

Section 5310 (CFDA NO. 20.513)

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
DIVISION OF SECRETARIAT
OFFICE OF AIR, RAIL, AND TRANSIT

SUB-RECIPIENT AGREEMENT
BETWEEN

City of Mitchell, South Dakota

State of South Dakota
Department of Transportation
Office of Air, Rail, and Transit
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 Mitchell, South Dakota
- b. Sub-Recipient's DUNS number: 040914277 and unique entity identifier: 12054862-03
- c. Federal Award Identification Number (FAIN): SD-2019-001
- d. Federal award date: 10/01/2018
- e. Sub-award period of performance: 10/01/2018-09/30/2020
- f. Amount of federal funds obligated to the Sub-Recipient by this Agreement: \$9,625.68
- g. Total amount of federal funds obligated to the Sub-Recipient: \$9,625.68
- h. Total amount of the federal award committed to the Sub-Recipient: \$9,625.68
- i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows: FY18 Section 5310 Preventive Maintenance
- j. Name of federal awarding agency: Federal Transit Administration
pass-through entity: South Dakota Department of Transportation
contact information for awarding official of the pass-through entity:
Office of Air, Rail and Transit
700 East Broadway Avenue
Pierre SD 57501
- k. CFDA No. and name: 20.513; Enhanced Mobility of Seniors and Individuals with Disabilities
- l. Is the grant award for research and development (R&D)? Yes No
- m. Indirect Cost Rate for federal award: N/A

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

This Agreement will be effective on October 1, 2018, and will end on September 30, 2020, unless sooner terminated pursuant to the terms of this Agreement.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

a. BACKGROUND:

- i. Under 49 U.S.C. Section 5310, as amended, the Section 5310 Program of the Fixing America's Surface Transportation Act (FAST Act) Section 3006(b) provides capital grants to private nonprofit corporations and associations for the specific purpose of assisting the private nonprofit corporations and associations in providing transportation services meeting the special needs of elderly persons and persons with disabilities for whom mass transportation services are unavailable, insufficient, or inappropriate.
- ii. The Governor of the State of South Dakota, in accordance with a request by the United States Department of Transportation, Federal Transit Administration, referred to in this Agreement as "FTA," has designated the State to evaluate and select projects proposed by eligible recipients and to coordinate the grant applications.
- iii. The State and the Sub-Recipient want to secure and utilize grant funds for the transportation needs of elderly persons and persons with disabilities in South Dakota.

b. PURPOSE:

The purpose of this Agreement is to provide for the facilitation of transportation services by the Sub-Recipient to the elderly and persons with disabilities, and to state the terms, conditions, and mutual understandings of the parties as to the manner in which these services will be undertaken and completed.

c. SCOPE OF PROJECT:

The Sub-Recipient will undertake and complete the services as described in the Sub-Recipient's application, referred to in this Agreement as the "PROJECT," which application is incorporated by reference, filed with, and approved by the State and FTA in accordance with the terms and conditions of this Agreement.

4. BASIS FOR SUBAWARD AMOUNT:

The cost of the PROJECT will be in the amount indicated in the Sub-Recipient's application or the latest approved PROJECT budget, attached to this Agreement as **Exhibit F**, and will be born in the manner described in this Agreement. The Sub-Recipient will provide, from sources other than FTA federal funds, funding in the amount sufficient, together with Federal FTA PROJECT grant funds, referred to in this Agreement as the "GRANT," to assure payment of the actual PROJECT costs. The Sub-Recipient will initiate and prosecute to completion all actions necessary to enable the Sub-Recipient to provide the Sub-Recipient's share of the PROJECT costs, at or prior to, the time that such funds are needed to meet the PROJECT costs. The Sub-Recipient further agrees that no refund, or reduction of the amount so provided, will be made at the same time, unless there is, at the same time, a refund to the State of a proportional amount of the GRANT.

- a. The State and the Sub-Recipient have agreed to the purchase of the following equipment:

Preventive Maintenance

- b. The State will provide eighty percent (80%) of the total equipment and purchase costs approved by the State.

