

**AGREEMENT BETWEEN THE  
SOUTH EASTERN COUNCIL OF GOVERNMENTS  
AND THE  
CITY OF HARRISBURG  
FOR ACCOMPLISHING THE SIOUX FALLS AREA  
TRANSPORTATION PLANNING PROCESS**

THIS AGREEMENT entered into, on this 1<sup>st</sup> day of January 2016, by and between the South Eastern Council of Governments, hereinafter SECOG, and the City of Harrisburg, hereinafter CITY, for the purpose of providing partial funding of the metropolitan planning area study activities scheduled to be performed during calendar year 2016 as outlined in the CY 2016 Unified Planning Work Program (UPWP), Attachment D, attached to and hereby made a part of this AGREEMENT, using planning funds available from apportionments made under Title 23, United States Code, Section 104, subsection f(4) and Title 49, United States Code, Section 5303.

WHEREAS, the Governor of the State of South Dakota has designated the Urbanized Development Commission of SECOG as being the Metropolitan Planning Organization (MPO) responsible for carrying out the provisions of Section 134 of Title 23 of the U.S.C. and Section 5303 of Title 49 of the U.S.C.; and

WHEREAS, Federal-Aid Highway Planning Funds and Transit Planning Funds have been apportioned to the South Dakota Department of Transportation, hereinafter STATE, for reimbursement of MPO activities; and

WHEREAS, CITY and SECOG desire to cooperatively work on objectives and work program activities leading towards a uniform transportation planning process; and

WHEREAS, CITY and SECOG prepared a mutually acceptable UPWP which has been adopted by the Urbanized Development Commission.

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 Sioux Falls Metropolitan Transportation Planning Process will be conducted in accordance with the CY 2016 UPWP included as Attachment D. Eligible costs are defined in 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- B. Technical documents and manuals prepared for use in accomplishing work programs will be submitted to the Citizens Advisory Committee and the Technical Advisory Committee for their review and comments and made available to the Urbanized Development Commission of SECOG.
- C. SECOG Responsibilities:

- 1) Provide the necessary administration of committees and staff and consult, collaborate and coordinate with CITY to accomplish all tasks as contained in the CY 2016 UPWP in such amounts as set forth in the 2016 UPWP Budget Spreadsheet.
- 2) Assign qualified personnel as needed to execute the CY 2016 UPWP in such amounts as set forth in the 2016 UPWP Budget Spreadsheet.
- 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.
- 4) Disseminate information on all transportation planning documents prepared under this AGREEMENT to local government members and to the STATE for its review and comments.

D. CITY Responsibilities:

- 1) CITY shall provide to SECOG assistance in those activities as specified in the CY 2016 UPWP and other activities as mutually agreeable to both parties.

2. DURATION OF AGREEMENT

This AGREEMENT shall commence January 1, 2016, and shall end December 31, 2016, unless terminated earlier as set forth in Section 15 herein. CITY can incur costs only on those work items of the CY 2016 UPWP that have been approved by the Federal Highway Administration and Federal Transit Administration, subsequent to the effective date of Federal Highway Administration and Federal Transit Administration approval for each pertinent work item, however, CITY will not be reimbursed for such costs until the execution of the AGREEMENT.

3. PAYMENT PROCEDURES

- A. SECOG agrees to provide compensation on a cost reimbursement basis for the federal participating share of eligible costs incurred for work activities specified in the approved CY 2016 UPWP.
- B. Payments will be made to CITY not more than once every four (4) weeks and shall only be for services performed under this AGREEMENT. CITY shall submit monthly time records within seven (7) days following the end of each time period. The monthly time records shall be the basis for payment pursuant hereto and shall be signed by a responsible representative of CITY certifying that all the items are true and correct for the work performed under the provisions of the AGREEMENT. Payment shall be made subject to audit by duly authorized representatives of the STATE. SECOG, upon receipt of payment from the STATE, shall make every reasonable effort to provide prompt payment to CITY.
- C. It is agreed that employees of CITY whose time is directly assignable to the program shall keep and sign a monthly time record showing the element of the program, date and hours worked, and title of position. Monthly time record will include all hours worked, including uncompensated overtime; in accordance with FAR 31.201-4 and CAS 418. CITY must provide annual progress reports to SECOG.

