

**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 is entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the City of Rapid City, South Dakota, referred to in this Agreement as the "MPO," for the purpose of providing partial funding of the metropolitan planning area study activities scheduled to be performed during calendar year (CY) 2013, as outlined in the CY 2013 Unified Planning Work Program, attached to and made a part of this Agreement by reference, 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.

BACKGROUND:

1. The Governor of the State of South Dakota 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.;
2. Federal-Aid Highway and Transit Planning Funds have been apportioned to the STATE for reimbursement of MPO activities;
3. The MPO, acting on behalf of the local units of government, and the STATE, want to cooperate to reach formal agreement on the objectives, organization, work program preparation, and Federal-Aid reimbursements for the Transportation Planning Process; and,
4. The MPO and the STATE will prepare a mutually acceptable Unified Planning Work Program which must be adopted by the MPO.

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 2013 Unified Planning Work Program incorporated in this Agreement by reference as **Attachment D**.
 - B. MPO Responsibilities:
 - 1) The MPO, acting by and 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 will provide a Secretary for the Citizens Advisory Committee, Technical Coordinating 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 will assure the accomplishment of work activities identified in the Unified Planning Work Program.
- 4) The MPO will 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.
- 5) The MPO will review work activities and 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.
- 6) The MPO will submit technical documents and manuals prepared for use in accomplishing work activities to the Citizens Advisory Committee and the Technical Coordinating Committee for its review and comment. Upon completion of the Citizens Advisory Committee's and the Technical Coordinating Committee's review, the technical documents and manuals will then be submitted to the Executive Policy Committee for review and comment.
- 7) The MPO will disseminate information on all documents prepared under this Agreement to the local members for their review and comments.

C. STATE Responsibilities:

- 1) The STATE will 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 will provide staff assistance to the MPO and other assistance as necessary to implement the Unified Planning Work Program.
- 3) The STATE will transmit to the MPO any documents developed by the STATE that affect the local governmental entities comprising 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, 2013, to April 30, 2014, unless terminated earlier pursuant to the terms of this Agreement.

3. Payment Procedures

- A. The maximum limiting amount will not exceed Six Hundred Eleven Thousand, Three Hundred Sixty-three Dollars (\$611,363), and cannot be exceeded by the combined vouchering of the participating parties in the Rapid City Transportation Planning Process and for which this Agreement will be effective.

- B. The maximum distribution of FEDERAL HIGHWAY ADMINISTRATION Planning Funds is Six Hundred Eleven Thousand, Three Hundred Sixty-three Dollars (\$611,363) for which this Agreement will regulate and be accountable for are as follows, until amended, for work in the CY 2013 Unified Planning Work Program.
- C. The STATE will 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 2013 Unified Planning Work Program. Compensation for 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 2013 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.
- D. The STATE will make payment to the MPO not more than once every four (4) weeks for costs incurred for services performed under this Agreement. The MPO will submit direct vouchers within twenty (20) days following the end of the period covered by the account. The direct vouchers will be the basis of payment and will include supporting documentation for all allowable costs. Duly authorized representatives of the STATE will provide an interim audit of each voucher. The STATE, upon receipt of the direct vouchers, will provide payment to the MPO of all allowable, documented costs within thirty (30) days of receipt of the voucher. Costs documented at a later date may be reimbursed on a subsequent voucher.
- E. The MPO agrees that employees of the MPO whose time is directly assignable to the program will keep and sign a time record showing the element of the program, date and hours worked, and title of position.
- F. The MPO will charge specific work items as contained in the approved CY 2013 Unified Planning Work Program. The MPO will provide the STATE with the MPO'S annual progress report.

4. Travel

All travel by the MPO which will use funds in accordance with this Agreement will 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 2013 are identified in the CY 2013 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 MPO'S Board.
- 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 will be by a letter supplement to this Agreement.

6. Reports

Reports will be prepared as outlined in the Unified Planning Work Program, reviewed by the participating agencies, and then made available to the MPO'S Board.