- c. The Sub-Recipient will provide, directly to the vendor, twenty percent (20%) of the total equipment and purchase costs approved by the State.
- d. The State will pay eighty percent (80%) of the total costs of the equipment listed in Paragraph A. 4.
 - a. directly to either the Sub-Recipient or the vendor, upon equipment delivery. Any purchase made by the Sub-Recipient under this Agreement in an amount over Five Thousand Dollars (\$5,000.00) requires verification of receipt of equipment by physical inspection before payment is processed. The Sub-Recipient must comply with State and FTA procurement policies and procedures.

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 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, 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 shall 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 AND AMENDMENT

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. RECORDS AND REPORTS

The Sub-Recipient will advise the State regarding the progress of the PROJECT at such times and in such manner as the State and FTA may require, including, but not limited to, meetings and interim reports.

The Sub-Recipient will maintain an accurate cost accounting system for all costs incurred in connection with the PROJECT. The Sub-Recipient will produce for examination, books of accounts, bills, invoices, and other vouchers, or certified copies, if the originals be lost, at such reasonable time and place as the State may designate. The Sub-Recipient will permit extracts and copies to be made during the PROJECT period and will retain records for three (3) years after the date of final payment of federal funds to the Sub-Recipient and all other pending matters are closed.

3. TERMINATION

- a. For Convenience. The State may, with the concurrence of FTA, terminate the PROJECT and cancel this Agreement if both parties agree that the continuation of the PROJECT would not produce beneficial results commensurate with the further expenditure of funds.
- b. For Cause. The State may, by written notice to the Sub-Recipient, terminate the PROJECT and cancel this Agreement for any of the following reasons:
 - i. The Sub-Recipient discontinues the use of the PROJECT equipment for the purpose of providing transportation services to a segment of the general public, as defined by age, disability, or low income, during the equipment's useful life.
 - ii. The Sub-Recipient takes any action pertaining to this Agreement without the State's approval and which under the procedures of this Agreement would have required the State's approval.
 - iii. The Sub-Recipient's commencement, prosecution, or timely completion of the PROJECT is, for any reason, rendered improbable, impossible, or illegal.
 - iv. The Sub-Recipient is in default under any provision of this Agreement.
 - v. FTA fails to provide the State with sufficient federal funds to meet the State's share of the PROJECT costs.
 - vi. The Sub-Recipient fails to commence, maintain, or continue good faith efforts to coordinate transit services with the public and other entities or organizations providing transit services in the PROJECT area.

- c. Action Upon Termination. Upon termination of the PROJECT and cancellation of this Agreement under the provisions of paragraph a. or b. of this Section, the Sub-Recipient will dispose of the PROJECT equipment in accordance with the OMB regulations found at 2 CFR Part 200.

4. 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.

5. INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of, or delegate to, the Congress of the United States will be admitted to any share or part of this Agreement, or to any benefit arising from this Agreement.

6. 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.

7. 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.

8. 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 pursuant to the Act. The Sub-Recipient has signed Local Civil Rights Assurances to this effect which is attached as **Exhibit A** and made a part of this Agreement.

The Sub-Recipient will provide services in compliance with the Americans With Disabilities Act of 1990, and any amendments. The Sub-Recipient has signed Americans With Disabilities Assurance to this effect which is attached as **Exhibit B** and made a part of this Agreement.

The State, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, CFR, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, disability, or national origin in consideration for an award.

9. DISADVANTAGED BUSINESS ENTERPRISES

In connection with the performance of this Agreement, the Sub-Recipient will cooperate with the State in meeting the State's commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises (DBE) and will use the Sub-Recipient's best efforts to insure that Disadvantaged Business Enterprises have maximum practicable opportunities to compete for subcontract work under this Agreement. The Sub-Recipient will carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation (USDOT) assisted contracts. Failure by the Sub-Recipient to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy as the State deems appropriate. The State's

DBE program, as required by 49 CFR Part 26 and as approved by the USDOT, is incorporated in this Agreement by reference.

10. SUBCONTRACTORS/SUB-SUB-RECIPIENTS

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. 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.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

The subcontractor or other sub-recipient must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors or other sub-recipients to include these clauses in any lower tier subcontracts. The prime contractor will be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

11. QUESTIONS OF FACTS/DISPUTES

Any question of fact or dispute with work not disposed of by agreement between the parties will be referred to the Program Manager, Office of Air, Rail, and Transit, South Dakota Department of Transportation or designee, for determination, whose decision will be final and conclusive to the parties to this Agreement.

