

**SECTION 5339 (CFDA NO. 20.526)
OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY
(49 USC Section 5339/MAP-21 Section 20029)
STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
AGREEMENT**

This Agreement is made and entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the city of Rapid City, South Dakota, referred to in this Agreement as the "GRANTEE." This Agreement is effective on October 1, 2012.

BACKGROUND:

1. 49 U.S.C. Section 5339 as specified under the Federal Reauthorization Moving Ahead for Progress in the 21st Century (MAP-21), offers federal assistance for public agencies and private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income;
2. 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; and,
3. The STATE and the GRANTEE want to secure and utilize grant funds for a capital project to replace, rehabilitate, or purchase buses, vans, and related equipment, or to construct bus-related facilities.

THE STATE AND THE GRANTEE AGREE AS FOLLOWS:

Section 1. Purpose of Agreement. The purpose of this Agreement is to provide for the facilitation of transportation services by the GRANTEE 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.

Section 2. Scope of Project. The GRANTEE will undertake and complete the Transportation Project as described in the GRANTEE'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.

Section 3. Period of Performance. The GRANTEE will commence, carry on, and complete the PROJECT with all practicable dispatch, in a sound, economical, and efficient manner for the life of the asset.

Section 4. Cost of Project. The cost of the PROJECT will be in the amount indicated in the GRANTEE'S Application or the latest approved PROJECT Budget and will be borne in the manner described in this Agreement. The GRANTEE will provide, from sources other than federal funds, funds 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 GRANTEE will initiate and prosecute to completion all actions

necessary to enable the GRANTEE to provide the GRANTEE'S share of PROJECT costs, at or prior to the time these funds are needed to meet the PROJECT costs. The GRANTEE further agrees that no refund, or reduction of the amount so provided will be made unless there is at the same time a refund to the STATE of a proportional amount of the GRANT.

- a) The STATE and the GRANTEE agree to:

Expand the existing bus storage facility

- b) The STATE will provide eighty percent (80%) of the total costs approved by the STATE.
- c) The GRANTEE will provide twenty percent (20%) of the total PROJECT costs approved by the STATE toward the PROJECT.
- d) The STATE will pay eighty percent (80%) of the total costs of the PROJECT listed in Paragraph 4(a), directly to the GRANTEE. The STATE will make no payment to the GRANTEE unless the PROJECT meets the specifications approved by the STATE.

Section 5. Title to Facility. Title to the PROJECT will be in the name of the GRANTEE, subject to the restrictions on use and disposition of the PROJECT set forth in this Agreement.

Section 6. Use of Facility. The GRANTEE must use the PROJECT for the provision of transportation service as described in the PROJECT Application. If the PROJECT is not used in this manner, the GRANTEE will immediately notify the STATE.

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

The GRANTEE will submit to the STATE, at the time of submittal of the GRANTEE'S annual application for Section 5339 funds, a certification that the PROJECT 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 GRANTEE will maintain the PROJECT at a high level of cleanliness, safety, and mechanical soundness. The STATE and FTA have the right to conduct periodic inspections for the purpose of confirming proper maintenance of the PROJECT.

Section 7. Construction of Bus Storage Facility Expansion. The GRANTEE and the STATE will fund the PROJECT, 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 Principals, and Audit Requirements for Federal awards (2 CFR Part 200). The GRANTEE and the STATE will fund the PROJECT in conformity with the latest approved PROJECT budget and will include the following required 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.

Section 8. Contract Under This Agreement. The GRANTEE 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 GRANTEE in any manner with any third party with respect to the GRANTEE'S rights and responsibilities under this Agreement, without the STATE'S prior written consent.

Section 9. Record and Reports. The GRANTEE 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, meeting and interim reports.

