

03TP022



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

PLANNING DEPARTMENT

300 Sixth Street

Patsy Horton, Transportation Planning Coordinator
Transportation Planning Division
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MEMORANDUM

TO: Legal and Finance Committee

FROM: Patsy Horton, Transportation Planning Coordinator

DATE: December 3, 2003

RE: Agreement for Transit Planning Assistance

Attached is the 2004 Agreement between the City of Rapid City and the Black Hills Council of Governments for providing transit planning assistance to the Rapid Transit System. This planning assistance is funded in part with Federal Highway Administration Planning Funds and Federal Transit Administration Section 5303 funds and is identified in the 2003 Unified Planning Work Program. This contract provides the Rapid Transit System with \$18,000 in transit planning assistance. On December 1, 2003, the Council approved the draft 2004 Unified Planning Work Program identifying this task as a work item.

The contract between the City of Rapid City and the Black Hills Council of Governments for the management of the Rapid Transit System expires on December 31, 2004, and in June the City will begin negotiations for the management contract and the planning assistance funding through the Metropolitan Planning Organization.

STAFF RECOMMENDATION: Staff recommends authorization for the Mayor and Finance Office to sign the Agreement between the City of Rapid City and the Black Hills Council of Governments for transit planning assistance, with the contract negotiations for the following year to begin in June, 2004.

c: Marcia Elkins, Planning Director
Rich Sagen, BHCOG
Van Lindquist, BHCOG

AGREEMENT FOR TRANSIT PLANNING ASSISTANCE
FOR THE RAPID CITY MPO URBANIZED AREA

THIS AGREEMENT, entered into this ____ day of December, 2003, by and between the RAPID CITY MPO (hereinafter called the MPO), and the firm of BLACK HILLS COUNCIL OF LOCAL GOVERNMENTS, (hereinafter called the CONSULTANT), for the purpose of providing transit planning assistance for the Rapid Transit System.

WITNESSETH THAT:

WHEREAS, the CITY OF RAPID CITY presently operates fixed route and demand-responsive transit service in the Rapid City MPO urbanized boundaries and plans to retain the CONSULTANT to provide such services described hereafter in connection with the undertaking, which will be funded, in part, with Federal Highway Administration (FHWA) PL funds and Federal Transit Administration (FTA) Section 5303 funds;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Engagement of CONSULTANT: The MPO hereby agrees to engage the CONSULTANT, and the CONSULTANT hereby agrees to perform, within the approved pay and time schedule, the services set forth in the 2004 Rapid City MPO UPWP and further described in Attachment A.
2. Area Covered: The CONSULTANT shall perform all the necessary services provided under this Agreement in connection with the respective boundaries of the Rapid City MPO.
3. Scope of Services: The CONSULTANT shall perform and carry out, in a satisfactory manner, the tasks set forth in the 2004 Rapid City MPO UPWP and further described in Attachment A, attached hereto and made a part hereof.
4. Personnel: The CONSULTANT will secure, in accordance with its proposal, all personnel required in performing the services under this contract. No portion of work or services covered by this Agreement shall be subcontracted without approval of the MPO. All subcontracts entered into by CONSULTANT shall contain all the provisions of the prime contract. All travel related expenses will be reimbursed following the State of South Dakota travel regulations.
5. Time of Performance: The services of the CONSULTANT are to commence as soon as practicable after January 1, 2004. The services shall be completed by December 31, 2004.
6. Compensation:
 - A. The total cost of this contract for the performance of work pursuant to this Agreement shall not exceed EIGHTEEN THOUSAND AND

NO/100 (\$18,000.00) DOLLARS. This amount will include ALL projected costs and any subcontracts.

B. The CONSULTANT shall receive payment pursuant to Paragraph B.1. Allowable costs are described in the following paragraph of this Agreement.

1. Personnel and Labor: The CONSULTANT shall provide personnel required for the execution of this contract, and the MPO shall reimburse the CONSULTANT for the salary and fringe benefits of personnel so employed upon the basis of actual salary expenditures. The actual salary expenditures shall be supported by detailed time sheets. Any amendments thereof shall be subject to MPO approval.