12. INSURANCE

The Sub-Recipient will maintain adequate general liability, workers' compensation, and automobile liability insurance during the period of this Agreement.

13. INDEMNIFICATION

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.

14. INTEGRITY

The Sub-Recipient agrees that any persons or entities, that by defined events or behavior potentially threaten the integrity of federally administered non-procurement programs, are excluded from participation in FTA-assisted programs.

15. 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 **Exhibit C** and made a part of this Agreement.

16. 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.

17. 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.

18. 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.

19. TITLE VI ASSURANCE

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

20. 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 **Exhibit E**. 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.

21. FEDERAL CHANGES

The Sub-Recipient will at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The Sub-Recipient's failure to comply will constitute a material breach of this Agreement.

22. 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: Program Manager
700 East Broadway Avenue
Pierre, South Dakota 57501

City of Mitchell, South Dakota
Attn: Transit Director
300 West 1st Ave.
Mitchell, SD 57301

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.

23. FUNDING

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement may be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

24. 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.

25. 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.

26. TERMS

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State will be a violation of the terms of this Agreement, and the Agreement will be subject to termination.

C. GRANT SPECIFIC PROVISIONS

1. PURCHASE OF PROJECT EQUIPMENT

The Sub-Recipient will make PROJECT purchases, financed in whole or in part, pursuant to this Agreement in accordance with applicable state law and the standards set forth by the Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200). The Sub-Recipient will make PROJECT purchases in conformity with the latest approved PROJECT Budget. The Sub-Recipient will include the following provision in any advertisement or invitation to bid for any procurement under this Agreement:

Statement of Financial Assistance:

This contract is subject to a financial assistance contract between the State of South Dakota and the U.S. Department of Transportation.

2. TITLE TO PROJECT EQUIPMENT

Title to the PROJECT equipment will be in the name of the Sub-Recipient, subject to the restrictions on use and disposition of the PROJECT equipment set forth in this Agreement.

3. USE OF PROJECT EQUIPMENT

The Sub-Recipient must use the PROJECT equipment and facilities for the provision of transportation service as described in the PROJECT application. If the PROJECT equipment is not used in this manner, or is withdrawn from transportation service, the Sub-Recipient will immediately notify the State. If the equipment can still be used for transportation service, and the State gives written approval for transfer of equipment, the Sub-Recipient may transfer ownership of the equipment to another private nonprofit organization with the Sub-Recipient to receive a payment of twenty percent (20%) of the estimated equipment value from the receiving organization. The State will establish the estimated equipment value and the State may permit the Sub-Recipient to dispose of the PROJECT equipment in accordance with the South Dakota State Management Plan.

The Sub-Recipient will keep satisfactory records with regard to the use of the property and will submit to the State, upon request, such information as is required in order to assure compliance with this Agreement. The Sub-Recipient will immediately notify the State in all cases where the PROJECT equipment is used in a manner substantially different from that described in the PROJECT application. The Sub-Recipient will maintain, in an amount and form satisfactory to the State, such insurance or self-insurance as will be adequate to protect the PROJECT equipment and facilities throughout the period of required use.

The Sub-Recipient will submit to the State, at the time of submittal of the Sub-Recipient's annual application for Section 5310 funds, a certification that the PROJECT equipment is still being used in accordance with the terms of this Agreement and that no part of the local contribution to the cost of the PROJECT has been refunded or reduced. During this period, the Sub-Recipient will maintain the PROJECT equipment and facilities at a high level of cleanliness, safety, and mechanical soundness. The State and FTA will have the right to conduct periodic inspections for the purpose of confirming proper maintenance of the PROJECT equipment and facilities.

4. MOTOR VEHICLE SAFETY AND POLLUTION

The Sub-Recipient will ensure the motor vehicles will comply with the Motor Vehicle Safety Standards as established by the USDOT.