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

Section 10. Audits and Inspection. The GRANTEE will permit the STATE, the Comptroller General of the United States, the Secretary of the United States Department of Transportation, or their authorized representatives, to audit the books, records, and accounts of the GRANTEE pertaining to the PROJECT. This Agreement is subject to the provisions of United States Office of Management and Budget 2 CFR Part 200, if the GRANTEE expends Seven Hundred Fifty Thousand Dollars (\$750,000) or more in federal funds during the GRANTEE fiscal year covered, in whole or in part under this Agreement period. If the GRANTEE expends less than Seven Hundred Fifty Thousand Dollars (\$750,000) in federal funds during the GRANTEE'S fiscal year, the STATE may perform a Performance Review and Management Audit or Review related to the completion of the PROJECT objective, the allowability of service or costs and adherence to Agreement provisions.

All audits must be conducted by an auditor approved by the State Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol Avenue, Pierre, South Dakota 57501-5070. On continuing engagements, the State Auditor General's approval should be obtained annually. 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. Failure to complete audit(s) as required 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 completed satisfactorily.

Section 11. Termination.

- a) For Convenience. The STATE may, with the concurrence of FTA, terminate the PROJECT and cancel this Agreement if both parties agree 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 GRANTEE, terminate the PROJECT and cancel this Agreement for any of the following reasons:
 - (1) The GRANTEE discontinues the use of the PROJECT facility for the purpose of providing transportation services to a segment of the general public, as defined by age, disability, or low income, during the facility's useful life.
 - (2) The GRANTEE takes any action pertaining to this Agreement without the STATE'S approval and which under this Agreement would have required the STATE'S approval.
 - (3) The GRANTEE'S commencement, prosecution, or timely completion of the PROJECT is for any reason, rendered improbable, impossible, or illegal.
 - (4) The GRANTEE is in default under any provision of this Agreement.
 - (5) FTA fails to provide the STATE with sufficient federal funds to meet the STATE'S share of the PROJECT costs.
 - (6) The GRANTEE 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 GRANTEE will dispose of the PROJECT facility in accordance with the Office of Management and Budget Circular A-102 or A-110.

Section 12. 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.

Section 13. 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.

Section 14. Prohibited Interest. No member, officer, or employee of the GRANTEE during the GRANTEE'S tenure, or within one (1) year thereafter, will have any interest, direct or indirect, in this Agreement or its proceeds.

Section 15. Civil Rights. The GRANTEE 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 under the Act. The GRANTEE has signed Local Civil Rights Assurances (Exhibit A) to this effect and Exhibit A is attached to and made a part of this Agreement.

The GRANTEE will provide services in compliance with the Americans With Disabilities Act of 1990, and any amendments. The GRANTEE has signed American With Disabilities Assurance (Exhibit B) to this effect and Exhibit B is attached to 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, Code of Federal Regulations, 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.

Section 16. Disadvantaged Business Enterprises. In connection with the performance of this Agreement, the GRANTEE 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 GRANTEE'S best efforts to insure that Disadvantaged Business Enterprises have maximum practicable opportunities to compete for subcontract work under this Agreement. The GRANTEE 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 GRANTEE 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.

Section 17. Subcontracts. The contractor or subcontractor 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 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.

Section 18. Charter Bus and School Bus Provisions.

- a) In connection with the facility and funding provided for this PROJECT, the GRANTEE will meet the latest federal charter requirements.
- b) In connection with the facility and funding provided for this PROJECT, the GRANTEE will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators. The facility must remain open to the public at all times and be clearly marked for public use.
- c) The GRANTEE will include the following requirements in each subcontract exceeding \$100,000, financed in whole or in part with federal assistance provided by the FTA:

- (1) Charter Bus: The GRANTEE 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" it must not interfere with or detract from the provision of mass transportation.
 - (2) 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 GRANTEE may provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the GRANTEE'S area. The GRANTEE 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 GRANTEE.