7. Accounting Records:

A. The CONSULTANT shall abide by all provisions under 49 CFR 18.36(b)(9) and maintain accounting records and other evidence pertaining to the costs incurred and make the records available at its office at all reasonable times during the agreement period and for three (3) years from the date of the final payment of federal funds to the CONSULTANT with respect to the study. Such accounting records and other evidence pertaining to the costs incurred will be made available for inspection by the MPO, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), the State of South Dakota, or any authorized representative of the federal government, and copies thereof shall be furnished if requested.

B. Allowable Costs: OMB Circular A-87 shall be followed to determine allowable costs. Allowable costs are those costs which must:

1. Be made in conformance with the project description and the project budget and all other provisions of this contract.
2. Be necessary in order to accomplish this project.
3. Be reasonable, both in quantity and in price.
4. Be actual net costs to the CONSULTANT (i.e., the price paid minus any refunds, rebates, or other items of value received by the CONSULTANT which have the effect of reducing the cost actually incurred).
5. Be incurred for work performed after the date of this contract, unless specific authorization from the MPO to the contrary is received.

6. Be in conformance with the standards for allocability of costs set forth in the FHWA and the FTA External Operating Manual.
 7. Be satisfactorily documented.
 8. Be treated uniformly and consistently under accounting principles and procedures approved or prescribed by the MPO for the contractors.
- C. Documentation of Project Costs: All costs charged to the project, including any approved services contributed by the CONSULTANT or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and property of the charged.
8. Method of Payment: The MPO shall pay the CONSULTANT on a quarterly basis as provided for under Paragraphs 6.B.1 and 7 of this Agreement. Such payments shall be made on the basis of the CONSULTANT's billings and the MPO's approval thereof. Such billings shall be made as hereinafter provided in this section.
- A. Itemized invoices for the CONSULTANT's costs shall be submitted to the MPO on quarterly basis. The MPO shall remit payment within thirty (30) days of invoice receipt. With each billing, the CONSULTANT shall submit a progress report outlining work and services completed during the reporting period and products completed.
9. Termination of Contract for Cause: If, through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this contract, the MPO shall thereupon have the right to terminate this contract by giving written notice to the CONSULTANT of such termination, which shall be effective upon receipt of the written notice. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports, or other material prepared by the CONSULTANT under this contract shall, at the option of the MPO, become its property, and the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. Notwithstanding the above the CONSULTANT shall not be relieved of liability to the MPO for any damages sustained by the MPO by virtue of any breach of the contract by the CONSULTANT, and the MPO may withhold any payments to the CONSULTANT for the purpose of "set off" until such time as the exact amount of damages due the MPO from the CONSULTANT are determined.

10. Termination of Contract for Convenience: The MPO may terminate this contract at any time by giving written notice to the CONSULTANT of such termination which shall be effective upon receipt of the written notice. In that event, all the finished or unfinished documents and other materials as described in Paragraph 9, above, shall, at the option of the MPO, become its property. If the contract is terminated by the MPO as provided herein, the CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the CONSULTANT covered by this contract, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the CONSULTANT shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the CONSULTANT during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to default of the CONSULTANT, Paragraph 9 hereof, relative to termination, shall apply.
11. Changes: All alterations of the terms of the Agreement shall be in writing and Agreeable to both parties. The CONSULTANT shall immediately notify the MPO of any changes in conditions or law or of any other event, which may significantly affect its ability to perform the project in accordance with the provisions of this contract. Amendments or contract extensions will be negotiated upon the same rate as in Attachment A.
12. Equal Opportunity: In connection with this project, it is agreed that the CONSULTANT shall not, on the grounds of race, religious creed color, national origin, age, ancestry, physical handicap, medical condition, marital status or sex, discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state, or local laws.

In the event of the CONSULTANT's noncompliance with this nondiscrimination clause or with any such rules, regulations, or orders, the CONSULTANT may be declared ineligible for this or any further contracts.