5. CHARTER BUS AND SCHOOL BUS PROVISIONS

- a. In connection with equipment and funding provided for the PROJECT, the Sub-Recipient will meet the latest federal charter requirements.
- b. In connection with equipment and funding provided for the PROJECT, the Sub-Recipient will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators. Equipment must remain open to the public at all times and be clearly marked for public use.
- c. The Sub-Recipient will include the following requirements in each subcontract exceeding \$100,000.00, financed in whole or in part with federal assistance provided by the FTA:
 - i. Charter Bus: The Sub-Recipient will comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," and it must not interfere with or detract from the provision of mass transportation.
 - ii. School Bus: Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specific exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.
- d. Agreement with All Registered Charter Providers: The Sub-Recipient may provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the Sub-Recipient's area. The Sub-Recipient is allowed to provide charter service up to ninety (90) days without an agreement with a newly registered charter provider in the geographic service area subsequent to the initial agreement. Any parties to an agreement may cancel the agreement after providing ninety (90) days' written notice to the Sub-Recipient.

6. LABOR PROTECTION WARRANTY

The following language is made a part of this Agreement as required by the U.S. Department of Labor (U.S. DOL). The Sub-Recipient acknowledges that by accepting this Agreement, the Sub-Recipient accepts full responsibility for the protection of labor described as follows:

- a. General Application. The State agrees, in the absence of waiver by U.S. DOL, the terms and conditions of this warranty, as set forth below, will apply for the protection of the employees of any employer providing transportation services assisted by the PROJECT, and the transportation related employees of any other surface public transportation providers in the transportation service area of the PROJECT.

The State will provide to the U.S. DOL, and maintain at all times during the PROJECT, an accurate, up-to-date listing of all existing transportation providers which are eligible Recipients of transportation assistance funded by the PROJECT, in the transportation service area of the PROJECT, and any labor organizations representing the employees of such providers.

Certification by the State to the U.S. DOL that designated the Sub-Recipient has indicated in writing acceptance of the terms and conditions of the warranty arrangement will be sufficient to permit the flow of Section 5310 funding in the absence of a finding of noncompliance by the U.S. DOL.

b. Standard Terms and Conditions.

- i. The PROJECT will be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Sub-Recipient or the employees of any other surface public transportation provider in the transportation service area of the PROJECT. The Sub-Recipient and any other legally responsible party designated by the State are obligated to assure that any and all transportation services assisted by the PROJECT are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "PROJECT," as used in this Agreement, will not be limited to the particular facility, service, or operation assisted by federal funds, but will include any changes, whether organizational or otherwise, which are a result of the assistance provided. The phrase "as a result of the PROJECT" will, when used in the Unified Protective Arrangement for Application to Capital and Operating Assistance Projects Pursuant to Section 5333(b) of Title 49 of the U.S.C., Chapter 53, referred to in this Agreement as the "Arrangement," include events related to the PROJECT occurring in anticipation of, during, and subsequent to the PROJECT and any program of efficiencies or economics related to the PROJECT; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the PROJECT (including any economics or efficiencies unrelated to the PROJECT) are not within the purview of this Arrangement.

An employee covered by this Arrangement, who is not dismissed, displaced, or otherwise worsened in position with regard to his/her employment as a result of the PROJECT, but who is dismissed, displaced, or otherwise worsened solely because of the total or partial termination of the PROJECT, discontinuance of the PROJECT services, or exhaustion of the PROJECT funding will not be deemed eligible for a dismissal or displacement allowance within the meaning of Section 5310, Paragraphs (6) and (7) of the Arrangement or applicable provisions of comparable substitute Arrangements.

- ii. (a) Where employees of the Sub-Recipient are represented for collective bargaining purposes, all the PROJECT services provided by the Sub-Recipient will be provided under, and in accordance with, any collective bargaining agreement applicable to such employees which is then in effect.
- (b) The Sub-Recipient or legally responsible party will provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces. In the case of employees represented by a union, such notice will be provided by certified mail through their representatives. The notice will contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs in the Sub-Recipient's employment available to be filled by such affected employees.
- iii. The procedures of this subparagraph will apply to cases where notices involve employees represented by a union for collective bargaining purposes. At the request of either the Sub-Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this Arrangement will commence immediately. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (.v.) of this warranty. The foregoing procedures will be complied with and carried out prior to the institution of the intended action.
- iv. For the purpose of providing the statutory required protections, including those specifically mandated by 49 U.S.C. Section 5333(b), the State will assure as a condition of the release of funds that Sub-Recipient agrees to be bound by the terms and conditions of the National (Model) Section 5333(b) agreement¹ executed July 23, 1975, identified below, provided that

¹Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pensions rights and benefit(s) under existing collective

other comparable arrangements may be substituted therefore, if approved by the U.S. Secretary of Labor and certified for inclusion in these conditions.

