

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND ENGINEERING
OFFICE OF PROJECT DEVELOPMENT

SUB-RECIPIENT AGREEMENT
BETWEEN

City of Rapid City, South Dakota
300 Sixth Street
Rapid City SD 57701

State of South Dakota
Department of Transportation
Office of Project Development
700 East Broadway Avenue
Pierre SD 57501

Referred to in this Agreement as the Sub-Recipient

Referred to in this Agreement as the State

The State and the Sub-Recipient enter into this Agreement (the "Agreement") for a grant award of federal financial assistance to the Sub-Recipient.

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION:

- a. Sub-Recipient's name: city of Rapid City, South Dakota
- b. Sub-Recipient's DUNS number: 057222119 and unique entity identifier: 12055002
- c. Federal Award Identification Number (FAIN): The parties understand and agree the FAIN will be provided by the State to the Sub-Recipient upon completion of the federal form 292 and submission of the form by the State to the Federal Highway Administration (FHWA), and information will also be retained on file with the State.
- d. Federal award date: The parties understand and agree the federal award date will be provided by the State to the Sub-Recipient upon completion of the federal form 292 and submission of the form by the State to the Federal Highway Administration (FHWA), and information will also be retained on file with the State.
- e. Sub-award period of performance: January 1, 2023 to June 30, 2024
- f. Amount of federal funds obligated to the Sub-Recipient by this Agreement: \$788,550
- g. Total amount of federal funds obligated to the Sub-Recipient: \$788,550
- h. Total amount of the federal award committed to the Sub-Recipient: \$788,550
- i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows: CY 2023 Rapid City Area MPO Unified Planning Work Program
- j. Name of federal awarding agency: Federal Highway Administration and Federal Transit Administration
pass-through entity: South Dakota Department of Transportation
contact information for awarding official of the pass-through entity:
Sarah Gilkerson
700 East Broadway Avenue
Pierre SD 57501

- k. CFDA No. and name: 20.205; Highway Planning and Construction
- l. Is the grant award for research and development (R&D)? Yes No
- m. Indirect Cost Rate for federal award: 0.00%

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

This Agreement will be effective on January 1, 2023, and will end on December 31, 2023, unless sooner terminated pursuant to the terms of this Agreement.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

a. BACKGROUND:

- i. The Governor of the State of South Dakota has designated the Sub-Recipient as being responsible for carrying out the provisions of Section 134 of Title 23 of the United States Code (U.S.C.) and Section 5303 of Title 49 of the U.S.C.
- ii. Federal-Aid Highway and Transit Planning Funds have been apportioned to the State for reimbursement of the Sub-Recipient's activities.
- iii. The Sub-Recipient, 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.
- iv. The Sub-Recipient and the State will prepare a mutually acceptable Unified Planning Work Program which must be adopted by the Sub-Recipient.

b. PURPOSE:

The purpose of this Agreement is to provide partial funding of the metropolitan planning area study activities scheduled to be performed during calendar year (CY) 2023, as outlined in the CY 2023 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, U.S.C., Section 104, subsection (f)(4), and Title 49, United States Code, Section 5303.

c. SCOPE OF PROJECT:

- i. 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 2023 Unified Planning Work Program incorporated in this Agreement by reference as **Attachment D**.
- ii. The Sub-Recipient's Responsibilities:
 - 1. The Sub-Recipient, acting by and through the Metropolitan Planning Organization's Board, 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 Sub-Recipient will provide a secretary for the Citizens Advisory Committee, Technical Coordinating Committee, and the Metropolitan Planning Organization's Board 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 Sub-Recipient will assure the accomplishment of work activities identified in the Unified Planning Work Program.
 4. The Sub-Recipient 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 Sub-Recipient 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 Sub-Recipient will submit technical documents and manuals prepared for use in accomplishing work activities to the Technical Coordinating Committee for its review and comment. Upon completion of the Technical Coordinating Committee's review, the technical documents and manuals will then be submitted to the Metropolitan Planning Organization's Board for review and comment.
 7. The Sub-Recipient will disseminate information on all documents prepared under this Agreement to the local members for their review and comments.
- iii. The State's Responsibilities:
1. The State will administer the funds apportioned to South Dakota in accordance with Federal Highway Administration policies and procedures for Section 134 of Title 23, of the 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 Sub-Recipient and other assistance as necessary to implement the Unified Planning Work Program.
 3. The State will transmit to the Sub-Recipient any documents developed by the State that affect the local governmental entities comprising the Sub-Recipient for review prior to submittal to the Federal Highway Administration and Federal Transit Administration to assure that the local concerns are properly addressed.

