28E AGREEMENT FOR PARA-TRANSIT SERVICES

THIS AGREEMENT, by and between the City of Council Bluffs, Iowa ("City') and Southwest Iowa Planning Council/Southwest Iowa Transit Agency (hereafter, "Contractor") is hereby entered into on the date last written below.

Purpose of Service

As part of the City's commitment to comprehensive public transit services, the City intends to provide transportation for residents of all ages who are disadvantaged concerning transportation due to disability. This transportation system is utilized to enhance existing public transportation in order to meet the needs of the disabled. The City's service is referred to as the Special Transit Service (STS).

Separate Legal Entity

This Agreement does not establish a separate legal entity.

Scope of Work

The work required is the provision of curb-to-curb transportation service that meets all requirements of the Americans with Disabilities Act ("ADA") and Federal Transit Administration ("FTA") regulations available to eligible users at their request. Such services are to occur within the designated days and hours of operation, to and/or from any origin or destination within the City of Council Bluffs, Iowa, and certain designated points within Omaha, Nebraska.

Southwest Iowa Planning Council/Southwest Iowa Transit Agency (hereafter "Contractor') shall provide service operation, administration, dispatching, communication, record keeping, personnel training, required drug and alcohol testing and reporting, and all other services necessary to fulfill the requirements under this Agreement. The City will provide promotion and marketing of the system, determination of client eligibility and client certification.

Vehicles and Repair

The Contractor shall also lease the City's fleet of STS vehicles at a rate of $1 per vehicle per year. The Contractor may substitute like vehicles from its own fleet as necessary to ensure full service and continuous coverage under this Agreement.

The Contractor shall maintain the vehicles necessary for the STS services, including, but not limited to, routine maintenance, fuel and regular upkeep. Any major repairs anticipated to be in excess of $1,000.00 shall first be discussed in consultation with City officials prior to commencing such repair.

Basis of Service

1. The City of Council Bluffs' Special Transit Service shall be provided 5:15 a.m. to 11:30 p.m. Monday – Friday and 6:45 a.m. to 8:45 p.m. on Saturday. There is no service on Sunday.

   a. Monday – Friday normally three to four (3-4) of the four vehicles will be operational during the Contractor's service hours. On Saturday normally only one vehicle is necessary for operation.

2. A service hour is defined as that time which a driver and vehicle are available to provide transportation service. Revenue hours will be defined as the time a vehicle makes the first pick up until the last drop off for the day.

3. The Contractor shall provide actual on-street service beginning at the starting time and until the ending time specified by the City. The Contractor shall accept requests for service for any time before the specified ending time. Trips in transit after the ending time shall be completed in the most cost-effective manner for the City of Council Bluffs. No new trips may be scheduled after the ending time.

4. Anticipated revenue hours are as follows:

Monday through Friday	6:00 a.m. to 5:00 p.m.
Saturday	9:00 a.m. to 5:00 p.m.

   In addition to these hours, service will also be provided if needed and scheduled for the day before at the following times: any time service is requested during the following hours, the Contractor is required to provide this service in the most economical method for the City, i.e. utilize designated cab service.

Monday through Friday	5:15 a.m. to 6:00 a.m.
	5:00 p.m. to 11:30 p.m.
Saturday	6:45 a.m. to 9:00 a.m.
	5:00 p.m. to 8:45 p.m.

   The City reserves the right to adjust the service schedule as it deems necessary.

5. Holidays to be observed during the Agreement period are:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Fourth of July	Christmas Day

Vehicle Operators

1. The goal of the STS is to provide responsible, courteous, timely and efficient transportation, and to increase the client's confidence in the service. All operational procedures and employee training should be developed by the Contractor with these points in mind.

2. It is the responsibility of the Contractor to provide the necessary driver training and orientation, and develop operating policies and procedures with regard to the special needs of STS clientele, passenger assistance and STS user policies, as well as report and record keeping, radio communication, vehicle and lift operation and driver safety.

3. Drivers shall be responsible for locking wheelchairs into place with the tie-down devices and ensuring that seated passengers wear seat belts. Driver negligence regarding the securing of wheelchairs with tie-downs and seated passengers with seat belts shall be the sole responsibility of the Contractor and shall be considered a failure to maintain the required level of service. Riders have the right to refuse tie-down devices and/or seat belts. If riders refuse tie-down devices and/or seat belts, drivers will be considered as having fulfilled their responsibilities concerning tie-down devices and/or seat belts.

