.S.C. and Section 5303 of Title 49 of the U.S.C., to review work activities and to involve the principal participants and other interested groups in a continuing, cooperative, and comprehensive Transportation Planning that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. Technical documents and manuals prepared for use in accomplishing work activities will be submitted to the Technical Advisory Committee for its review and comment and will then be made available to the Executive Policy Committee.
- 5) The MPO shall disseminate information on all documents to the local members for their review and comments.

## C. STATE Responsibility

- 1) The State shall administer the funds apportioned to South Dakota in accordance with FEDERAL HIGHWAY ADMINISTRATION Policies and procedures for Section 134 Title 23, U.S.C and FEDERAL TRANSIT ADMINISTRATION Policies and procedures for Section 5303 of Title 49 of the U.S.C.

- 2) The State shall provide staff assistance to the MPO and other assistance as necessary to implement the Unified Planning Work Program. STATE may charge an amount up to Eight Thousand Dollars (\$8,000) against this AGREEMENT Federal Transit Planning Funds in carrying out Rapid City Transit activities. STATE will provide the twenty percent (20%) matching share of the \$8,000.
- 3) The State shall submit all documents from the MPO to FEDERAL HIGHWAY ADMINISTRATION and FEDERAL TRANSIT ADMINISTRATION. The STATE will review these submissions to assure that the concerns of the STATE, FEDERAL HIGHWAY ADMINISTRATION, and the FEDERAL TRANSIT ADMINISTRATION expressed during the development of the documents have been properly addressed in either the transmittal letter or the documents. The STATE's review shall be in the spirit of cooperation with the MPO to facilitate the earliest possible FEDERAL HIGHWAY ADMINISTRATION and FEDERAL TRANSIT ADMINISTRATION approval of these documents.
- 4) The State shall transmit any documents developed by the State that affect the local governmental entities comprising the MPO to the MPO for review prior to submittal to the FEDERAL HIGHWAY ADMINISTRATION and FEDERAL TRANSIT ADMINISTRATION to assure that the local concerns are properly addressed.

2. Duration of Agreement

This Agreement covers the period from January 1, 2008, to April 30, 2009.

3. Payment Procedures

- A. The maximum limiting amount which cannot be exceeded by the combined vouchering of the participating parties in the Rapid City Transportation Planning Process and for which this Agreement shall be effective shall not exceed \$511,392.
- B. The maximum distribution of FEDERAL HIGHWAY ADMINISTRATION Planning Funds and FEDERAL TRANSIT ADMINISTRATION Planning Funds for which this Agreement shall regulate and be accountable for are as follows, until amended, for work in the CY 2008 Unified Planning Work Program: \$414,075 for FEDERAL HIGHWAY

ADMINISTRATION Planning Funds and \$97,317 for the FEDERAL TRANSIT ADMINISTRATION Planning Funds.

- C. The STATE agrees to reimburse the MPO for 50% of the non federal-participating share for the Mount Rushmore Central Corridor Analysis Study which includes both STATE and MPO Streets. The total estimated cost of the study is \$295,000. The estimated federal-participating share is \$241,753 and the estimated non federal-participating share is \$53,248. The STATE'S estimated share is \$26,624.
- D. The STATE agrees to provide compensation to the MPO on a cost reimbursement basis for the federal-participating share for eligible costs incurred for work activities in the approved CY 2008 Unified Planning Work Program. Compensation for FEDERAL HIGHWAY ADMINISTRATION Planning Funds will be on a cost reimbursement basis by payment of 81.95 percent of the total eligible costs incurred for work activities in the approved CY 2008 Unified Planning Work Program and for FEDERAL TRANSIT ADMINISTRATION Planning Funds will be on a cost reimbursement basis by payment of 80 percent of the total eligible costs incurred for work activities in the approved CY 2008 Unified Planning Work Program. Eligible costs are defined in 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- E. Payments will be made to the MPO not more than once every four weeks for costs incurred for services performed under this Agreement. The MPO shall submit direct vouchers within 20 days following the end of the period covered by the account. The direct vouchers shall be the basis of payment and shall include supporting documentation for all allowable costs. Duly authorized representatives of the STATE shall provide an interim audit of each voucher. The STATE, upon receipt of the direct vouchers, shall provide payment to the MPO of all allowable, documented costs within 30 days of receipt

of the voucher. Costs documented at a later date may be reimbursed on a subsequent voucher.

F. It is agreed that employees of the MPO whose time is directly assignable to the program shall keep and sign a time record showing the element of the program, date and hours worked, and title of position.

G. The MPO will charge specific work items as contained in the approved CY 2008 Unified Planning Work Program. The MPO will provide the STATE with its annual progress report.

4. Travel

A. All travel by the MPO which will use funds in accordance with this Agreement shall be on the basis of the company policy and also subject to preauthorization by the STATE. Estimates of travel by the MPO staff which will use funds in accordance with the Agreement for CY 2008 are identified in the CY 2008 Unified Planning Work Program.

5. Unified Planning Work Program Acceptance and Modification

A. Changes in the program may be made only after consultation with and approval in writing by the parties to this Agreement, the Federal Highway Administration, and the Executive Policy Committee.

B. Decisions affecting the composition, scope, and duration of the work will be subject to approval by the parties to this Agreement prior to proceeding with the program.

C. If, as project work progresses, major changes are deemed necessary, adjustment for pay or modification in the scope of the work shall be by a letter supplement to this Agreement.