4. BASIS FOR SUBAWARD AMOUNT:

- a. The maximum limiting amount will not exceed Seven Hundred Eight-eight Thousand, Five Hundred Fifty Dollars (\$788,550), 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 Seven Hundred Eight-eight Thousand, Five Hundred Fifty Dollars (\$788,550), for which this Agreement will regulate and be accountable for are as follows, until amended, for work in the CY 2023 Unified Planning Work Program.
- c. The State will provide compensation to the Sub-Recipient on a cost reimbursement basis for the federal participating share for eligible costs incurred for work activities in the approved CY 2023 Unified Planning Work Program. Compensation for Federal Highway Administration 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 2023 Unified Planning Work Program and for Federal Transit Administration Planning Funds will be on a cost reimbursement basis by payment of 80 percent of the total eligible costs incurred for work activities in the approved CY 2023 Unified Planning Work Program. Eligible costs are defined

in 2 CFR Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- d. The State will make payment to the Sub-Recipient not more than once every four (4) weeks for costs incurred for services performed under this Agreement. The Sub-Recipient 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 Sub-Recipient of all allowable, documented costs within thirty (30) days of receipts of the voucher. Costs documented at a later date may be reimbursed on a subsequent voucher.
- e. The Sub-Recipient agrees that employees of the Sub-Recipient whose time is directly assignable to the program will keep and sign a time sheet record showing the element of the program, date and hours worked, and title of position.
- f. The Sub-Recipient will charge specific work items as contained in the approved CY 2023 Unified Planning Work Program. The Sub-Recipient will provide the State with the Sub-Recipient's annual progress report.
- g. All travel by the Sub-Recipient 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 Sub-Recipient's staff which will use funds in accordance with this Agreement for CY 2023 are identified in the CY 2023 Unified Planning Work Program.

5. RISK ASSESSMENTS, MONITORING, AND REMEDIES:

Risk assessments will be ongoing throughout the project period. The Sub-Recipient agrees to allow the State to monitor the Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award, and to facilitate the same. At the discretion of the State, monitoring may include, but is not limited to, the following: on-site visits, follow-up, document or desk reviews, third-party evaluations, virtual monitoring, technical assistance, and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

The Sub-Recipient will comply with ongoing risk assessments to facilitate the monitoring process, and further, the Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including, but not limited to: temporary withholding of payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by the Sub-Recipient, debarment, or other remedies including civil and criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient will retain such records for a period of three (3) years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must

be retained for three years after final disposition. When records are transferred to or maintained by the federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, along with the Federal Highway Administration, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and will have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which will include all information disclosed to the Sub-Recipient by the State, will be retained in the Sub-Recipient's secondary and backup systems and will remain fully subject to the obligations of confidentiality stated in this Agreement until such information is erased or destroyed in accordance with the Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement must be returned to the State within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If the Sub-Recipient expends \$750,000.00 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F - Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle Street
% 500 East Capitol Avenue
Pierre, SD 57501-5070

If the Sub-Recipient expends less than \$750,000.00 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits will be filed with and approved by the State Auditor General by the end of the ninth month following the end of the fiscal year of the entity being audited or thirty (30) days after receipt of the auditor's report, whichever is earlier.

For either an entity-wide, independent financial audit, or an audit under 2 CFR Part 200, Subpart F, the Sub-Recipient will resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient will facilitate and aid any such reviews, examinations, and agreed upon procedures, the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and awards may be suspended, until the audit is completely resolved.

The Sub-Recipient will be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 CFR 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and federal agency each has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, the Sub-Recipient will comply in full with the administrative requirements and cost principles as outlined in U.S. Office of Management & Budget (OMB) uniform administrative requirements, cost principles, and audit requirements for federal awards – 2 CFR Part 200 (Uniform Administrative Requirements).

8. SUB-RECIPIENT ATTESTATION

By signing this Agreement, the Sub-Recipient attests to the following requirements as set forth in South Dakota Codified Law (SDCL) § 1-56-10:

- a. A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;
- b. 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 sub-recipient's website;
- c. An effective internal control system is employed by the recipient's or sub-recipient's organization; and
- d. If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

The Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

The Sub-Recipient agrees to disclose to the State, in writing, any conflicts of interest that exist under the Sub-Recipient's conflict of interest policy. The State will publicly post any disclosed conflicts of interest along with the corresponding grant agreement on the State of South Dakota's OpenSD website.