4. Drivers will collect STS fares and tickets on the vehicles and a complete record of all monies and tickets collected will be maintained.

5. Drivers and dispatchers are subject to the drug and alcohol regulations adopted by the Federal Transit Administration (FTA). The Contractor will maintain the necessary policy, testing program and reporting system to meet FTA regulations. The Contractor will furnish an annual report of the testing results to the City by February 15 of each year.

6. The drivers shall not be required to wait more than ten (10) minutes at any pick up location.

7. The driver shall assist passengers at the curb and sidewalk when necessary in boarding and leaving the vehicle. The driver shall not be required to leave the curb and sidewalk to assist passengers.

Dispatch

1. The Contractor is required to provide dispatching for STS. A specific telephone number, for this purpose only, shall be established to receive service requests and one or more schedulers shall be available to answer calls during the specified hours.

2. Requests for STS service, including next day service, shall be taken Monday-Friday and Saturday from 8 a.m. to 5 p.m. Requests for other than next day trips will be taken up to

14 days in advance. Reservations can be accepted using electronic means (e.g. answering machines or voice mail) on Sundays or after 5 p.m. on Monday-Friday and Saturday.

3. The Contractor shall take the necessary steps to provide schedulers who are sensitive to the specialized needs of the disabled, who are familiar with the City and the STS service area, who are orientated in the policies for use of STS established by the City, and the operational procedures of the Contractor.

4. The Contractor will notify the City (712-890-5325) as soon as possible if unable to provide paratransit service due to inclement weather. Dispatch personnel will notify scheduled passengers of any cancellations.

Level of Service

The Contractor will provide efficient, courteous and timely transportation to the disabled citizens of the City. The level and quality of service provided by the Contractor shall be maintained the under normal and extraordinary levels of demand. The following service parameters will be strictly adhered to in the service delivery:

1. Trips must be scheduled within one hour of requested time. The Contractor does have the option of negotiating with the client a pick up time of an hour either before or after his/her requested time if scheduling capacities justify this action.
2. Clients shall be picked up with no more than a thirty-minute variance from the scheduled time.
3. Clients shall be delivered at, or before, their assigned delivery time.
4. No client shall be limited in the number of trips he/she may schedule.
5. No client shall be denied a trip because of the purpose of the trip.
6. The client will be notified by telephone if the STS vehicle dispatched to provide service will be more than fifteen (15) minutes late. A new pick-up and delivery time will be given to the client at that time.
7. Service is available anywhere within the city limits of Council Bluffs.
8. Service is provided in Omaha as far north as Hamilton Street, as far south as Woolworth Avenue and as far west as 42nd Street. This includes service to the University of Nebraska Medical Center (UNMC) main campus and the Veterans Affairs Medical Center (VA).

Records

1. Various internal records and procedures will be developed by the Contractor. All records associated with the Contractor's provision and operation of STS, whether requested by the City or whether part of records normally kept by the Contractor on his operations, shall be open to the City. The records and procedures are subject to City approval for form content and accuracy.

2. All records applicable to the operation of this service must be retained and be available to the City for a period of three (3) years after the termination of this Agreement. If the Contractor discontinues its business operation, it will turn over relevant records to the City within three (3) business days.

3. The Contractor shall provide to the City the monthly trip information and other pertinent data needed to qualify for Federal or State subsidies.

4. The contractor shall establish record keeping and operating procedures to provide the following:

    a. A dispatch log shall be established on which both subscription and reservation service trips shall be entered daily by the dispatcher. Information required on the dispatch log sheet includes, in addition to normal dispatch information, trip purpose, presence of non-pay escort and/or paying companion, and client identification. Such information may be recorded electronically.

The dispatch log shall reflect all requests for service received from STS users, whether or not service was provided, and if no service was provided, the reasons for such failure.

    b. Trip sheets maintained by the drivers indicating vehicle identification, date, client identification, scheduled and actual pick-up and delivery time, and origin and destinations. Copies of trip sheets will be provided to a City representative monthly. Electronic format is acceptable.

    c. A daily record of all fare receipts.

    d. A file indicating certified users of STS and procedure to monitor subscription service, no-shows, and other data necessary to operate the service in accordance with user policy established by the City.