7. Inspection of Work

The STATE and the MPO will, at all times, be accorded proper facilities for review and inspection of each other's work as outlined in the approved CY 2013 Unified Planning Work Program. In addition, the STATE and the MPO will also, at all times, provide proper facilities for review and inspection of this same work to authorized personnel of the FEDERAL HIGHWAY ADMINISTRATION and 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 will maintain an accurate cost accounting system for all costs incurred under this Agreement, and costs will be clearly identified with activities performed under this Agreement.
- C. Upon reasonable notice, the MPO will allow STATE or FEDERAL HIGHWAY ADMINISTRATION 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. The MPO will keep all records for a period of three (3) years after the date of final payment by STATE under this Agreement and all other pending matters are closed.
- D. If the MPO expends Five Hundred Thousand Dollars (\$500,000) or more in federal funds during any MPO calendar year covered under this Agreement, the MPO will 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 Five Hundred Thousand Dollars (\$500,000) in federal funds during any MPO calendar 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 will not copyright material developed under this Agreement without written authorization from the STATE, the FEDERAL HIGHWAY ADMINISTRATION and the FEDERAL TRANSIT ADMINISTRATION. The STATE, the 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 under this Agreement 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 will be set forth, if requested.

C. All reports published by the STATE or the MPO will 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 will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. 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 no employee of either party, while engaged in the performance of any work or services, will be considered an employee of the other party, and no claim that may or might arise under the South Dakota Workers' Compensation Act on behalf of said employee, while so engaged on any of the work or services provided to be rendered in this Agreement, will be the obligation or responsibility of the other party.

12. Subcontracting

The MPO, with the MPO'S own staff or by subcontract with other public agencies, will perform work valued at not less than fifty percent (50%) of the contract amount excluding specialized services. The MPO will submit to the STATE all agreements or contracts pertinent to the Work Program and subject to partial reimbursement under this Agreement for review and approval prior to final execution and will be approved by the MPO'S Board. All subcontracts must contain all of the provisions of this Agreement.

13. Nondiscrimination/ADA

The MPO will 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 to and made a part of this Agreement. The MPO will submit, upon request, quarterly Title VI (Civil Rights) State of Contractor reports to the STATE. The MPO will provide services in compliance with the Americans With Disabilities Act of 1990, and any amendments.

14. Certification for Grants, Loans, and Cooperative Agreements

The MPO will comply with the requirements identified in **Attachment B**, attached to and made a part of this Agreement.

15. Certification for Debarment, Suspension and Other Responsibility Matters

The MPO will comply with the requirements identified in **Attachment C**, attached to and made a part of this Agreement.

16. Termination

Either party may terminate this Agreement by providing thirty (30) days' written notice to the other.

17. Availability of Funds

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

18. The MPO has designated its Chairman as the MPO'S authorized representative and has empowered the Chairman with the authority to sign this Agreement on behalf of the MPO. A copy of the MPO'S board minutes or resolution authorizing the execution of this Agreement by the Chairman as the MPO'S authorized representative is attached to this Agreement as **Attachment E**.

The parties have caused this Agreement to be executed by their proper officers and representatives.

City of Rapid City, South Dakota	State of South Dakota Department of Transportation
By: _____ Sam Kooiker	By: _____ Darin P. Bergquist
Its: Mayor	Its: Secretary
Date: _____	Date: _____
Attest:	Recommended By:
_____ City Finance Officer/Clerk	_____ Mike Behm, Project Development Engineer
(City Seal)	Approved as to Form:
Approved as to Form:	_____ Special Assistant Attorney General
_____ City Attorney	
Rapid City Metropolitan Planning Organization	
By: _____ Nancy Trautman	
Its: Chairman, Executive Policy Committee	
Date: _____	

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

1. Compliance with Regulations: The contractor will 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 hereinafter incorporated by reference and made a 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, religion, national origin, sex, age, or disability 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 leases of equipment, each potential subcontractor or supplier will 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, religion, national origin, sex, age, or disability.
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 a 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 this information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the non-discrimination 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 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 (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 non-compliance: Provided, however, that in the event of 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 South Dakota Department of Transportation to enter into such litigation to protect the interests of the State of South Dakota, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ATTACHMENT B

CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The MPO certifies, to the best of MPO'S knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the MPO, 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 will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The MPO will 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 will 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 will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ATTACHMENT C

CERTIFICATION FOR DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The MPO, as a recipient of FEDERAL HIGHWAY ADMINISTRATION and FEDERAL TRANSIT ADMINISTRATION funds, 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 MPO certifies that if it becomes aware of any later information that contradicts the statements of paragraph (1) through (4) above, it will promptly inform FHWA or South Dakota Department of Transportation.