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MEMORANDUM

TO: Tamara Pier, City Attorney
FROM: Karen Jones, Administrative Secretary
RE: Financial Agreement and Amendment #1 for US 16 Corridor Study
DATE: September 19, 2000

Tamara,

For your review I am attaching the Financial Agreement between the City of Rapid City and SDDOT regarding the US 16 Corridor Study, and Amendment #1 prepared by SDDOT pertaining to this agreement.

The original financial agreement was prepared by SDDOT, sent to us, approved by Council and sent back to SDDOT for signatures. When they received it for final signatures, they decided it needed to be amended, hence Amendment #1.

We would like to include this amendment on the Legal and Finance Committee agenda for approval on September 25th.

If you have any questions regarding either of these documents, please contact Jeff Gies as he is more familiar with them than I am.

Thanks Tamara.

AMENDMENT NUMBER ONE
AGREEMENT NUMBER 310717

This AMENDMENT, dated this 6th day of September, 2000, by and between the State of South Dakota, Department of Transportation, hereinafter referred to as the "STATE" and Rapid City Metropolitan Planning Organization, hereinafter referred to as the "MPO", and the City of Rapid City, South Dakota, hereinafter referred to as "CITY".

WHEREAS, the STATE wishes to amend the terms of this Agreement.

NOW, THEREFORE, it is mutually agreed between the STATE and the MPO and the CITY that the provisions of this amendment be added to Agreement Number 310717.

Except as modified by this Amendment, the terms and conditions of the original agreement shall remain in full force and effect.

CITY OF RAPID CITY

City Finance Officer

Mayor

**RAPID CITY METROPOLITAN
PLANNING ORGANIZATION**

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

Executive Policy Committee Chair.

Ronald W. Wheeler, Secretary

Recommended by:

Approved as to form:

Leon Schochenmaier,
Director of Planning / Engineering

Assistant Attorney General

CHANGES IN AGREEMENT

Changes in objectives and scope of the financial agreement must be approved prior to executing, in writing, by STATE. Requests for increases in study time or funding must be submitted to STATE before extra work is started. All increases in study time or funding require execution of a supplemental Agreement.

OWNERSHIP OF DATA

The ownership of data collected under this Agreement, together with summaries and charts derived therefrom, shall be vested jointly of those participating in this Agreement.

DISPUTES

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties hereto shall be referred to State's Secretary of Transportation or his duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to this Agreement.

TERMINATION FOR CAUSE

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

CIVIL RIGHTS

The MPO and CITY do agree to be bound by Exhibit 1 attached hereto and made a part hereof by reference thereto, said assurance being entitled, "EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION". MPO AND CITY agree to provide services in compliance with the Americans with Disabilities Act of 1990.

CODE OF CONDUCT

The MPO and CITY warrant that they have not employed or retained any company or person, other than a bona fide employee working solely for the MPO and / or CITY, to solicit or secure the agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the MPO and / or CITY, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of the agreement. For breach or violation of this warranty, the DOT shall have the right to annul the agreement without liability, or, in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The CITY and MPO each certify, by signing this agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

EXHIBIT 1

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

STANDARD TITLE VI ASSURANCE

SEPTEMBER 1, 1997

TITLE VI - NONDISCRIMINATION:

During the performance of this contract, the CITY and MPO, for themselves, their assignees and successors in interest (each hereinafter referred to as the "Contractor") agree as follows:

1. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally or State assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex 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 Subcontracts, 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 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, sex 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 State Transportation Department 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 State Transportation Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts were made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the non-discrimination provisions of this contract, the State Transportation Department 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.

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 State Transportation Department 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 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 State Transportation Department to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

FINANCIAL AGREEMENT BETWEEN

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION RAPID CITY METROPOLITAN PLANNING ORGANIZATION CITY OF RAPID CITY

IT IS HEREBY AGREED between the State of South Dakota acting through the Department of Transportation, hereinafter referred to as STATE, and the Rapid City Metropolitan Planning Organization, herein referred to as MPO, and the City of Rapid City, South Dakota, hereinafter referred to as CITY, as follows:

WHEREAS, the STATE, MPO and CITY agree that a US Highway 16 Corridor Study in southern Rapid City is necessary, and

WHEREAS, the US Highway 16 Corridor Study will include both STATE highways and CITY streets and therefore the cost of the study should be split 50%, and

WHEREAS, the STATE, MPO and CITY agree that a consultant should be hired to conduct the study,

NOW THEREFORE, it is mutually agreed as follows:

A. STATE agrees to perform the following:

1. Will reimburse the CITY for 50% of the actual and final cost of the US Highway 16 Corridor Study. The STATE'S estimated share of the cost of the study is \$70,000. STATE will reimburse the CITY within 30 days of billings.

B. CITY agrees to perform the following:

1. The CITY, acting as the administrator of the MPO, will hire and manage a consultant to conduct the US Highway 16 Corridor Study. Procurement will be consistent with 49 CFR 18.36 and 23 CFR Part 172.
2. The CITY will coordinate the various aspects of this study with the STATE, and will involve the STATE in meetings pertaining to this study.
3. The CITY, acting as the administrator of the MPO, will provide 50% contribution to the study, which is estimated at \$70,000. Funding will be provided by 81.95% Federal PL Funds and 18.05% local match.

- 4. The CITY, acting as administrator of the MPO, shall maintain an accurate cost accounting system for all costs incurred under this agreement and clearly identified with activities performed under this agreement.
- 5. Upon reasonable notice, the CITY, acting as administrator of the MPO, will allow STATE and federal auditors to audit all records related to this agreement during normal business hours. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after the date of final payment under this agreement.

The CITY, STATE, and MPO by signing this agreement, evidence authority to enter into this agreement through formal action of their governing body and for payment to be made thereunder.

Dated this 5 day of June, 2000

RAPID CITY METROPOLITAN PLANNING ORGANIZATION

By: [Signature]
Executive Policy Committee Chairperson

CITY OF RAPID CITY

By: [Signature]
City Finance Officer

[Signature]
Mayor

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

By: [Signature]
Director of Planning/Engineering

APPROVED AS TO FORM
~~SUBJECT TO REVISION~~
Assistant Attorney General

Provisions added