- A. Policy: It is the policy of the Department of Transportation that Disadvantaged Business Enterprise (DBE), as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part, with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this Agreement.
- B. DBE Obligation: The recipient of this contract agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed (in whole or in part) with federal funds provided under the Agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps, in

accordance with 49 CFR Part 23, "Opportunity to Compete for and Perform Contracts." Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

- C. Sanctions and Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, the MPO shall impose such sanctions as they may determine to be appropriate including but not limited to: (1) withholding of payments to the CONSULTANT under the Agreement until the CONSULTANT complies, and/or (2) cancellation, termination, or suspension of the Agreement in whole or in part.
 - D. Incorporation of Provisions: The CONSULTANT will include Equal Employment Opportunity provisions in every subcontract, including procurement of materials and lease of equipment, unless exempted by the regulations, orders, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the MPO may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the MPO to enter into litigation to protect the interest of the MPO. In addition, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.
13. Interest of Members of the MPO and Others: No officer, member, or employee of the MPO, and no other public official of the governing body of the locality of localities in which the project is situated or being carried out, who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decisions relating to this Agreement which effects his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested or have any personal pecuniary interest, direct or indirect in this Agreement.
14. Assignability: The CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the MPO. Such restriction shall not apply to any assignment of earnings by the CONSULTANT, except that the MPO shall be notified of any such assignment.
15. Interest of CONSULTANT: The CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service required to be performed under this contract. The CONSULTANT further covenants that in the performance of this contract, no person having any such interest shall be employed.

16. Officials Not to Benefit: No members of or Delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share or part hereto or to any benefit to arise herefrom, except as a member of the public.
17. Identification of Documents: All final products and documents completed as part of this Agreement, other than documents exclusively for internal use by the CONSULTANT, shall carry the following notation on the front cover or a title page (or, in the case of maps, in the same block) containing the name of the CONSULTANT and the date prepared: "The preparation of this (report, map, document, etc.) was partially financed by FHWA PL funds and FTA Section 5303 funds through the regional office in Denver, Colorado." If either the MPO, FHWA, or FTA do not wish to subscribe to the findings and conclusions of the document, the following statement shall be added: "The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the MPO, FHWA, or the Federal Transit Administration."
18. Publication, Reproduction, and Use of Materials: No materials produced in whole or in part under this Agreement shall, during the life of this Agreement, be subject to copyright in the United States or in any other country. Permission and approval must be obtained from the MPO before any report, interim date, or results are published. Draft copies of the final product must be prepared by the CONSULTANT and reviewed and approved by the MPO, before publication. The CONSULTANT, subject to the approval by the MPO, shall have the authority to publish, disclose, distribute and otherwise use, in whole and part, any reports, data, or other materials prepared under this Agreement.
19. Audits and Inspections: At any time during normal business hours, as often as the MPO, FHWA, FTA, and/or Comptroller General of the United States may deem necessary, there shall be made available to the MPO, FHWA, FTA, the State of South Dakota, and/or representatives of the Comptroller General for examination of all of its records with respect to all matters covered by this Agreement and will permit the MPO, FHWA, FTA, State of South Dakota and/or representatives of the Comptroller General to audit, examine, and make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by the Agreement. If CONSULTANT expends Three Hundred Thousand (\$300,000) or more in federal funds during any CONSULTANT fiscal year covered, in whole or in part, under this agreement, then CONSULTANT shall be subject to the single agency audit requirements of the U.S. Office of Management and Budget (OMB) Circular A-133. If CONSULTANT expends less than \$300,000 in federal funds during any CONSULTANT fiscal year, the MPO, FHWA, FTA or SDDOT 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.

20. Responsibility for Claims and Liability:
- A. Any and all employees of the CONSULTANT or other persons, while engaged in the performance of any work or services required by the CONSULTANT under the Agreement, shall not be considered employees of the MPO, and any and all claims that may or might arise under the Workmen's Compensation Acts of the State of South Dakota on behalf of said employees or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services to be rendered shall in no way be the obligation or responsibility of the MPO.
 - B. The CONSULTANT indemnifies, saves, and holds harmless the MPO and any agents or employees thereof from any and all claims, demands, actions, or causes of action of whatsoever nature of character arising out of or by reason of the execution or performance of the work of the CONSULTANT provided for under this Agreement. All disputes regarding this contract shall be mitigated through negotiation with the Rapid City Director of Planning.
21. Ownership of Data: The MPO and other participating members of the Rapid City Transportation Planning Process shall have exclusive ownership of all data resulting from the work performed under this Agreement.
22. Information and Reports: The CONSULTANT will provide the MPO all information and reports, up to three (3) years from the date of the final payment to the CONSULTANT, as required by the regulations or orders and instructions issued pursuant thereto, and will permit reasonable access to its books, records, accounts, other sources of information and its facilities as may be determined by the MPO to be pertinent to ascertaining compliance with regulations, orders, and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another, who fails or refuses to furnish this information, the CONSULTANT shall so certify to the MPO and shall set forth what efforts it has made to obtain this information.
23. Deliveries and Products: The CONSULTANT, for the remuneration noted herein, shall provide the MPO the products as described in the 2004 Rapid City MPO UPWP and in Attachment A. Final payment shall be remitted upon the satisfactory completion of the deliverables. All the above products shall be completed by December 31, 2004.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective and duly authorized officers on the day and year last written below.