- D. CITY and SECOG will charge specific work items as contained in the CY 2016 UPWP adopted by the Urbanized Development Commission and approved by the Federal Highway Administration.
- E. This AGREEMENT must not exceed the dollar amount of CITY's estimated costs, without the written consent of SECOG, as described in the current CY 2016 UPWP adopted by the Urbanized Development Commission and approved by the Federal Highway Administration.

4. TRAVEL

All travel by CITY which utilizes funds authorized under this AGREEMENT, shall be on the basis of CITY'S officially adopted, written travel policies and procedures and also subject to preauthorization by the STATE. A copy of CITY'S travel policy shall be provided to SECOG upon execution of this AGREEMENT.

5. UNIFIED PLANNING WORK PROGRAM 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 STATE, the Federal Highway Administration, and the Urbanized Development Commission.
- 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 an action of the Urbanized Development Commission.

6. REPORTS

Reports shall be prepared as outlined in the CY 2016 UPWP, reviewed by the participating agencies, and made available to the Urbanized Development Commission.

7. INSPECTION OF WORK

The STATE, SECOG and authorized personnel of the Federal Highway Administration or Federal Transit Administration shall, at all times, be accorded proper facilities for review and inspection of the work as outlined in the CY 2016 UPWP.

8. RECORDS AND AUDITS

- A. All charges will be subject to audit in accordance with current STATE procedures and CFR Title 48, part 31.2.
- B. CITY shall maintain an accurate cost accounting system for all costs incurred under this AGREEMENT. Costs shall be clearly identified with activities performed under this AGREEMENT. CITY shall produce, for examination, books of accounts, bills, invoices and other vouchers or certified copies thereof at such reasonable time and place as may be designated by SECOG and shall permit extracts and copies thereof to be made

during the AGREEMENT period and for three (3) years after the date of final payment by SECOG.

- C. CITY shall, with reasonable notice, afford representatives of the STATE or Federal Government and SECOG reasonable facilities for examination and audits of the cost account records; shall make such returns and reports available to a representative as such representative may require; shall produce and exhibit such books, accounts, documents and property as such representative may determine necessary to inspect; and shall in all things aid such representative in the performance of duties.
- D. CITY shall be audited in compliance with all federal requirements. If any payments made to the CITY are disallowed in whole or in part, the CITY shall reimburse SECOG, STATE, the Federal Highway Administration, or the Federal Transit Administration for any amounts found due and owing as a result of such audit within 30 days of such audit, plus such additional sums in interest and penalties as are required by law.

9. OWNERSHIP OF DATA

Documents and all products of this AGREEMENT are to be the joint property of the political jurisdiction and governmental agencies participating in the Transportation Planning Process.

10. 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 STATE, Federal Transit Administration, Federal Highway Administration, and SECOG. The STATE, Federal Transit Administration, Federal Highway Administration, and SECOG 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 SECOG and CITY, 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 CITY shall contain a credit reference to the Federal Highway Administration, Federal Transit Administration, and STATE such as "prepared in Cooperation with the U.S. Department of Transportation, Federal Highway Administration, Federal Transit Administration, the South Dakota Department of Transportation and the Sioux Falls Metropolitan Transportation Planning Process."

11. CLAIMS

SECOG agrees to hold harmless and indemnify CITY, its officers, agents and employees from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of SECOG or any officer, agent or employee of SECOG performing services hereunder. CITY agrees to hold harmless and indemnify SECOG, its officers, agents and employees from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of CITY or any officer, agent or employee of CITY performing services hereunder.

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 Workers' Compensation Act of the State of South Dakota on behalf of said employees, while so engaged, 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 their actions.