Section 19. Labor Protection Warranty. The following language is made a part of this Agreement as required by the U.S. Department of Labor. The GRANTEE acknowledges that by accepting this Agreement, the GRANTEE 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. Department of Labor, 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. Department of Labor, 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. Department of Labor that designated the GRANTEE has indicated in writing acceptance of the terms and conditions of the warranty arrangement will be sufficient to permit the flow of Section 5339 funding in the absence of a finding of noncompliance by the U.S. Department of Labor.

b) Standard Terms and Conditions.

- (1) The PROJECT will be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the GRANTEE or the employees of any other surface public transportation provider in the transportation service area of the PROJECT. The GRANTEE 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. Code, Chapter 53, referred to in this Agreement and 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 thereto; 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 Paragraphs (6) and (7) of the Arrangement or applicable provisions of comparable substitute Arrangements.

- (2) (a) Where employees of the GRANTEE are represented for collective bargaining purposes, all the PROJECT services provided by the GRANTEE will be provided under, and in accordance with, any collective bargaining agreement applicable to such employees which is then in effect.
- (b) The GRANTEE 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 GRANTEE'S employment available to be filled by such affected employees.

- (c) 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 GRANTEE 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 (4) of this warranty. The foregoing procedures will be complied with and carried out prior to the institution of the intended action.
- (3) 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 the GRANTEE 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 other comparable arrangements may be substituted therefore, if approved by the U.S. Secretary of Labor and certified for inclusion in these conditions.
- (4) 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 in the event they cannot agree upon such procedure, to the U.S. Department of Labor or an impartial third party designated by the U.S. Department of Labor 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 GRANTEE 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.

¹Such protective arrangements will 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 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 will include provisions protecting individual employees against a worsening of their positions with respect to their employment which will 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.

- (5) The GRANTEE, 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 GRANTEE 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 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.
- (6) 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.
- (7) If any employee covered by these Arrangements is terminated or laid off as a result of the PROJECT, the GRANTEE will give this employee priority of employment or reemployment to fill any vacant position within the control of the GRANTEE 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 GRANTEE 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.
- (8) The GRANTEE will post, in a prominent and accessible place, a notice stating that the GRANTEE 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 herein for the protection of employees. The GRANTEE 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, and enforcement of these Arrangements and to the proper determination of any claims arising thereunder.
- (9) 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 GRANTEE and the U.S. Department of Labor. 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.

- (10) 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 GRANTEE 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 GRANTEE 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 GRANTEE or of any other surface public transportation providers in the transportation service area who could be potentially affected by the PROJECT. The U.S. Department of Labor will give a 30-day notice of proposed waiver and, in the absence of timely objection, the waiver will become effective at the end of the 30-day notice period. In the event of timely objection, the U.S. Department of Labor will review the matter and determine whether a waiver will be granted. In the absence of waiver, these protections will apply to the PROJECT.

Section 20. Transit Employee Protective Arrangements. The GRANTEE will comply with applicable transit employee protective requirements as follows:

- a) General Transit Employee Protective Requirements. To the extent that FTA determines that transit operations are involved, the GRANTEE will carry out the transit operations work on this Agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees under this Agreement and to meet the employee protective requirements of 49 U.S.C. A-5333(b) and U.S. DOL guidelines at 29 CFR Part 215, and any amendments. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the GRANTEE'S PROJECT from which the federal assistance is provided to support work on this Agreement. The GRANTEE will carry out that work in compliance with the conditions stated in said U.S. DOL letter.
- b) The GRANTEE will include any applicable requirements in each subcontract involving transit operations financed in whole or in part with federal assistance provided by the FTA.

Section 21. Accessibility Requirements. The GRANTEE'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 GRANTEE will take action appropriate to retrofit vehicles and facilities in such a way as to satisfy the accessibility needs of the area.

Section 22. Insurance. The GRANTEE will maintain adequate general liability, workers' compensation, and equipment liability insurance during the period of this Agreement.

Section 23. Indemnification. The GRANTEE 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 GRANTEE performing services under this Agreement. This section does not require the GRANTEE to be responsible for or defend against claims or damages arising solely from acts or omissions of the State of South Dakota, its officers, agents, or employees.