- v. Any dispute or controversy arising regarding the application, interpretation, or enforcement of any of the provisions of this Arrangement, which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any such party to any final and binding disputes settlement procedure acceptable to the parties, or if they cannot agree upon such procedure, to the U.S. DOL or an impartial third party designated by the U.S. DOL for final and binding determination. The compensation and expenses of the impartial third party, and any other jointly incurred expenses, will be borne equally by the parties to the proceeding and all other expenses will be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the PROJECT, it will be employee's obligation to identify the PROJECT and specify the pertinent facts of the PROJECT relied upon. It will then be the burden of either the Sub-Recipient or the State to prove that factors other than the PROJECT affected the employees. The claiming employee will prevail if it is established that the PROJECT had an effect upon the employee even if other factors may also have affected the employee.

- vi. The Sub-Recipient, or other legally responsible party designated by the State, will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by these Arrangements, or the union representative of such employee, may file claim of violation of these Arrangements with the Sub-Recipient within sixty (60) days of the date employee is terminated or laid off as a result of the PROJECT, or within eighteen (18) months of the date his/her position with respect to his/her employment is otherwise worsened as a result of the PROJECT. In the latter case, if the events giving rise to the claim have occurred over an extended period, the eighteen (18) month limitation will be measured from the last such event. No benefits will be payable for any period prior to six (6) months from the date of the filing of any claim.
- vii. Nothing in this Arrangement will be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements, nor will this Arrangement be deemed a waiver of any rights of any union or of any represented employee derived from any other agreement or provision of federal, state, or local law.
- viii. If any employee covered by these Arrangements is terminated or laid off as a result of the PROJECT, the Sub-Recipient will give this employee priority of employment or reemployment to fill any vacant position within the control of the Sub-Recipient for which employee is, or by training or retraining within a reasonable period, can become qualified. If training or retraining is required by such employment or reemployment, the Sub-Recipient or other legally responsible party designated by the State will provide or arrange for others to provide for such training or retraining at no cost to the employee.
- ix. The Sub-Recipient will post, in a prominent and accessible place, a notice stating that the Sub-Recipient has received federal assistance under the 49 U.S.C. Chapter 53, and has agreed to comply with the provisions of 49 U.S.C. Section 5333(b). This notice will also specify the terms and conditions set forth in this Agreement for the protection of employees. The Sub-Recipient will maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration,

bargaining agreements or otherwise); (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training and retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to Section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended.

and enforcement of these Arrangements and to the proper determination of any claims arising thereunder.

- x. Any labor organization which is the collective bargaining representative of employees covered by these Arrangements may become a party to these Arrangements by serving written notice of its desire to do so upon the Sub-Recipient and the U.S. DOL. In the event of any disagreement that such labor organization represents covered employees, or is otherwise eligible to become a party to these Arrangements, as applied to the PROJECT, the dispute as to whether such organization will participate will be determined by the U.S. Secretary of Labor.
 - xi. If the PROJECT is approved for assistance under 49 U.S.C. Chapter 53, the foregoing terms and conditions will be made part of the agreement of assistance between the federal government and the State or the Sub-Recipient of federal funds; provided however, that this Arrangement will not merge into the agreement of assistance, but will be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor will any other employee protective agreement merge into this Arrangement, but each will be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.
- c. Waiver. As a part of the grant approval process, either the Sub-Recipient or the State may, in writing, seek from the U.S. Secretary of Labor a waiver of the statutory required protections. The Secretary will waive these protections in cases where at the time of the requested waiver the Secretary determines that there are no employees of the Sub-Recipient or of any other surface public transportation providers in the transportation service area who could be potentially affected by the PROJECT. The U.S. DOL will give a thirty (30) day notice of proposed waiver and, in the absence of timely objection, the waiver will become effective at the end of the thirty (30) day notice period. In the event of timely objection, the U.S. DOL will review the matter and determine whether a waiver will be granted. In the absence of waiver, these protections will apply to the PROJECT.