12. SUBCONTRACTING

All agreements or contracts pertinent to the CY 2016 UPWP and subject to partial reimbursement under this AGREEMENT shall be submitted to the STATE and SECOG for review prior to final execution and shall be approved by the Urbanized Development Commission and the STATE.

13. NONDISCRIMINATION/ADA

CITY 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 Attachment A attached hereto and hereby by this reference, made a part of this AGREEMENT. CITY agrees to submit upon request quarterly Title VI (Civil Rights) State of Contractor reports. CITY agrees to provide services in compliance with the Americans with Disabilities Act of 1990, and any amendments.

14. CERTIFICATION OF GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

CITY agrees to comply with the requirements identified in Attachment B attached and hereby this reference, made a part of this AGREEMENT.

15. CERTIFICATION FOR DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

COUNTY agrees to comply with the requirements identified in Attachment C attached and hereby this reference, made a part of this AGREEMENT.

16. TERMINATION

CITY and SECOG each reserve the right to terminate this AGREEMENT upon a thirty (30) day written notice by either party.

17. AVAILABILITY OF FUNDS

The payment of public funds to CITY under this AGREEMENT is subject to the availability of Federal Highway Administration Planning Funds and Federal Transit Administration Planning Funds appropriated by Congress.

18. DISPUTES

Disputes concerning the execution of work activities as specified in the UPWP shall be referred to the Director of the Division of Planning/Engineering of the STATE for resolution under the guidelines set forth in 49 2 CFR 18.36(b)(12) and 49 CFR 18.36(i)Part 200.

19. INCORPORATION

This AGREEMENT incorporates by reference and is governed by any federal or state statutes or regulations pursuant to which funds under this AGREEMENT are disbursed, and to the extent that this AGREEMENT is inconsistent with any such federal or state statutes or regulations, such state or federal statutes and regulations shall control, and payments to be made pursuant to this AGREEMENT shall be made in accordance with all such state or federal regulations.

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

APPROVED AS TO FORM:



Nate Schoen  
Legal Counsel

SOUTH EASTERN COUNCIL OF  
GOVERNMENTS

BY: \_\_\_\_\_

Mike Broderick  
SECOG Board Chairman

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lynne Keller Forbes  
Executive Director, SECOG

CITY OF HARRISBURG

BY: \_\_\_\_\_

Mayor, City of Harrisburg

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Mary McClung  
Finance Officer, City of Harrisburg

[SEAL]

## ATTACHMENT A

### ASSURANCE WITH REGARD TO THE CIVIL RIGHTS ACT OF 1964 AND THE U.S. DEPARTMENT OF TRANSPORTATION, TITLE 49, CODE OF FEDERAL REGULATIONS, PART 21

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

(1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT"), 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 ground of race, color, 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 Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or 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 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 Southeast Council of Governments (SECOG) acting as the fiscal agent on behalf of the Sioux Falls MPO or South Dakota Department of Transportation to be pertinent to ascertain compliance with such Regulations orders and instructions. 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 SECOG acting as the fiscal agent on behalf of the Sioux Falls MPO or the South Dakota Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of contractor's noncompliance with the nondiscrimination provisions of this contract, SECOG acting as the fiscal agent on behalf of the Sioux Falls MPO shall impose such contract sanctions as it or the South Dakota Department of Transportation 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 contractor 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 contractor shall take such action with respect to any subcontract procurement as SECOG acting as the fiscal agent on behalf of the Sioux Falls MPO or the South Dakota Department of Transportation 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, the contractor may request SECOG acting as the fiscal agent on behalf of the Sioux Falls MPO to enter into such litigation to protect the interests of SECOG acting as the fiscal agent on behalf of the Sioux Falls MPO, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## ATTACHMENT B

### CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The CITY 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 CITY, 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, and 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 CITY shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The CITY 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.

## ATTACHMENT C

### CERTIFICATION FOR DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The CITY, 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 CITY certifies that if it becomes aware of any later information that contradicts the statements of paragraph (1) through (4) above, it will promptly inform SECOG, FHWA, FTA, or South Dakota Department of Transportation.