

**AGREEMENT BETWEEN CITY OF RAPID CITY AND
CITY OF BOX ELDER
FOR ACCOMPLISHING THE
RAPID CITY AREA TRANSPORTATION PLANNING PROCESS**

THIS AGREEMENT entered into by the City of Rapid City, hereinafter **CITY**, and the City of Box Elder, hereinafter **BOX ELDER**, is for the purpose of providing partial funding of the regional area transportation planning process study activities scheduled to be performed during calendar year 2013 as outlined in the CY 2013 Unified Planning Work Program attached to this agreement, using planning funds available from apportionments made under Subsection f, Section 104, Title 23, United States Code.

WHEREAS, the South Dakota Governor has designated Rapid City as being responsible for carrying out the provisions of Section 134 of Title 23 of the United States Code, and

WHEREAS, Federal Aid Highway Planning Funds have been apportioned to the South Dakota Department of Transportation for reimbursement of **CITY** activities, and

WHEREAS, **CITY** and **BOX ELDER** desire to cooperate to reach a formal agreement on the objectives, organization, work program preparation and Federal-Aid reimbursements for the transportation planning process, and

WHEREAS, **CITY** and **BOX ELDER** prepared a mutually acceptable CY 2013 Unified Planning Work Program which has been adopted by the Executive Policy Committee of the Rapid City Area Metropolitan Planning Organization,

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

I.

SCOPE OF WORK

- A. The work to be performed under the terms of this Agreement for the Rapid City Metropolitan Planning Organization Transportation Planning Process will be conducted in accordance with the CY 2013 Unified Planning Work Program included as Exhibit A.
- B. Technical documents and manuals prepared for use in accomplishing work programs will be submitted to the Technical Coordinating Committee for their review and comments made available to the Executive Policy Committee of the Rapid City Area Metropolitan Planning Organization.
- C. **CITY** Responsibility:
 - 1) Provide the necessary administration of committee and staff, and consult, collaborate and coordinate with **BOX ELDER** to accomplish the tasks as contained in the CY 2013 Unified Planning Work Program.
 - 2) **CITY** shall provide to **BOX ELDER** assistance as outlined in the CY 2013 Unified Planning Work Program.
 - 3) Arrange for and conduct meetings and conferences to review work details and make presentations to the principal participants and other interested groups as will best effect cooperation and understanding in the program.
- D. **BOX ELDER** Responsibility:

Assign qualified personnel as needed to execute the CY 2013 Unified Planning Work Program.

II.

DURATION OF AGREEMENT

This agreement covers the period from January 1, 2013, and ending April 30, 2014.

III.

PAYMENT PROCEDURES

- A. The maximum limiting amount of this Agreement cannot be exceeded by the combined vouchering of the participating parties in the Rapid City Area Transportation Planning Process and shall not exceed one hundred twenty-five

thousand dollars (\$125,000) to include \$102,437.50 in federal funding and \$22,562.50 of match funding to be provided by City of Box Elder.

- B. **BOX ELDER** agrees to fund the non federal-participating share. The maximum limiting amount of this Agreement is \$125,000. The federal-participating share is \$102,437.50 and the non federal-participating share is \$22,562.50.
- C. **BOX ELDER** agrees to provide compensation to the **CITY** for the non-federal-participating share prior to the CITY entering into an agreement or contract with a consultant to perform work in the CY 2013 Unified Planning Work Program.
- D. **CITY** agrees to seek compensation for the Federal participating share of eligible costs incurred for work activities specified in the approved CY 2013 Unified Planning Work Program. Compensation will be by payment of 81.95 percent of the total eligible costs incurred for work activities in the approved CY 2013 Unified Planning Work Program for Federal Highway Administration PL funds.
- E. Expenses charged to this Agreement must not exceed the dollar amount as described in the CY 2013 Unified Planning Work Program adopted by the Executive Policy Committee and approved by the Federal Highway Administration without an amendment to the CY 2013 Unified Planning Work Program.

IV.

AMENDMENTS TO THE CY 2013 UNIFIED PLANNING WORK PROGRAM

- A. An amendment to the CY 2013 Unified Planning Work Program is required whenever there are changes in the program affecting the composition, scope and duration of the work or whenever any funds are to be reallocated among various line items in the CY 2013 Unified Planning Work Program.
- B. Amendments to the CY 2013 Unified Planning Work Program may be proposed only after consultation with the parties to this Agreement and the South Dakota Department of Transportation.
- C. All proposed amendments to the CY 2013 Unified Planning Work Program must be approved by the Executive Policy Committee, the South Dakota Department of Transportation and the Federal Highway Administration, and do not become

effective until all approvals are secured.

V.