7. ACCESSIBILITY REQUIREMENTS

The Sub-Recipient's facilities will be accessible to the semiambulatory and nonambulatory to the extent necessitated by local conditions, as stated in **Exhibit A**, and in compliance with federal accessibility requirements as set forth in Section 504 of the Rehabilitation Act of 1973 (49 CFR Part 27).

Should the accessibility needs of the area's residents change in the future and additional accessibility features be required, the Sub-Recipient agrees to take action appropriate to retrofit vehicles and facilities in such a way as to satisfy the accessibility needs of the area. To assist the Sub-Recipient, the State will reserve a portion of new Section 5310 funds if these funds become available for future retrofit projects.

8. ENERGY EFFICIENCY AND CLEAN AIR ACT

The Sub-Recipient will comply with mandatory standards and policies relating to energy efficiencies, including the requirements contained in ASHRAE Standard 90:1-1999 and the Energy Policy and Conservation Act, 42 U.S.C. 6321 which, among other things, authorized development and implementation of State energy conservation plans. The Sub-Recipient will comply with sections 306 and 508 of the Clean Air Act of 1995, which establishes, among other things, national standards for vehicle emissions, 42 U.S.C. 7401, *et seq.* The Sub-Recipient will comply with Executive Order 11738 and Environmental Protection Agency (EPA) regulations.

9. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Sub-Recipient acknowledges and agrees that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this Agreement and will not be subject to any obligations or liabilities to the Sub-Recipient or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Sub-Recipient will include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. The Sub-Recipient will not modify the above clause, except to identify the subcontractor who will be subject to its provisions.

10. PRIVACY ACT

If the Sub-Recipient maintains files on drug and alcohol enforcement activities for FTA, and those files are maintained in such a way that information could be retrieved by personnel identified, then all requirements of the Privacy Act apply.

11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Sub-Recipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and USDOT regulations "Program Fraud Civil Remedies," 49 CFR Part 31, apply to the Sub-Recipient's actions pertaining to the PROJECT. Upon execution of the underlying agreement, the Sub-Recipient certifies or affirms the truthfulness and accuracy of any statement the Sub-Recipient has made, makes, may make, or causes to be made, pertaining to the underlying agreement or the FTA assisted project for which this agreement work is being performed. In addition to other penalties that may be applicable, the Sub-Recipient further acknowledges that if the Sub-Recipient makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Sub-Recipient to the extent the federal government deems appropriate.

12. FACILITY, EQUIPMENT, AND VEHICLE MAINTENANCE PLANS

The Sub-Recipient will participate and comply with the requirements of the Asset Management Program and Safety Program. The Sub-Recipient's participation will ensure the maximum useful life of each asset is obtained while maintaining a safe working environment.

The Sub-Recipient, as part of the building facility maintenance plan, will submit a written maintenance plan to the State which plan will include a series of inspections and routine maintenance actions designed to ensure the proper care and maximum useful life of facilities and equipment, and a record keeping system that maintains adequate permanent records of maintenance and inspection activity for facilities and equipment.

The Sub-Recipient will service each vehicle in accordance with the maintenance schedule located in the owner's manual of the vehicle, and will keep records to show service was completed. Upon request by the State, the Sub-Recipient will allow the State to review maintenance records.

13. INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain standard terms and condition required by the State, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the State, as set forth in this Agreement, are incorporated by reference. All FTA mandated terms will be deemed to control in the event of a conflict with other provision contained in this Agreement. The Sub-Recipient will not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

The Sub-Recipient will include this requirement in each subcontract financed in whole or in part with federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

14. FEDERAL WATER POLLUTION CONTROL ACT

The Sub-Recipient will comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.* The Sub-Recipient will report each violation to the State and understands and agrees the State will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

15. ENERGY CONSERVATION

The Sub-Recipient will comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

16. REPORTING OF PROJECT EVENTS

The Sub-Recipient will report to the State any event that may impact the schedule, cost, capacity, usefulness, or purpose of the project under this Agreement immediately upon discovery.

