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CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

PLANNING DEPARTMENT

300 Sixth Street

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Transportation Planning Division
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MEMORANDUM

TO: Legal and Finance Committee

FROM: Patsy Horton, Transportation Planning Coordinator

DATE: November 21, 2002

RE: Agreement for the Federal Highway Administration planning funds

Attached is an Agreement between the City of Rapid City and the South Dakota Department of Transportation for accomplishing the Rapid City area metropolitan transportation planning process. This agreement provides the partial funding of the Federal-Aid Highway Planning Funds within the metropolitan study area for activities identified in the 2003 Unified Planning Work Program. Council approved the draft 2003 Unified Planning Work Program on October 21, 2002.

STAFF RECOMMENDATION: Staff recommends approval of the Agreement between the City of Rapid City and the South Dakota Department of Transportation for accomplishing the Rapid City Area Transportation Planning Process – Federal Highway Administration planning funds.

c: Marcia Elkins, Planning Director

**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 area study activities scheduled to be performed during calendar year 2003 as outlined in the CY 2003 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).

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

WHEREAS, Federal-Aid Highway 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 2003 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.
- 2) Provide a Secretary for the Citizens Advisory Committee, the 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.) to record committee action and to distribute meeting minutes to committee members and other interested persons.
- 3) Assure the accomplishment of work activities identified in the Unified Planning Work Program.
- 4) Schedule and conduct meetings and conferences pertaining only to Transportation Planning relative to Section 134 of Title 23 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 Coordinating Committee for their review and comments and then be made available to the Executive Policy Committee.
- 5) Disseminate information on all documents to the local transportation planning committee members for their review and comments.

C. STATE Responsibility

- 1) Administer the funds apportioned to South Dakota in accordance with FHWA Policies and procedures for Section 134 Title 23, U.S.C.
- 2) Provide staff assistance to the MPO and other assistance as necessary to implement the Unified Planning Work Program.
- 3) Submit all documents from the MPO to FHWA. The SDDOT will review these submissions to assure that the concerns of the SDDOT and the FHWA 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 FHWA approval of these documents.
- 4) 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 FHWA to assure that the local concerns are properly addressed.

2. Duration of Agreement

This Agreement covers the period from January 1, 2003 to December 31, 2003.

3. Payment Procedures

- A. The maximum limiting amount which cannot be exceeded by the combined vouchering of the participating parties in the Rapid City Metropolitan Transportation Planning Process and for which this Agreement shall be effective shall not exceed \$366,659.
- B. The maximum distribution of PL funds for which this Agreement shall regulate and be accountable for are as follows, until amended, for work in the CY 2003 Unified Planning Work Program: \$366,659.
- C. 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 2003 Unified Planning Work Program. Compensation 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 2003 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. Payments will be made to the MPO not more than once every four weeks and for costs incurred for services performed under this Agreement. The MPO shall submit direct vouchers in quadruplicate within 20 days following the end of the period covered by the account. The direct vouchers shall be the basis of payment. Payment shall be made subject to audit by duly authorized representatives of the STATE. The STATE, upon receipt of the direct vouchers, shall make every reasonable effort to provide prompt payment to the MPO.
- E. 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.
- F. The MPO will charge specific work items as contained in the approved CY 2003 Unified Planning Work Program. The STATE and the MPO will provide each other with its annual progress reports.

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 procedures established for Third Party Contracts as pertaining to all STATE employees. Estimates of travel by the MPO which will use funds in accordance with the Agreement for CY 2003 are identified in the CY 2003 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 others work as outlined in the approved CY 2003 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.

8. Records and Audits

- A. 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.
- B. Upon reasonable notice, the MPO will allow STATE or FEDERAL GOVERNMENT representatives 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.
- C. If the MPO expends Three Hundred Thousand Dollars (\$300,000) or more in federal funds during any MPO fiscal year covered, in whole or in part, under this Agreement, then

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 \$300,000 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 and the FHWA. The STATE and the FHWA 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 portions 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 FHWA such as "prepared in Cooperation with the U.S. Department of Transportation, Federal Highway Administration."

11. Claims

The MPO agrees to indemnify, save and hold harmless the STATE, and all its agents and employees, of and from any and all claims, demands, actions or causes of action of whatever nature or character arising out or by reason of, the work to be performed by the MPO as a result of this Agreement. 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 Worker's

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.

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 Exhibit "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 Federal-Aid Planning Funds appropriated by Congress.

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

APPROVED AS TO FORM:

CITY OF RAPID CITY

SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION

ATTEST: _____
City Finance Officer

William J. Nevin
Assistant Attorney General

BY: _____
Mayor

RECOMMENDED: _____
Leon Schochenmaier
Director of
Planning/Engineering

BY: _____
Chairman
Executive Policy Committee

BY: _____
Ronald W. Wheeler
Secretary

DATED: _____

DATED: _____

EXHIBIT 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 AGREEMENT, the MPO and the STATE, agree as follows:

- (1) Compliance with Regulations: The MPO and the State shall 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 herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The MPO and the State, 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 MPO and the State 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 Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the MPO or the State for work to be performed under a subcontract, including procurements of materials or equipment, 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 ground of race, color, or national origin.
- (4) Information and Reports: The MPO and the State 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 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 MPO or the State is in the exclusive possession of another who fails or refuses to furnish this information, the MPO or the State shall so certify to the State 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 MPO or the State's noncompliance with the nondiscrimination provisions of this contract, the State 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 either party 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 MPO and the State 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 MPO or the State shall take such action with respect to any subcontract or procurement as the State 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 the State to enter into such litigation to protect the interests of the State, and, in addition, either party 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: _____
Mayor, City of Rapid City

DATED: _____