Required Reports

1. On or before February 15th of each calendar year, the Contractor must submit to the City the Management Information System (MIS) Report on substance testing for the previous calendar year, in compliance with federal law. The Contractor must annually provide a statement of compliance with the drug and alcohol testing rules using language similar to that required by federal law.

2. The Contractor must submit a monthly report which will include: a) the total vehicle miles; b) the total revenue miles; c) the total number of passengers (rides); d) the total fare box revenue (cash & tickets); e) types/purposes of trips; f) revenue hours (per

week) which includes documentation from driver's logs or Contractor's dispatch records.

Communication

The Contractor shall provide and maintain the capability of two-way voice communication between dispatch and drivers. The communication system shall be between the Contractor's base station and all vehicles utilized in providing paratransit service.

Insurance

The Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents from any and all liability from any damage, loss or injury including death (this will include attorney fees and the cost of litigation) arising out of an event or incident related to the Contractor, its employees and agents performing or attempting to perform its obligations to the City and public as set out in this agreement.

As evidence of its ability to perform its obligation set out in the above paragraph, the Contractor shall provide proof of insurance covering all aspects of its operations as they related to the City and this agreement. This insurance must be in at least the amounts set forth below and require thirty (30) days written notice to the City prior to cancellation.

The Contractor shall insure vehicles and equipment as follows:

1. Commercial General Liability
   a. Each Occurrence Limit $1,000,000
   b. General Aggregate Limit $1,000,000

2. Commercial Automobile Liability
   a. Limits of Liability:
      Bodily Injury & Property Damage $1,000,000

      Each Accident:
   b. Limits of Liability:
      Uninsured and Underinsured Motorists $1,000,000

3. Umbrella Liability
   a. Limits of Liability:
      Bodily Injury and/or property damage

      Each Occurrence $1,000,000
      General Aggregate $1,000,000

In case of an accident resulting in a total loss, either fair market value or a replacement vehicle, subject to City approval, the title of which shall be relinquished to the City, shall be returned to the program.

Compensation

1. On or before the fifteenth day of each month, the Contractor shall submit to the City an invoice equal to one twelfth of the annual lump sum amount of $297,917, minus any fares collected and retained, plus the actual costs of any services provided under this Agreement by non-SWITA taxi services.

2. The City will, upon receipt of the Contractor's monthly invoice, remit payment of the balance due, net of any credits to the Contractor, promptly within thirty (30) days.

3. The annual service fee will be reviewed annually by SWITA and City personnel, resulting in a mutually agreed upon contract addendum if needed.

General

The Contractor shall submit for the City's approval written procedures and reporting policies for the following:

1. Vehicle accidents.

2. Vehicle failure.

3. Service complaints.

The Contractor shall provide access to an established place of business for the conducting of management activities including the acceptance of information.

The Contractor shall submit a monthly invoice for providing service in accordance with the accepted proposal. All costs charged to the operation shall be supported by properly executed payrolls, time records, invoices, contracts, or other documentation to the satisfaction of the City. The Contractor shall deduct an amount equal to fare revenues collected from the monthly billing.

Client eligibility and cancellation of eligibility shall be entirely within the discretion of the City.

Federal and State Requirements

This Agreement is subject to financial assistance contracts, and the conditions of said contracts between the City and the State of Iowa, and between the City and the FTA that require the Contractor comply with certain regulations. The regulations are listed in "Exhibit B."

Term of Agreement

This Agreement is effective for five years, with service commencing on July 1, 2018 and terminating June 30, 2023.

Signed this _____ day of _____, 2018

By:

_____ _____

John P. McCurdy, Executive Director Matthew J. Walsh, Mayor

_____

Jodi Quakenbush, City Clerk

Southwest Iowa Planning Council City of Council Bluffs

EXHIBIT "A"

FARE STRUCTURE

The following fare structure, implemented on March 12, 2012, will remain in effect unless changed by the City:

ADA – Eligible Passenger	$2.50 per one-way trip
Personal Care Attendant	Free
Non-Personal Care Attendant/ Riding Companion (space available)	$2.50 per one-way trip

EXHIBIT "B"

Federal Transit Administration (FTA) Requirements

Charter Service Operations – The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients 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 at 49 CFR 604.9 must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Operations – Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients 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 specified exemption, recipients and sub-recipients may not use federal funded equipment, vehicles or facilities.

