

MISSISSIPPI DEPARTMENT OF CORRECTIONS
CONTRACT TERMS AND CONDITIONS

AGENCY CONTRACT NO. **XXXXXXXXXX**

This Contract is made and entered into by and between the Mississippi Department of Corrections (“MDOC”), the State of Mississippi, acting by and through the duly authorized Executive Deputy Commissioner of the Mississippi Department of Corrections (MDOC), and **VENDOR**, who is duly registered to do business in the State of Mississippi and whose address is _____, effective as of the date of latest execution below, under the following terms and conditions.

1. **SCOPE OF SERVICES.** Vendor will provide the items as set forth in Sealed RFX Proposal No. 3160005552 as agreed to therein. Vendor does hereby grant, bargain, sell and warrant the above described materials, equipment, and/or supplies and agree that they are according to the approved plans, specifications and requirements of the MDOC as set out in the Proposal/Bid and “Notice and Instructions,” both of which are fully incorporated by reference and made a part of this Contract, as if set forth in letters and figures herein. Any and all labor or work to be performed under this Contract shall be performed in accordance with same. The said materials, equipment, supplies and/or work shall be to the complete satisfaction to the MDOC in accordance with the terms of this Contract.
2. **CONTRACT TERM.** The Contract shall begin on **MDOC Approval, anticipated through December 05, 2023.** If a contract is awarded and executed in connection with this proposal, the MDOC reserves the right to extend the agency contract contract for this proposal twice for up to six (6) months, upon written acceptance of both parties. The Contract extension shall begin on the original termination date or the extension termination date. The contract price for the **Fork Lift(s)** will remain the same through the duration of the contract, including extensions.
3. **PAYMENT.** Unless the Agreement provides for periodic invoicing, payment of all fees for services shall not occur until all services to be provided and/or deliverables, if any, under the Agreement have been fully provided to MDOC's satisfaction. Continuance of any MDOC contract is based upon the availability of funds. Should there be no funds available for any successive funding period, the contract will be cancelled as of the end of the funding period with no further obligation on the part of MDOC. Any property covered by a lease shall be returned to the lessor. In the event of any reduction of available funds, the contract shall be funded as priority. No invoice shall be considered, past due or late until 45 days after receipt and no late payment fees or penalties shall apply in excess of those prescribed by law. FOB, MDOC Destination for each fork lift ordered.
4. **AVAILABILITY OF FUNDS.** It is expressly understood and agreed that the obligation of the MDOC to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise

available to the MDOC, the MDOC shall have the right upon ten (10) working days written notice to Vendor, to terminate this agreement without damage, penalty, cost or expenses to the MDOC of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

5. **PAYMODE.** Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Vendor's choice. The State may, at its sole discretion, require Vendor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Vendor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
6. **E-PAYMENT.** Vendor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The MDOC agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the MDOC within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § § 31-7-301 *et seq.*
7. **INSURANCE.** Vendor shall maintain commercial general liability insurance in a commercially reasonable amount sufficient and necessary to cover the scope of services of the Agreement. If the Agreement requires Vendor to provide professional services, Vendor shall also maintain professional liability insurance covering itself, its employees, agents, professional employees and representatives. In addition, if the Agreement requires Vendor to provide onsite services to MDOC, Vendor shall maintain Workers Compensation coverage of its employees, if any, and said coverage shall be in compliance the applicable law. Upon request, Vendor shall provide proof of insurance to MDOC. MDOC is self-insured under the Mississippi Tort Claims Act. Any provisions of this Agreement which require MDOC to obtain or maintain insurance are hereby deleted in their entirety. Any provisions of the Agreement which require MDOC to name Vendor as an additional insured are hereby deleted in their entirety.
8. **BILLING DISPUTES.** If the amount to be paid to the Vendor is disputed by MDOC, then MDOC shall immediately advise the Vendor of the basis of the dispute and, pay the amount of such invoice, which is not in dispute. If the parties cannot resolve the dispute within thirty (30) days of such date that the Vendor is advised of MDOC's dispute, either party may initiate dispute resolution proceedings as provided herein.
9. **DISPUTE RESOLUTION.** In the event that the parties are unable to resolve any issue related to this Agreement, the parties shall use their best efforts to settle such disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution satisfactory to both parties. If the parties cannot resolve the dispute within thirty (30) days of the date of the initial notice of dispute, the parties agree that the dispute shall be heard and subsequently decided by a Mississippi Attorney General designee or by the courts.
10. **APPLICABLE LAW.** Governing Law; Venue. The Agreement shall be governed and controlled by all applicable laws, ordinances, rules and regulations of the State of Mississippi. All suits, claims, cases, controversies, actions, disputes, complaints and/or orders to show

cause related to; arising from; in connection with; or to construe or enforce the terms of the Agreement, (hereinafter "Suites") shall be governed by the laws of the State of Mississippi, without regard to its conflicts of law provisions. Any provision contained in the Agreement which purports to set venue outside of the State of Mississippi is hereby deleted in its entirety.

