

CONTRACT AGREEMENT FOR CAPITAL
EQUIPMENT PROCUREMENT

CONTRACT NO: XXXXXXXXXX

CONTRACT AGREEMENT FOR CAPITAL EQUIPMENT PROCUREMENT

CONTRACT NO: XXXXXXXXX

INDEX

	<u>PAGE NO.</u>
<u>Section 1. Purpose of Contract Agreement</u>	4
<u>Section 2. Scope of Work</u>	4
<u>Section 3. Period of Performance</u>	4
<u>Section 4. Procurement Funding</u>	5
<u>Section 5. E-Invoice and E-Payment PayMode</u>	5
<u>Section 6. Contracts Under This Contract Agreement</u>	5
<u>Section 7. Contract Changes</u>	6
<u>Section 8. Compliance with Applicable Laws</u>	6
<u>Section 9. Federal Changes</u>	6
<u>Section 10. Indemnity, Insurance & Relationship of the Parties</u>	6
<u>Section 11. Pre-Award and Post Delivery Audit Requirements</u>	6
<u>Section 12. Disputes</u>	9
<u>Section 13. Availability of Funds</u>	9
<u>Section 14. Stop Work Order</u>	10
<u>Section 15. Termination of Contract</u>	11
<u>Section 16. Interest of Members of, or Delegates, to Congress</u>	12
<u>Section 17. Prohibited Interest</u>	12

<u>Section 18. Civil Rights</u>	12
<u>Section 19. Equal Employment Opportunity</u>	14
<u>Section 20. Contract Work Hours and Safety Standards</u>	14
<u>Section 21. Clean Air</u>	14
<u>Section 22. Environmental Regulations</u>	15
<u>Section 23. Clean Water</u>	15
<u>Section 24. Energy Efficiency</u>	15
<u>Section 25. Audit and Inspection</u>	15
<u>Section 26. Effective Date</u>	15
<u>Section 27. Purchase Order</u>	15
<u>Section 28. Certification Regarding Lobbying</u>	15
<u>Section 29. Buy America</u>	16
Certification requirement for procurement of steel, iron, or manufactured products	16
Certification requirement for procurement of buses, other rolling stock and associated equipment	17
<u>Section 30. Certification Regarding Suspension and Debarment</u>	17
<u>Section 31. Cargo Preference-Use of United States-Flag Vessels</u>	17
<u>Section 32. No Obligation by the Federal Government</u>	18
<u>Section 33. Incorporation of Federal Transit Administration (FTA) Terms</u>	18
<u>Section 34. Program Fraud and False or Fraudulent Statements or Related Acts</u>	18
<u>Section 35. Immigrant Status Certification</u>	18

<u>Section 36. Section 504 and ADA Requirements</u>	19
<u>Section 37. Notification of Federal Participation</u>	19
<u>Section 38: Notice</u>	19
<u>Section 39: Entire Agreement</u>	20

CONTRACT AGREEMENT FOR CAPITAL EQUIPMENT PROCUREMENT

CONTRACT NO: XXXXXXXXX

This Contract Agreement is made by and between the Mississippi Transportation Commission (hereinafter referred to as the "COMMISSION") and **XXXXXXXXXX** (hereinafter referred to as "CONTRACTOR").

WHEREAS, the CONTRACTOR has submitted to the COMMISSION a formal bid in response to an Invitation to Bid and Vehicle Specifications issued by the COMMISSION for the purchase of vehicles;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the COMMISSION and the CONTRACTOR hereby agree as follows:

Section 1. Purpose of Contract Agreement: The purpose of this Contract Agreement is to provide for the purchase of vehicles as defined in Section 2 below and to state the terms, conditions, and mutual undertakings of the parties as to the manner in which the purchase will be undertaken and completed.

Section 2. Scope of Work: The CONTRACTOR shall provide **27/29-A-Basic-Non-ADA Passenger Accessible Bus** The vehicles will meet the Vehicle Specifications herewith incorporated by reference in accordance with **XXXXXXXXXX** and attached as Appendix A, at the unit prices. The procurement of the vehicles will be in accordance with the terms and conditions of this Contract.

Section 3. Period of Performance.

(A) The CONTRACTOR shall deliver all vehicles F.O.B. Jackson, Mississippi, within one hundred-twenty (120) days upon receipt of a purchase order issued by the COMMISSION. The CONTRACTOR shall provide written notice of vehicle delivery to the COMMISSION within five (5) working days of receiving the vehicles. The Scope of Work of the Contract Agreement will be completed upon successful delivery, satisfactory inspection, and acceptance by the COMMISSION, correction of any defects, and payment by the COMMISSION of the invoice submitted by the CONTRACTOR. This does not relieve the CONTRACTOR of any vehicle warranty obligations called for in the Vehicle Specifications (Appendix A). The accepted unit prices will remain unchanged for the duration of the Contract. Any revisions are subject to the provisions of Section 7 of this Contract.