Section 24. Integrity. The GRANTEE 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.

Section 25. Questions of Fact/Disputes. Any question of fact or dispute with this 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, for determination, whose decision will be final and conclusive to the parties to this Agreement.

Section 26. Commercial Driver's License and Drug Testing. The GRANTEE will comply with the requirements for commercial driver's license and drug and alcohol testing. Any party purchasing equipment with Section 5339 funds is required to certify annually that it is in compliance with FTA regulations concerning drug and alcohol testing and must submit an annual report to the STATE. The GRANTEE has signed the Certification of Compliance with FTA Anti-drug and Misuse Prevention Program (**Exhibit C**) to this effect and **Exhibit C** is attached to and made a part of this Agreement.

Section 27. Debarment and Suspension. The GRANTEE will comply with the federal requirement for debarment, suspension, and other responsibility matters. The GRANTEE has signed the certification for debarment, suspension, and other responsibility matters (**Exhibit D**) to this effect and **Exhibit D** is attached to and made a part of this Agreement.

Section 28. Energy Efficiency and Clean Air Act. The GRANTEE 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, authorizes development and implementation of State energy conservation plans. The GRANTEE 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 GRANTEE will comply with Executive Order 11738 and EPA regulations.

Section 29. Energy Conservation. The GRANTEE 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.

Section 30. Privacy Act. If the GRANTEE 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.

Section 31. Program Fraud and False or Fraudulent Statements or Related Acts. The GRANTEE acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the PROJECT. Upon execution of the underlying contract, the GRANTEE certifies or affirms the truthfulness and accuracy of any statement GRANTEE has made, makes, may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the GRANTEE further acknowledges that if the GRANTEE 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 GRANTEE to the extent the federal government deems appropriate.

Section 32. No Government Obligation to Third Parties. The GRANTEE 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 GRANTEE or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

Section 33. Title VI Assurance. The GRANTEE will be bound by **Exhibit E**, attached to and made a part of this Agreement, said assurance being entitled, "STANDARD TITLE VI ASSURANCE."

Section 34. Certification Regarding Lobbying. The GRANTEE certifies, to the best of the GRANTEE'S knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of the GRANTEE, 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

GRANTEE will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The GRANTEE will require 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 require all subrecipients to certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 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 GRANTEE who applies or bids for an award of \$100,000 or more will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached to this Agreement as **Exhibit F**. 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.

Section 35. Federal Changes. The GRANTEE will at all times comply with all applicable Federal Transit Authority (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 GRANTEE'S failure to comply will constitute a material breach of this Agreement.

Section 36. Incorporation of FTA Terms. The preceding provision 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 GRANTEE 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.

Section 37. Federal Water Pollution Control Act. The GRANTEE 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. The GRANTEE 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.

Section 38. Building Facility Plan. The GRANTEE will participate and comply with the requirements of the Asset Management Program and Safety Program. The GRANTEE'S participation will ensure the maximum useful life of each asset is obtained while maintaining a safe working environment.

The GRANTEE, 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 routing maintenance action 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.

Section 39. Authorization. The GRANTEE has designated its Mayor as the GRANTEE'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the GRANTEE. A copy of the GRANTEE'S Commission minutes or resolution authorizing the execution of this Agreement by the Mayor as the GRANTEE'S authorized representative is attached to this Agreement as **Exhibit G.**

This Agreement has been executed by the STATE and the GRANTEE, acting by and through their duly authorized representatives, effective the day and year first above written.

City of Rapid City, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Bruce E. Lindholm

Date: _____

Its: Program Manager,
Office of Air, Rail, and Transit

Date: _____

Attest:

City Auditor/Clerk

Approved as to Form:

Special Assistant Attorney General

(CITY SEAL)

LOCAL CIVIL RIGHTS ASSURANCES

The city of Rapid City, South Dakota, certifies as a condition to receiving federal assistance under Section 5339 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, disability, or handicap 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 Rapid City, South Dakota, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, religion, sex, disability, or national origin.
3. The city of Rapid City, 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 semiambulatory 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 Assurance 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 Rapid City, 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**

The city of Rapid City, South Dakota, (the 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 (DOT).