11. **COMPLIANCE WITH LAWS.** Vendor understands that the MDOC is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Vendor agrees during the term of the agreement that Vendor will strictly adhere to this policy in its employment practices and provision of services. Vendor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
12. **ATTORNEY'S FEES, COLLECTION COSTS AND DAMAGES.** Any provision of the Agreement which require the prevailing party and/or require MDOC to pay Vendor any attorney fees and/or collection costs are hereby deleted in their entirety. Any provisions of the Agreement which require payment of liquidated damages by MDOC are hereby deleted in their entirety.
13. **INDEMNIFICATION.** If Vendor's employees shall be performing any service whatsoever on or at any MDOC site, Vendor shall to the fullest extent allowed by law, indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Vendor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion upon approval of the Office of the Mississippi Attorney General, Vendor may be allowed to control the defense of any such claim, suit, etc. In the event Vendor defends said claim, suit, etc., Vendor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Vendor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Vendor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.
14. **ADJUSTMENTS TO CHARGES.** Upon providing a thirty (30) day advance written notice to MDOC, Vendor may, from time to time propose the addition of a surcharge, fee or increase any Charges provided in the Agreement to account for: (a) increased Vendor costs due to uncontrollable events including, but not limited to, changes in Applicable Laws, imposition of taxes, fees or surcharges, or acts of God such as fires, weather, disease, strikes or terrorism; (b) increased disposal or processing costs; (c) increased transportation costs; (d) costs or fees due to the inclusion of Excluded Waste and/or contamination; (e) decreased value of Recyclable Material or changes in commodity markets; or (f) actual Services or equipment that differ from those listed in the Service Details of the Agreement. Subject to any Comments in the Service Details, Vendor may, from time to time by advanced written notice to, increase any Charges provided in the Agreement to achieve or maintain an acceptable operating margin

as determined in Vendor's sole discretion. Vendor may also increase Charges for any other reason with Customer's consent, which may be evidenced, in writing, or by the parties' actions and practices.

15. TERMINATION FOR CONVENIENCE.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate the contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Vendor specifying the part of the contract terminated and when termination becomes effective.
- b. *Vendor's Obligations.* Vendor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Vendor will stop work to the extent specified. Vendor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

16. REPRESENTATIONS OF VENDOR. Vendor represents and warrants that Vendor, its officers, directors and employees (a) has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; (b) has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

17. TRADE SECRETS AND FINANCIAL INFORMATION. It is expressly understood that Mississippi law requires that the provisions of the Agreement which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

18. TRANSPARENCY. The Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated §79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Vendor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

19. NO LIMITATION OF LIABILITY. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Vendor for harm caused by the intentional or reckless conduct of Vendor or for damages incurred through the negligent performance of duties by Vendor or the delivery of products that are defective due to negligent construction.

20. ANTI-ASSIGNMENT/SUBCONTRACTING. Vendor acknowledges that it was selected by the MDOC to perform the services/work required hereunder. Vendor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of MDOC, which MDOC may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of Vendor's obligations without such consent shall be null and void. No such approval by MDOC of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the MDOC in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that MDOC may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

21. MODIFICATION. This agreement may be modified only by written agreement signed by the parties hereto.

22. TERMINATION UPON BANKRUPTCY This contract may be terminated in whole or in part by the MDOC upon written notice to Vendor, if Vendor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Vendor of an assignment for the benefit of its creditors. In the event of such termination, Vendor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

23. FAILURE TO ENFORCE. Failure by the MDOC at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the MDOC to enforce any provision at any time in accordance with its terms.

24. INTEGRATED AGREEMENT/MERGER. This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the MDOC and Vendor. Vendor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the MDOC or Vendor on the basis of draftsmanship or preparation hereof.

25. PRIORITY. The contract consists of these Contract Terms and Conditions, the RFX [RFX 3160005552] hereinafter "RFX". The RFX, including the "NOTICE AND INSTRUCTIONS" and any attachments thereto (including, but not limited to, the Specifications, which are Attachment B to the "NOTICE AND INSTRUCTIONS), as well as Vendor's bid/proposal in response are fully incorporated by reference herein as if set forth in letters and figures. Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first reference to these Contract Terms and Conditions, the RFX and, if still unresolved, by reference to the bid/proposal. Omission of any term or obligation from this agreement or attached

Tabulation shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

- 26. TAXES.** The Vendor is liable for all taxes. Sections 27-65-1, *et seq.*, and 27-67-1, *et seq.*, of the Mississippi Code exempt the MDOC and other State entities from State sales and use taxes. Likewise the MDOC will not pay excise or personal property taxes and if the Vendor is liable for these they should be taken into consideration in formulating the pricing of bids. It is the Vendor's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible taxing liabilities in connection therewith.
- 27.** If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, and to this end, the provisions hereof are severable. In such event, the parties shall amend the Agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

This the _____ day of _____, 2022.

VENDOR NAME,

BY: _____

This the _____ day of _____, 2022.

MISSISSIPPI DEPARTMENT OF CORRECTIONS,

BY: _____

Karei McDonald
Executive Deputy Commissioner