Prior to the building of any vehicle, the CONTRACTOR shall supply the COMMISSION with a complete factory generated manufacturer's build list, including, but not limited to, an accurate and complete description of the vehicle's specifications, manufacturer's requirements, dimensions,

additions, deletions and descriptions of the vehicle of any type whatsoever, including all specifications required by the COMMISSION.

(B) In the event of the CONTRACTOR'S non-compliance with the delivery provisions of this contract and/or the approved specifications, the COMMISSION shall impose such contract sanctions as it may determine appropriate, including but not limited to:

- (1) Cancellation, termination or suspension of the contract agreement, in part or in whole;
- (2) Withdrawal and/or cancellation of all purchase orders;
- (3) Refusal to accept delivery of vehicles; or
- (4) Prohibiting the CONTRACTOR, his representatives or any company for which he is an officer, employee, partner or owner from participating in the COMMISSION'S solicitation for vehicle for a period of at least twelve (12) months.

Section 4. Procurement Funding.

(A) Funds to cover the Federal share of the vehicles' cost may be provided through an appropriation authorized by Titles 49 and 23 of the U.S.C. of 1964, as amended, and it shall be the responsibility of the COMMISSION to obtain these funds. Inability of the COMMISSION for any reason to obtain funds shall result, upon notification by the COMMISSION to the CONTRACTOR, in termination of the contract.

(B) The maximum amount of funds payable to the CONTRACTOR for the equipment described in Section 2 (Scope of Work) shall be listed below:

27/29-A-Basic-Non-ADA Passenger Accessible Bus

Make: XXXXXX

Model: XXXXXX

Delivery: XXXXX

(C) Payment of Cost. Mississippi Department of Transportation (hereinafter referred to as "MDOT") personnel will inspect all vehicles within five working days of notification that a vehicle is on the ground at the dealer's location. This inspection will include only the mechanical and physical parts of the vehicle. Any problems found will be corrected by the dealer. After the vehicle has been found to meet specifications and has no problems, an invoice will be accepted. The invoice will be processed for payment in the next payment cycle.

It will be the CONTRACTOR'S responsibility to insure the vehicle until it is delivered to the final contractor. The lettering will be applied to the vehicle according to MDOT specifications. The vehicle will only be delivered to the final contractor with the approval and assistance of MDOT personnel.

(D) Payment Records. The CONTRACTOR shall maintain all records relating to the purchase for three (3) years from the date of payment by the COMMISSION to the CONTRACTOR.

Section 5. E-Invoice and E-Payment PayMode: This COMMISSION requires that all CONTRACTORS submit invoices electronically throughout the term of this agreement contract. CONTRACTOR invoices shall be submitted to the COMMISSION using the processes and procedures identified by the COMMISSION, which are known and/or available to the CONTRACTOR. Procedures for new CONTRACTORS may be found in the MAAPP Manual in the Vendor File Maintenance Sections 11.20.10, 17.20.05 and 17.10.10, and in the related Section on requirements for requesting an exemption from electronic payment found in Section 17.10.20. CONTRACTOR understands that CONTRACTOR must be enrolled in PayMode e-payment module prior to being enrolled for e-invoicing, and agrees to same, unless CONTRACTOR has applied for and been granted, an exemption. CONTRACTOR may request assistance enrolling by contacting <http://www.mmrs.state.ms.us> or by calling the MMRS Call Center at (601) 359-1343. The CONTRACTOR agrees to accept all payments in United States currency via the State of Mississippi electronic and remittance vehicle. These payments shall be deposited in the bank account of the CONTRACTOR'S choice. CONTRACTOR understands that the COMMISSION is exempt from the payment of taxes.

Section 6. Contracts Under This Contract Agreement: Unless otherwise authorized in writing by the COMMISSION, the CONTRACTOR shall not assign any portion of the work to be performed under this Contract Agreement, or execute any contract amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Contract Agreement without the prior written concurrence of the COMMISSION.

- a. The CONTRACTOR shall insure that every subcontract includes any clauses required by the Contract Agreement, federal statutes and implementing regulations.
- b. All contracts for services will be developed in accordance with the FTA's requirements for competition and/or private sector participation as referenced in the guidance contained in Circular 4220.1F as amended entitled "Third Party Procurement."
- c. In no event shall this contract or equipment, materials and goods provided hereunder be treated as assets of the CONTRACTOR in any bankruptcy or similar proceeding.

Section 7. Contract Changes: Any proposed changes in this Contract Agreement shall require a written supplemental agreement, signed by both parties to the contract agreement.

Section 8. Compliance with Applicable Laws: The CONTRACTOR shall, in providing these services, comply with the most current version of all Federal and State Laws, licensing standards, and other regulations applicable to the provision of these services, including but not limited to the Americans with Disabilities Act, Bus Testing, Federal Motor Vehicle Safety Standards, the Mississippi Accountability and Transparency Act of 2008, and FTA Circular 9300.1B.

Section 9. Federal Changes: 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 COMMISSION and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR'S failure to so comply shall constitute a material breach of this contract. This agreement shall be construed and governed in accordance with the laws of the State of Mississippi and any local governments or political subdivisions that may affect the performances under this agreement.