Specifically, the Recipient GIVES ASSURANCE that it will conduct any program or operate any facility so assisted in compliance with all applicable requirements imposed by DOT 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 C.F.R. Parts 27, 37, and 38, as well as all applicable regulations and directives issued pursuant thereto any other federal departments or agencies.

City of Rapid City, South Dakota

By: _____

Its: Mayor

Date: _____

Certification of Compliance with FTA Anti-drug and
Alcohol Misuse Prevention Programs for Fiscal Year 2013

The city of Rapid City, South Dakota, as an applicant for a FTA grant, certifies to the best of its knowledge and belief, that it has adopted and implemented the following:

- A. A policy statement on drug use and alcohol misuse in the workplace.
- B. An employee and supervisor education and training program.
- C. A drug and alcohol testing program for employees and drug testing for applicants for employment in safety-sensitive positions and procedures to follow in the event of a positive test.
- D. Administrative procedures for record keeping, reporting and releasing drug and alcohol information to authorized parties.

The city of Rapid City, 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 Rapid City, South Dakota.

City of Rapid City, South Dakota

By: _____

Its: Mayor

Date: _____

Certification for Debarment, Suspension
and Other Responsibility Matters

The city of Rapid City, South Dakota, as an applicant for a FTA grant, certifies to the best of its knowledge and belief the following:

- 1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- 2. Has not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against it 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. Is 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. Has 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 Rapid City, South Dakota, certifies that if it becomes aware of any later information that contradicts the statements of paragraph (1) through (4) above, it will promptly inform FTA or South Dakota Department of Transportation.

The city of Rapid City, South Dakota, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted.

City of Rapid City, South Dakota

By: _____

Its: Mayor

Date: _____

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
STANDARD TITLE VI ASSURANCE
September 1, 1997**

TITLE VI – NONDISCRIMINATION:

During the performance of this Agreement, the GRANTEE, for itself, its assignees, and successors in interest (referred to in this Agreement as the “contractor”) agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally or state assisted programs of the South Dakota Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as it may be amended from time to time (referred to in this Agreement as the “Regulations”), which are incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: The contractor, with regard to the work performed by the contractor during this Agreement, shall not discriminate on the grounds of race, color, sex, age, disability, 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 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 Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, disability, 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 will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the South Dakota Department of Transportation or the Federal Transit Administration to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to the Department of Transportation, or the Federal Transit Administration as appropriate, and will set forth what efforts were made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor’s noncompliance with the non-discrimination provisions of this Agreement, the South Dakota Department of Transportation will impose such contract sanctions as the South Dakota Department of Transportation or the Federal Transit Administration may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the contractor under this contract until the contractor complies, and/or
 - b. Cancellation, termination, or suspension of this contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs 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 or procurement as the South Dakota Department of Transportation or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the South Dakota Department of Transportation to enter into such litigation to protect the interests of the State of South Dakota, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceed \$100,000)

The GRANTEE certifies, to the best of the GRANTEE’S knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the GRANTEE, 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 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 GRANTEE will complete and submit Standard Form, LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The GRANTEE 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.
- (4) 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).
- (5) The GRANTEE understands any person who does not file a required Certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

City of Rapid City, South Dakota

By: _____

Its: Mayor

Date: _____

BUDGET NO. 1

PROJECT DESCRIPTION AND BUDGET
FOR

City of Rapid City, South Dakota

Application for Capital Grants Assistance under Section 5339
of the Moving Ahead for Progress in the 21st Century

<u>Facility</u>	<u>Federal Share</u>	<u>Local Share</u>	<u>Total</u>
Bus Storage Facility Expansion	\$369,766	\$92,442	\$462,208