RAPID CITY MPO, RAPID CITY, SD

BLACK HILLS COUNCIL OF LOCAL GOVERNMENTS

Chairperson, Rapid City, MPO Date

Executive Director, BHCOG Date

CITY OF RAPID CITY

ATTEST:

Mayor Date

Finance Officer Date

"ATTACHMENT A"

SCHEDULED WORK ITEMS FOR CONTRACT BETWEEN RAPID CITY MPO AND BLACK HILLS COUNCIL OF LOCAL GOVERNMENTS FOR FTA SECTION 5303 and FHWA PL PLANNING ASSISTANCE

Personnel Services

FTA Section 5303/5307 Grant Management

Program Elements:

1. General administrative support.
2. Review, monitor, and evaluate FTA bulletins, rules, regulations, guidelines and circulars.
3. Attend FTA training sessions, workshops, and other FTA sponsored training meetings.
4. Administration of operating, planning, and capital grants; including preparation and submittal of Quarterly Progress reports, FSR's, NTD reports and DBE goal.
5. Inter-governmental coordination among City of Rapid City, BHCOG, SDDOT, FHWA and FTA. This will include staff support and attendance at transportation planning process committee meetings.
6. Staff time for meeting with the Rapid Transit Advisory Board (RTAB) on a quarterly basis. Staff time will also be devoted to preparation of agendas and previous meeting minutes.
7. Development of required TIP items and the Section 5303 UPWP and any subsequent amendments.
8. Prioritize Section 5310 project requests.
9. Ensure that transportation needs are identified and actively pursue coordination of services among transit providers. Coordination issues will be addressed during the Rapid Transit Advisory Board meetings, which are held on a quarterly basis. Various coordination activities will be addressed and evaluated.

End Products:

1. Continue coordination with Black Hills Workshop & Training Center to ensure delivery of transit services for clients and avoid duplication of services when possible.
2. Continue coordinated sensitivity training efforts with Western Resources for Disabled Independence for the disabled population within the area.
3. Continue cooperative effort with Community Alternatives for the Black Hills to transport inmates to job sites within Rapid City.
4. Continue efforts to coordinate with Youth and Family Services for delivery of transit services for children.
5. Continue coordinated effort with Rapid City Public Schools for delivery of transit service.

6. Continue coordinated effort with Pennington County Office on Aging for senior transportation on ADA Dial-A-Ride service.
7. Coordinate with RSVP and Adult Services & Aging in joint effort to assist area seniors in overcoming anxiety many have regarding the use of public transportation.
8. Efficient and effective overall program management.
9. Maintain compliance with congressional legislation, FTA regulations and guidelines.
10. Improve image and awareness of RAPID TRANSIT SYSTEM.
11. Coordination of FTA programs with other governmental entities.
12. Improve communication between and among governmental bodies.
13. Provide input to statewide STIP development and local TIP development.
14. Develop five-year Operating/Capital Plan

Line Item Cost: \$13,900

Transportation Improvement Program (41.15.00)

Program Elements/End Products:

1. Develop the transit sections of the five-year TIP and provide any necessary program amendments.
2. Develop the transit elements for the 2004-2008 TIP.
3. Prepare TIP amendments.

Line Item Cost: \$200

Process Operations (41.11.00)

Program Elements/End Products:

1. Prepare Section 5307 grant application and required information for the UPWP to obtain Section 5303 funding.
2. Quarterly progress reports for Section 5307 grants, including FSR's for the Section 5307 grant.
3. Compliance with FTA grant provisions.
4. Coordination with FTA, SDDOT, BHCOG, Rapid City MPO, regarding the Section 5303 program.
5. Restructure route segments where required.
6. Monitor the anti-drug program for employees who perform sensitive safety functions.
7. RTS will monitor the transit system safety program.
8. Verify that the ADA mandates are being met by the Rapid City Paratransit Plan.
9. Review fixed route system efficiency.