In the event of a significant change in the conflict of interest policy, the Sub-Recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. The Sub-Recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

9. CLOSEOUT

- a. For purposes of this Agreement, "Date of Completion" means the date when the Agreement expires pursuant to its terms or is terminated in accordance with paragraph B. 3.
- b. The Sub-Recipient will submit a final financial report to the State. Within the limits of the Agreement amount, the State may make upward or downward cost adjustments on the basis of the information contained in the report. Agreement obligations will remain in force until all final reports are reviewed and approved by the State.
- d. The Sub-Recipient, along with the final financial report, will refund to the State any unexpended funds or unobligated (unencumbered) cash advances.
- e. All outstanding obligations (encumbered funds) which have not been paid out as of the Date of Completion must be liquidated prior to the submission of the final report.
- f. Whether or not audits were conducted during the Agreement term, a final financial and compliance audit may be initiated up to three (3) years after the date the State approves the final financial report.
- g. If either the final financial report or the final audit discloses an overpayment to the Sub-Recipient, the State may, at its option, either require the Sub-Recipient to repay the overpayment to the State or deduct the amount of overpayment from monies due the Sub-Recipient under this Agreement or under any other agreement between the Sub-Recipient and the State.
- h. The Sub-Recipient will provide, along with the final financial report, a written accounting of property acquired with Agreement funds or received from the State.

B. STANDARD PROVISIONS:

1. ASSIGNMENT

The Sub-Recipient will not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order, or obligate the Sub-Recipient in any manner with any third party with respect to the Sub-Recipient's rights and responsibilities under this Agreement, without the State's prior written consent.

2. REPORTS

Reports will be prepared as outlined in the Unified Planning Work Program, reviewed by the participating agencies, and then made available to the Sub-Recipient.

3. INSPECTION OF WORK

The State and the Sub-Recipient will, at all times, be accorded proper facilities for review and inspection of each other's work as outlined in the approved CY 2023 Unified Planning Work Program. In addition, the State and the Sub-Recipient 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 the Federal Transit Administration.

4. 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 Sub-Recipient 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 Sub-Recipient will allow the State or Federal Highway Administration representatives to have access to and the right to examine all records of the Sub-Recipient related to this Agreement during the Sub-Recipient's normal business hours. The Sub-Recipient will keep all records for a period of three (3) years after the date of final payment by the State under this Agreement and all other pending matters are closed.

5. TERMINATION

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

6. AGREEMENT CHANGES

This Agreement may not be amended, except in writing, which writing will be identified as a part of this Agreement, and be signed by an authorized representative of each of the parties.

7. PROHIBITED INTEREST

No member, officer, or employee of the Sub-Recipient, during the Sub-Recipient's tenure or within one (1) year thereafter, will have any interest, direct or indirect, in this Agreement or its proceeds.

8. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Sub-Recipient will not discriminate against any employee, or applicant for employment, because of race, religions, color, sex, disability, or national origin. Such actions will include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.

9. CIVIL RIGHTS

The Sub-Recipient will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the regulations of the U.S. Department of Transportation issued the Act. The Sub-Recipient will submit, upon request, quarterly Title VI (Civil Rights) State of Contractor report to the State. The Sub-Recipient will provide services in compliance with the Americans With Disabilities Act of 1990, and any amendments.

10. SUBCONTRACTORS/SUB-SUB-RECIPIENTS

The Sub-Recipient, with the Sub-Recipient's own staff or by subcontract with other public agencies, will perform work valued at not less than fifty percent (50%) of the Agreement amount excluding specialized services. The Sub-Recipient 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 Sub-Recipient. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

11. CLAIMS

The Sub-Recipient will indemnify the State, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceeding which may arise as a result of the Sub-Recipient performing services under this Agreement. This section does not require the Sub-Recipient to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents, or employees. It is further agreed that no 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. DEBARMENT AND SUSPENSION

The Sub-Recipient will comply with the federal requirement for debarment, suspension, and other responsibility matters. The Sub-Recipient has signed the certification for debarment, suspension, and other responsibility matters to this effect which is attached as **ATTACHMENT A** and made a part of this Agreement.

13. CONTROLLING LAW

This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota without regard to any conflicts of law principals, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement will be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. SUPERCESSION

All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to the subject matter.

15. SEVERABILITY

In the event that any portion of this Agreement will be held unenforceable or invalid by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Agreement, which will remain in full force and effect.