REPORTS

Reports shall be prepared as outlined in the CY 2013 Unified Planning Work Program and, upon final approval by the Executive Policy Committee and the Federal Highway Administration, copies will be distributed to the participating agencies.

VI.

INSPECTION OF WORK

The South Dakota Department of Transportation, CITY and authorized personnel of the Federal Highway Administration shall, at all times, be accorded proper facilities for review and inspection of the work outlined in the CY 2013 Unified Planning Work Program (Exhibit A).

VII.

RECORDS

CITY shall maintain an accurate accounting system as to all costs incurred in connection with the subject of this Agreement for three (3) years after the date of final payment by CITY.

VIII.

OWNERSHIP OF DATA

Documents and all products, including digital data created under this Agreement, are to be the joint property of the political jurisdiction and governmental agencies participating in the transportation planning process.

IX.

PUBLICATION OR RELEASE OF INFORMATION

- A. Product and/or compilation of material under this Agreement subject to copyright shall not be copyrighted without written approval of the South Dakota Department

of Transportation and the CITY.

- B. Either party to this Agreement may initiate a request for publication of any report or portions thereof. In the event of failure of agreement between **CITY** and **BOX ELDER**, each party reserves the right to publish independently, in which event, nonconcurrence of the other party shall be set forth if requested.
- C. Publication by either party shall give credit to the other party.

X.

CLAIMS

It is 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 Workmen's Compensation Act of the State of South Dakota on behalf of said employees, while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part 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. Each party agrees to defend at its own sole cost and expense any action or proceeding commenced for the purpose of asserting a claim of whatever character arising as a result of its actions.

XI.

SUBCONTRACTING

All agreements or contracts pertinent to the Work Program and subject to partial reimbursement under this Agreement shall be submitted to the South Dakota Department of Transportation for review prior to final execution and shall be approved by the Executive Policy Committee, South Dakota Department of Transportation and the Federal Highway Administration. All consultant and/or subcontracting selection procedures shall comply with 23 CFR 172. All subcontracts must contain all of the provisions of this agreement.

XII.

NONDISCRIMINATION

BOX ELDER and CITY agree to comply with the requirements of the extract from Executive Order 11246 and Appendix A of Title VI of the Civil Rights Act of 1964, identified as Exhibit B attached hereto and hereby, by this reference, made a part of this Agreement.

XIII.

TERMINATION OF AGREEMENT

BOX ELDER and CITY each reserve the right to terminate this Agreement by a thirty (30) day written notice by either party to the other party. If Box Elder terminates the Agreement after payment has been made in accordance with Section III.B., the parties agree that no refund will be issued.

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

CITY OF RAPID CITY

Sam Kooiker, Mayor Date

Attest:

Pauline Sumption, City Finance Officer

[CITY SEAL]

Approved as to Form:

City Attorney

CITY OF BOX ELDER

Bill Griffiths 7 March 2013

Bill Griffiths, Mayor Date

Attest:

Mystee Lashwood 3-7-13

Mystee Lashwood, City Finance Officer

Approved as to Form:

[Signature]

City Attorney

EXHIBIT A

2013 Work Program

EXHIBIT B

COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

During the performance of this contract, **BOX ELDER** and CITY agree as follows:

- 1) Compliance with Regulations: **BOX ELDER** and CITY shall each comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: **BOX ELDER** and CITY, with regard to the work to be performed by either of them after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, creed, age, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. **BOX ELDER** and 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 Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by **BOX ELDER** or CITY, for work to be performed under a subcontract, including procurements of materials or equipment, each agree that 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 grounds of race, color, creed, age, sex or national origin.
- 4) Information and Reports: **BOX ELDER** and CITY shall each provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to each of their books, records, accounts, other sources of information, and its facilities as may be determined by CITY or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of **BOX ELDER** or **CITY** is in the exclusive possession of another who fails or refuses to furnish this information, they shall so certify to

CITY, 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 **BOX ELDER'S** or **CITY'S** noncompliance with the nondiscrimination provisions of this contract, **CITY** shall impose such contract sanctions as it, the south Dakota Department of Transportation, or the Federal Highway Administration, may determine to be appropriate including, but not limited to,
 - a. Withholding of payments to either party, and/or
 - b. Cancellation, termination or suspension of the contract, in whole or in part.
- 6) Incorporation of Provisions: **BOX ELDER** and **CITY** each agree to include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. **BOX ELDER** and **CITY** will take such action with respect to any subcontract or procurement as **CITY**, 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, either party may request **CITY** or **BOX ELDER** to enter into such litigation to protect the interests of **CITY** or **BOX ELDER**, and in addition, either party may request the United States to enter into such litigation to protect the interests of the United States.