Line Item Cost: \$3,900

CERTIFICATION OF THE RAPID CITY MPO

I HEREBY CERTIFY that I am the Chairperson of the Rapid City MPO Executive Policy Committee and that the above contractor or his representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to:

- A. Employ or retain, or agree to employ or retain, any firm or persons, or
- B. Pay, or agree to pay, any firm, person, or organization, any fees, contributions, donations, or consideration of any kind.

I ACKNOWLEDGE that this Certification is to be furnished to the Federal Highway Administration, Federal Transit Administration, U.S. Department of Transportation, in connection with this contract involving participation of PL funds and Section 5303 funds respectively, and is subject to applicable state and federal laws, both criminal and civil.

DATED this _____ day of December, 2003.

RAPID CITY MPO

Ken Davis, Chairperson
Executive Policy Committee
Rapid City MPO

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(S E A L)

CERTIFICATION OF CONTRACTOR

I HEREBY CERTIFY that I am the Executive Director and duly authorized representative of the firm of the BLACK HILLS COUNCIL OF LOCAL GOVERNMENTS, and that neither I, nor the above firm I here represent, has:

- A. Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or persons (other than a bona fide employee working solely for me or the above contractor) to solicit or secure this contract;
- B. Agreed, as an expression of implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or
- C. Paid, or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above contractor) any fees, contributions, donations, or consideration of any kind for, in connection with, procuring or carrying out the contract.

I ACKNOWLEDGE THAT this Certification is to be furnished to the Federal Highway Administration, Federal Transit Administration, U.S. Department of Transportation, in connection with this contract involving participation of PL funds and Section 5303 funds respectively, and is subject to applicable state and federal laws, both criminal and civil.

BLACK HILLS COUNCIL OF GOVERNMENTS

Executive Director

WITNESS: _____

RAPID CITY MPO:

Ken Davis, Chairperson
Executive Policy Committee
Rapid City MPO

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer
(SEAL)

Date

DBE CONTRACT GOALS

It is the policy of the City of Rapid City that equal opportunity to participate in its procedures will be provided to DBE's. To accomplish this objective, the City of Rapid City requires the contractor to assert a good-faith effort to attain the specified goals for DBE participation.

The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBE's (as compared to the total value of all work performed under this contract) and/or by the percentage of the net profit which the parties agree will be shared by DBE's where a joint venture is entered into for the completion of the project.

A contractor may satisfy the requirements by having DBE status, by subcontracting portions of the work to DBE's, and/or by entering into a joint venture with DBE's.

The City of Rapid City has specified a DBE goal of 0 percent for the work to be performed under this contract.

The City of Rapid City, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

APPENDIX A TO TITLE VI ASSURANCE

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

- (1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (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 part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement 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) Solicitation for Subcontracts 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 or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, 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 City of Rapid City or the FHWA and FTA 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 refuses to

furnish this information, the contractor shall so certify to the City of Rapid City, the FHWA or the FTA 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 nondiscrimination provisions of this contract, the City of Rapid City shall impose contract sanctions as it or FHWA or the FTA may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
 - (b) cancellation, termination, or suspension of the contract, in whole or in part.

- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurement 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 City of Rapid City the FHWA or the FTA 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 supplier as a result of such direction, the contractor may request the City of Rapid City to enter into such litigation to protect the interests of the City of Rapid City, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS
PRIMARY COVERED TRANSACTIONS

The _____ certifies to the best of its knowledge and belief that it and its

(Name of Contractor)

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 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 enumerated in paragraph two (2) of this certification; and,
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the primary participant (Applicant for a FTA Grant or Cooperative Agreement) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

THE _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND
(Name of Contractor)

ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. ss 3801 ET SEQ. ARE APPLICABLE THERETO.

Authorized Official

Date

Title

CERTIFICATION
OF
RESTRICTIONS ON LOBBYING

I, Van Lindquist, hereby certify on behalf of the Black Hills Council of Local Governments, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person or influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee 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.
- (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 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is 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.

Executed this _____ day of December, 2003.

(Signature and Title of Authorized Official)