16. TITLE VI ASSURANCE

The Sub-Recipient will be bound by **ATTACHMENT B**, attached to and made a part of this Agreement, said assurance being entitled, "STANDARD TITLE VI/NONDISCRIMINATION ASSURANCES APPENDIX A & E."

17. CERTIFICATION REGARDING LOBBYING

The Sub-Recipient certifies, to the best of the Sub-Recipient's knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any 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 a federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the Sub-Recipient will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Sub-Recipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all 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 31 U.S.C. 1352. 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.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65. Any Sub-Recipient who applies or bids for an award of \$100,000.00 or more will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached to this Agreement as **ATTACHMENT C**. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier will also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

18. NOTICE

Any notice or communication required under this Agreement will be in writing and sent to the following addresses:

South Dakota Department of Transportation
Attn: Sarah Gilkerson
700 East Broadway Avenue
Pierre, South Dakota 57501

City of Rapid City, South Dakota
Attn: Kip Harrington
300 Sixth Street
Rapid City, South Dakota 57701

Notices or communications to or between the parties will be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination will be sent by registered mail or certified mail, or, if personally delivered, when received by such party.

19. FUNDING

The payment of public funds under this Agreement is subject to the availability of Metropolitan Planning Organizations Federal Highway Administration and Federal Transit Administration funds appropriated by Congress.

20. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement who present insufficient skills or inappropriate behavior.

21. CONFLICT OF INTEREST

The Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL §§ 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL §§ 5-18A-17 through 5-18A-17.6.

C. GRANT SPECIFIC PROVISIONS

1. OWNERSHIP OF DATA

Documents and all products of this Agreement are to be the joint property of the State and the Sub-Recipient in the Transportation Planning Process.

2. PUBLICATION OR RELEASE OF INFORMATION

- a. The Sub-Recipient 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 this 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 Sub-Recipient, each party reserves the right to publish independently, in which event non-concurrence of the other party will be set forth, if requested.
- c. All reports published by the State or the Sub-Recipient 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."

3. 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 and the Federal Highway Administration.
- 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.

4. AUTHORIZATION

The Sub-Recipient has designated the city of Rapid City, South Dakota's Mayor as the Sub-Recipient's authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the Sub-Recipient. A copy of the city of Rapid City's Council minutes or resolution authorizing the execution of this Agreement by the Mayor on behalf of Sub-Recipient as the Sub-Recipient's authorized representative is attached to this Agreement as **ATTACHMENT E**.

This Agreement has been executed by the State and the Sub-Recipient, acting by and through their duly authorized representatives.

SIGNATURE PAGE FOLLOWS

City of Rapid City, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Printed Name: _____

Joel M. Jundt

Its: Mayor

Its: Department Secretary

Date: _____

Date: _____

Attest:

Recommended:

By: _____

By: _____

Printed Name: _____
City Finance Officer/Clerk

Printed Name: _____

Its: Director of Planning and Engineering

(City Seal)

Date: _____

Attest:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

City Attorney

Its: Project Development Program Manager

Date: _____

Rapid City Metropolitan Planning Organization

By: _____

Printed Name: _____

Its: Chairman, Executive Policy Committee

Date: _____

CERTIFICATION FOR DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Sub-Recipient, as a sub-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 Sub-Recipient certifies that if it becomes aware of any later information that contradicts the statements of paragraphs (1) through (4) above, it will promptly inform Federal Highway Administration or South Dakota Department of Transportation.

The Sub-Recipient certifies or affirms the truthfulness and accuracy of the contents of the statements submitted. The person whose signature appears below is authorized to sign this certification on behalf of the Sub-Recipient.

City of Rapid City, South Dakota

By: _____

Its: Mayor

Date: _____

**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 Sub-Recipient, 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 Sub-Recipient, 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, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC Ch. 471, § 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 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. Ch. 471, § 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.*).

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000.00)

The Sub-Recipient certifies, to the best of the Sub-Recipient's knowledge and belief, that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, 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.
- ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contracts to an officer or employee of any 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 Sub-Recipient will complete and submit Standard Form, LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
- iii. The Sub-Recipient will require that the language of this certification be included in the award documents for all subawards at all tiers including, but not limited to third party contracts, subcontracts, subagreements, and other third party agreements under a federal grant, cooperative agreement, loan, line of credit, and will certify and disclose accordingly.
- iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made and entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure act of 1995).
- v. The Sub-Recipient understands any person who does not file a required Certification is subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.