17. AUTHORIZATION

The Sub-Recipient has designated its 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 Sub-Recipient's Commission minutes or resolution authorizing the execution of this Agreement by the Mayor as the Sub-Recipient's authorized representative is attached to this Agreement as **Exhibit G**.

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

City of Mitchell, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Name/Printed: _____

Name/Printed: _____

Its: Mayor

Its: _____

Date: _____

Date: _____

Attest:

City Auditor/Clerk

(City Seal)

LOCAL CIVIL RIGHTS ASSURANCES

The city of Mitchell, South Dakota, certifies as a condition to receiving federal assistance under Section 5310 of the Intermodal Surface Transportation Efficiency Act of 1991, as amended, that:

1. No person will on the grounds of race, color, creed, national origin, sex, age, or disability be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity for which this recipient receives federal financial assistance from the Federal Transit Administration.
2. The city of Mitchell, South Dakota, will not discriminate against any employee or applicant for employment because of race, color, sex, age, disability, or national origin, and will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, age, disability, or national origin.
3. The city of Mitchell, South Dakota, will conduct any program or operate any facility that receives or benefits from federal financial assistance administered by the State in compliance with all requirements imposed by or pursuant to 49 CFR, Part 27, "Nondiscrimination on the Basis of Handicap in Federally Assisted Programs and Activities receiving or Benefiting from Federal Financial Assistance."
4. Special efforts are being made to provide transportation that handicapped persons, including wheelchair users and semi-ambulatory persons, can use. This transportation will be reasonable in comparison to the transportation provided to the general public and will meet a significant fraction of the actual transportation needs of such persons within a reasonable time. (This "Special Efforts Certification" may be filed with the State on a one-time basis and referenced in each application).
5. A Standard South Dakota Department of Transportation Title VI/Nondiscrimination Assurance, signed and dated, has been filed with the State.

The person whose signature appears below is authorized to sign this assurance on behalf of the recipient.

City of Mitchell, South Dakota

By: _____

Its: Mayor

Date: _____

**ASSURANCE CONCERNING NONDISCRIMINATION ON THE BASIS OF DISABILITY
IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES
RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

Implementing the Rehabilitation Act of 1973, as amended, and
the Americans With Disabilities Act of 1990

City of Mitchell, South Dakota, ("the Sub-Recipient")

AGREES THAT, as a condition to the approval or extension of any federal financial assistance from the Federal Transit Administration (FTA) to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research or to participate in or obtain any benefit from any program administered by the FTA, no otherwise qualified person with a disability will, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance administered by the FTA or any entity within the United States Department of Transportation (USDOT).

Specifically, the Sub-Recipient GIVES ASSURANCE that it will conduct any program or operate any facility so assisted in compliance with all applicable requirements imposed by USDOT regulations implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act of 1990 (any subsequent amendments thereto) set forth at 49 CFR Parts 27, 37, and 38, as well as all applicable regulations and directives issued pursuant thereto by any other federal departments or agencies.

City Mitchell, South Dakota

By: _____

Its: Mayor

Date: _____

CERTIFICATION FOR DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The city of Mitchell, South Dakota, as an applicant for an FTA grant, 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 of Mitchell, South Dakota, certifies that if it becomes aware of any later information that contradicts the statements of paragraphs (1) through (4) above, it will promptly inform FTA or South Dakota Department of Transportation.

The city of Mitchell, South Dakota, 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 city of Mitchell, South Dakota.

City of Mitchell, 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 Transit 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 Transit 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 Transit 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 Transit 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 Transit 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.

City of Mitchell, South Dakota

By: _____

Its: Mayor

Date: _____

Budget No. 1

Application for Capital Grants Assistance under Section 5310
of the Fixing America's Surface Transportation Act (FAST Act)

The PROJECT consists of procurement of:

Preventive Maintenance

<u>Equipment Type</u>	<u>Federal Share</u>	<u>Local Share</u>	<u>Total</u>
Preventive Maintenance	\$9,625.68	\$2,406.42	\$12,032.10