

**AGREEMENT BETWEEN CITY OF RAPID CITY AND
PENNINGTON COUNTY
FOR ACCOMPLISHING THE
RAPID CITY AREA TRANSPORTATION PLANNING PROCESS**

THIS AGREEMENT entered into by the City of Rapid City, hereinafter **CITY**, and PENNINGTON COUNTY COMMISSION, hereinafter **PENNINGTON COUNTY**, is for the purpose of providing partial funding of the regional area transportation planning process study activities scheduled to be performed during calendar year 2022 and 2023 as outlined in the CY 2022 Unified Planning Work Program (Attachment E), 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 **PENNINGTON COUNTY** 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 **PENNINGTON COUNTY** prepared a mutually acceptable CY 2022 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 2022 Unified Planning Work Program included as Exhibit E.
- 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 **PENNINGTON COUNTY** to accomplish the tasks as contained in the CY 2022 Unified Planning Work Program.
 - 2) **CITY** shall provide to **PENNINGTON COUNTY** assistance as outlined in the CY 2022 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. **PENNINGTON COUNTY** Responsibility:

Assign qualified personnel as needed to execute the CY 2022 Unified Planning Work Program.

II.

DURATION OF AGREEMENT

This agreement covers the period from June 1, 2022, and ending December 31, 2023.

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 Two hundred thousand dollars (\$200,000) to include \$163,900 in federal funding and \$18,050 of match funding to be provided by PENNINGTON COUNTY.

- B. **PENNINGTON COUNTY** agrees to fund a portion of the non federal-participating share. The maximum limiting amount of this Agreement is \$200,000. The federal-participating share is \$163,900 and the non federal-participating share is \$18,050.

	City of Box Elder	Pennington County	City of Rapid City	Total
Local Match - 18.05%	\$18,050	\$18,050	\$0	\$36,100
FHWA Planning Funds – 81.95%	\$81,950	\$81,950	\$0	\$163,900
Total	\$100,000	\$100,000	\$0	\$200,000

- C. **PENNINGTON COUNTY** 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 2022 Unified Planning Work Program.
- D. **CITY** agrees to provide compensation for the federal participating share of eligible costs incurred for work activities specified in the approved CY 2022 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 2022 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 2022 Unified Planning Work Program adopted by the Executive Policy Committee and approved by the Federal Highway Administration without an amendment to the CY 2022 Unified Planning Work Program.

IV. TRAVEL

All travel by **PENNINGTON COUNTY** that will use funds in accordance with this agreement will be based on the entity policy and also subject to preauthorization by the **CITY**. Estimates of travel by **PENNINGTON COUNTY** that will use funds in accordance with the Agreement for CY 2022 are identified in the CY 2022 Unified Planning Work Program.

V.

AMENDMENTS TO THE CY 2022 UNIFIED PLANNING WORK PROGRAM

- A. An amendment to the CY 2022 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 2022 Unified Planning Work Program. Amendments to the CY 2022 Unified Planning Work Program may be proposed only after consultation with the parties to this Agreement and the South Dakota Department of Transportation, hereinafter, SDDOT.
- B. All proposed amendments to the CY 2022 Unified Planning Work Program must be approved by the Executive Policy Committee, the SDDOT and the Federal Highway Administration, and do not become effective until all approvals are secured.

VI.

REPORTS

Reports shall be prepared as outlined in the CY 2022 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.

VII.

INSPECTION OF WORK

The SDDOT, **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 2022 Unified Planning Work Program.

VIII.

RECORDS AND AUDITS

- A. All charges will be subject to audit in accordance with current SDDOT procedures and CFR Title 48, part 31.2.
- B. **PENNINGTON COUNTY** 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, **PENNINGTON COUNTY** will allow **CITY**, SDDOT, and Federal Highway Administration representatives to have access to and the right to examine all records related to this Agreement. **PENNINGTON COUNTY** will keep all records for a period of three (3) years after the date of final payment by **CITY** under this Agreement and all other pending matters are closed.

IX.

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.

X.

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 **PENNINGTON COUNTY**, 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.

XI.

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.

XII.

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.

XIII.

NONDISCRIMINATION

PENNINGTON COUNTY and **CITY** agree 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 Attachment A, attached to and made a part of this agreement.

XIV.

CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

PENNINGTON COUNTY will comply with the requirements identified in Attachment B, attached to and made a part of this agreement.

XV.

CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

PENNINGTON COUNTY will comply with the requirements identified in Attachment C, attached to and made a part of this agreement.

XVI.

COMPLIANCE WITH SDCL § 1-56-10

PENNINGTON COUNTY will comply with the requirements identified in Attachment D, attached to and made a part of this agreement.

XVII.

TERMINATION OF AGREEMENT

PENNINGTON COUNTY 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 **PENNINGTON** County terminates the Agreement after the notice to proceed for the project identified in Exhibit E, the parties agree that no refund will be issued.

XVIII.

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.

Signature Page Follows

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

CITY OF RAPID CITY

PENNINGTON COUNTY COMMISSION

Steve Allender, Mayor Date

Lloyd LaCroix, Chairperson Date

Attest:

Attest:

Pauline Sumption, Finance Director Date

Cindy Mohler, Auditor Date

Executive Policy Committee
Rapid City Area Metropolitan
Planning Organization

Larry Larson, Chair

APPROVED AS TO FORM:

Kinsley Groote, Assistant City Attorney

ATTACHMENT A

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES
APPENDIX A & E
MARCH 1, 2016**

During the performance of this Agreement, 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 (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices, when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
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 will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
- b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this Agreement, the MPO, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252)(prohibits discrimination on the basis of race, color, national origin), and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601)(prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.)(prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, (42 U.S.C. § 6101 et seq.), as amended (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended(prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209)(Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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 \$100,000.00, 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 \$10,000.00 and not more than \$100,000.00 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 Federal Highway Administration or South Dakota Department of Transportation.

ATTACHMENT D

State of South Dakota Grant Recipient or Subrecipient Attestation

By completing this form, you, the recipient or subrecipient, attest to meeting the following requirements per SDCL § 1-56-10:

- (1) A conflict of interest policy is enforced within the recipient's or subrecipient's organization;
- (2) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or subrecipient's website;
- (3) An effective internal control system is employed by the recipient's or subrecipient's organization; and
- (4) If applicable, the recipient or subrecipient is in compliance with the federal Single Audit Act, in compliance with SDCL § 4-11-2.1, and audits are displayed on the recipient's or subrecipient's website.

If you, the recipient or subrecipient, have concerns regarding the requirements listed above, please contact your state agency representative before signing this form.

Printed Name of Person Completing Form:

Printed Title of Person Completing Form:

Signature of Person Completing Form:

Date: _____