Energy Conservation – The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Clean Water – (1) The Contractor agrees to 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 Contractor agrees to report each violation to the Purchaser, and understands and agrees that the Purchaser in turn will report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Lobbying – Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause, pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C.§ 1601, et seq].

-Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d).

-Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Party 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

-Use of "Disclosure of Lobbying Activities," Standard Form-LLL – Set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.) – Contractors who apply for bid for an award of $100,000 or more shall file the certification required by CFR Part 20, "New Restrictions on Lobbying." 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 shall 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 the Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City of Council Bluffs (STS).

Access to Records – The following access to records requirements apply to this Agreement:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agree, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of the Agreement, in which case the Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Federal Changes – The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to comply shall constitute a material breach of this Agreement.

Clean Air – (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § § 7401 et seq. The

Contractor agrees to report each violation to the Purchaser, and understands and agrees that the Purchaser in turn will report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Recovered Materials – The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Obligation by the Federal Government

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.
(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

(1) The Contractor acknowledges that the provision 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 CFR Part 31, apply to its actions pertaining to this truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which the work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it 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 Contractor to the extent the Federal Government deems appropriate
(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C § 5307, the Government reserve the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract

financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination

a. Opportunity to Cure – The City of Council Bluffs (STS) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

   If Contractor fails to remedy to the City of Council Bluffs' satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Contractor of written notice from the City setting for the nature of said breach or default, the City shall have the right to terminate the Agreement without any further obligation to the Contractor. Any such termination for default shall not preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

b. Waiver of Remedies for any Breach – In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or any other term, covenant, or condition of this Agreement.

c. Termination for Convenience – The City of Council Bluffs, by written notice, may terminate this Agreement, in whole or in part, when it is in the City's interest. If this Agreement is terminated, the City shall be liable only for payment under the payment provisions of this Agreement for service rendered before the effective date of termination.

d. Termination for Default – If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this Agreement or any extension or if the Contractor fails to comply with any other provisions of this Agreement, the City may terminate this Agreement for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the Agreement price for service performed in accordance with the manner of performance set forth in this Agreement. If this Agreement is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the City, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and the City shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If after termination for failure to fulfill contractual obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issues for the convenience of the City.

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.940 and 29.945, are suspended or debarred.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

1) Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a Federal department or agency;

2) Contractor has 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) Contractor is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission or any of the offenses enumerated in paragraph (2) of this certification; and

4) Contractor has not had one or more public transactions (Federal, State or local) terminated for cause or default within a three-year period preceding this Agreement.

Contracts Involving Federal Privacy Act Requirements – The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government with any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974.

Among other things, the Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

Civil Rights – The following requirements apply to the Agreement:

(1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the Agreement:

(a) Race, Color Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 29 U.S.C. § 12112, the Contractor agrees they will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disputes – Disputes arising in the performance of this Agreement that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Council Bluffs' STS. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute – Unless otherwise directed by the City of Council Bluffs, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

Claims for Damages – Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies – Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Council Bluffs and the Contractor arising out of or in relation to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Rights and Remedies – The duties and obligation imposed by this Agreement and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duly afforded any of him or her under the Agreement, nor shall any such action or failure to act constitute an approval of our acquiescence in any breach there under, except as may be specifically agreed in writing.

Transit Employee Protective Provisions

(1) The Contractor agrees to 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 Contractor agrees to carry out the transit operations work under this Agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and

equitable to protect the interest of employees employed 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 thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on this Agreement. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the Agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on this Agreement, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with this Agreement in compliance with the conditions state in that U.S. DOL letter.

(2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Disadvantaged Business Enterprises

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 3.53%. A separate contract goal has not been established for this procurement.

The successful bidder/offerer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Incorporation of Federal Transit Administration (FTA) Terms

If this Agreement does not include or fully set forth all the terms of FTA Circular 4220.1E or conflicts with Circular 4221.1E, then Circular 4220.1E shall control and the Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of any of the FTA Circular 4110.1E terms which are hereby incorporated by reference.

Drug and Alcohol Testing

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the Iowa Department of Transportation or the City of Council Bluffs, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 1st of each contract year and to submit a copy of the submitted Management Information System (MIS) report to HIRTA by March 15 of each contract year with a copy to the Transit Coordinator for the City of Council Bluffs' STS at 209 Pearl Street, Council Bluffs, Iowa 51503. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements", which is published annually in the Federal Register.