6. Reports

A. Reports shall be prepared as outlined in the Unified Planning Work Program, reviewed by the participating agencies, and then made available to the Executive Policy Committee.

7. Inspection of Work

The STATE and the MPO shall, at all times, be accorded proper facilities for review and inspection of each other's work as outlined in the approved CY 2008 Unified Planning Work Program. In addition, the STATE and the MPO shall also, at all times, provide proper facilities for review and inspection of this same work to authorized personnel of the Federal Highway Administration or Federal Transit Administration.

8. Records and Audits

- A. All charges will be subject to audit in accordance with current STATE procedures and CFR Title 48, part 31.2.
- B. The MPO 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.
- C. Upon reasonable notice, the MPO will allow STATE or FEDERAL GOVERNMENT representatives to have access to and the right to examine all records of the MPO related to this Agreement during the MPO's normal business hours. All records shall be kept by the MPO for a period of three (3) years after the date of final payment by STATE under this Agreement.
- D. If the MPO expends Five Hundred Thousand Dollars (\$500,000) or more in federal funds during any MPO fiscal year covered under this Agreement, in whole or in part, the MPO shall be subject to the single agency audit requirements of the U. S. Office of Management and Budget (OMB) Circular A-133. If the MPO expends less than \$500,000 in federal funds during any MPO fiscal year, the STATE may perform a more limited program or performance audit related to the completion of Agreement objectives, the allowability of services or costs and adherence to Agreement provisions.

9. Ownership of Data

Documents and all products of this Agreement are to be the joint property of those participating in the Transportation Planning Process.

10. Publication or Release of Information

- A. The MPO shall not copyright material developed under this Agreement without written authorization from the STATE, FEDERAL TRANSIT ADMINISTRATION, and the FEDERAL HIGHWAY ADMINISTRATION. The STATE, FEDERAL HIGHWAY ADMINISTRATION and the FEDERAL TRANSIT ADMINISTRATION reserve a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.
- B. Either party to the Agreement may initiate a request for publication of any report or portion thereof. In the event of failure of agreement between the STATE and the MPO, 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 the MPO shall contain a credit reference to the FEDERAL HIGHWAY ADMINISTRATION and FEDERAL TRANSIT ADMINISTRATION such as "prepared in Cooperation with the U.S. Department of Transportation, Federal Highway Administration and Federal Transit Administration."

11. Claims

The MPO agrees to indemnify and hold the STATE, its officers, agents, and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the MPO to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents or employees. 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 Workers' 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.

12. Subcontracting

The MPO, with its own staff and/or by subcontract with other public agencies, shall perform work valued at not less than fifty percent of the contract amount excluding specialized services. All Agreements or contracts pertinent to the Work Program and subject to partial

reimbursement under this Agreement shall be submitted to the STATE for review and approval prior to final execution and shall be approved by the Executive Policy Committee. All subcontracts must contain all of the provisions of this agreement.

13. Nondiscrimination/ADA

The MPO 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 by this reference, made a part of this Agreement. The MPO agrees to submit upon request quarterly Title VI (civil rights) State of Contractor reports to the State. The MPO agrees to provide services in compliance with the Americans With Disabilities Act of 1990.

14. Termination or Abandonment

The STATE and the MPO share the right to terminate this Agreement by a 30-day written notice by either party to the other party.

15. Availability of Funds

The payment of public funds under this agreement is subject to the availability of MPO FEDERAL HIGHWAY ADMINISTRATION Planning Funds and FEDERAL TRANSIT ADMINISTRATION Planning Funds appropriated by Congress.

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

CITY OF RAPID CITY

SOUTH DAKOTA DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_  
Alan Hanks, Mayor Date

\_\_\_\_\_  
Darin P. Bergquist, Interim Secretary Date

ATTEST:

RECOMMENDED:

\_\_\_\_\_  
City Finance Officer Date

\_\_\_\_\_  
Loren Schaefer Director of Planning/Engineering Date



RAPID CITY METROPOLITAN  
PLANNING ORGANIZATION

*Jerry J. Shoener* 10-19-07  
Curt Nupen, Chairman *vice* Date  
Executive Policy Committee

\_\_\_\_\_  
Bruce Lindholm Date  
Local Transportation Programs

APPROVED AS TO FORM

*Paul Lund* 10-8-07  
City Attorney Date

APPROVED AS TO FORM

\_\_\_\_\_  
Karla L. Engle Date  
Assistant Attorney General

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

- (1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT"), 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: The Contractor, 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. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the South Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the South Dakota Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the South Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to the contractor under the contract until the party complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor 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.

The contractor shall take such action with respect to any subcontract or procurement as the South Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for 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, the contractor may request the South Dakota Department of Transportation to enter into such litigation to protect the interests of the South Dakota Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Certification for Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her 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 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.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CITY OF RAPID CITY

ATTEST: \_\_\_\_\_  
City Finance Officer

BY: \_\_\_\_\_  
Alan Hanks, Mayor

DATED: \_\_\_\_\_

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 that it and its principals:

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 South Dakota Department of Transportation.

The **City of Rapid City** certifies or affirms the truthfulness and accuracy of the contents of the statements submitted. The person whose signature appears below is authorized to sign this certification on behalf of **City of Rapid City**.

CITY OF RAPID CITY

ATTEST: \_\_\_\_\_  
City Finance Officer

BY: \_\_\_\_\_  
Alan Hanks, Mayor

DATED: \_\_\_\_\_