Section 10. Indemnity, Insurance & Relationship of the Parties: The CONTRACTOR shall indemnify, defend and hold harmless the COMMISSION and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any negligent act, actions, neglect or omission by the CONTRACTOR, its agents, employees, or subcontractors during the performance of this CONTRACT, whether direct or indirect, and whether to any person or property for which COMMISSION or said parties may be subject, except that neither the CONTRACTOR nor any of his agents or subcontractors will be liable under this provision for damages arising out of the injury or damage to persons or property solely caused or resulting from the negligence of the COMMISSION or any of its officers, agents or employees.

CONTRACTOR'S obligation to indemnify, defend, and pay for the defense, or at the COMMISSION'S option, to participate and associate with the COMMISSION in the defense and trial or arbitration of any damage claim, lien or suit and any related settlement negotiations shall be initiated by the COMMISSION'S notice of claim for indemnification to CONTRACTOR. The CONTRACTOR'S evaluation of liability, or its inability to evaluate liability, shall not excuse CONTRACTOR'S duty to defend. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the COMMISSION entirely responsible shall excuse performance of this provision by the CONTRACTOR. In such case COMMISSION shall pay all costs and fees related to this obligation and its enforcement. Should there be a finding of dual or multiple liability, costs and fees shall be apportioned accordingly.

In conjunction herewith, the COMMISSION agrees to notify CONTRACTOR as soon as practicable after receipt or notice of any claim involving CONTRACTOR. These indemnities shall not be limited by reason of the listing of any insurance coverage below:

The relationship of the CONTRACTOR to the COMMISSION is that of an independent contractor, and said CONTRACTOR, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the COMMISSION by reason hereof. The CONTRACTOR will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employees of the COMMISSION, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.

The COMMISSION executes all orders and directives through the MDOT.

Section 11. Pre-Award and Post Delivery Audit Requirements: The CONTRACTOR agrees to comply with 49 U.S.C. § 5323 and FTA's implementing regulation at 49 C.F.R. Parts 661 and 663 and to submit the following certifications:

(A) Buy America Requirements: The CONTRACTOR shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists:

(1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and

(2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(B) Solicitation Specification Requirements: The CONTRACTOR shall submit evidence that it will be capable of meeting the bid specifications.

(C) Federal Motor Vehicle Safety Standards (FMVSS): The CONTRACTOR shall submit:

(1) Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or

(2) Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMEN**

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Section 12. Disputes: Any dispute concerning a question of fact in connection with the Contract Agreement which is not disposed of by agreement shall be arbitrated by the Executive Director of the COMMISSION or such person as the Executive Director may designate on behalf of the Transportation Commission. The decision of the Executive Director or his/her designee shall be final and conclusive, unless within 15 days from the date of receipt of the decision, the CONTRACTOR submits a written request for review of the decision. In that event, the CONTRACTOR shall be provided an opportunity to be heard on the review and offer evidence in support of the CONTRACTOR's position regarding the decision. The decision of the Executive Director on the review shall be final and conclusive unless determined by a court of competent jurisdiction to be unlawful for the reason it was not supported by any substantial evidence, was fraudulent or capricious. Until a final determination is made, the CONTRACTOR shall proceed forthwith with the performance of the CONTRACTOR's duties under the contract pursuant to the Executive Director's decision.

Section 13. Availability of Funds: It is expressly understood and agreed that the obligation of the COMMISSION to proceed under any Contract is conditioned upon the availability of funds, the appropriation of funds by the Mississippi Legislature, and/or the receipt of state and/or federal funds, as provided by Section 27-104-25, of the Mississippi Code.

(A) **SUSPEND AND/OR STOP WORK:** If at any time the funds anticipated for the fulfillment of this Contract are not forthcoming, or are 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 COMMISSION for the performance of this Contract, then this Contract shall be suspended and/or a stop work order issued automatically without any notice to CONTRACTOR or any surety, for a period not to exceed ten (10) business days, effective

immediately upon the date that said funds are not available, without damage, penalty, cost, or expenses to the COMMISSION of any kind whatsoever. CONTRACTOR is responsible for monitoring the actions of the Mississippi Legislature in its enactment, or its failure to enact, any budget appropriation for the MDOT for the ensuing Fiscal Year, or, to monitor the MDOT website at, <http://www.gomdot.com>, for any such notices.

In the event that said suspension or stop work is necessary, CONTRACTOR shall take all necessary steps to minimize the incurrence of costs allocable to the suspension and/or stop work order, and advise all subcontractors and vendors to do the same. Upon expiration of the ten (10) business days, if said funds remain unavailable, then COMMISSION may, at its discretion, elect to terminate this contract, or to extend the suspension and/or stop work order of said Contract.

If a suspension and/or stop work order is not canceled and the work covered by such suspension and/or order is terminated, the CONTRACTOR may be paid for services rendered prior to the suspension and/or stop work order. In addition to payment for services rendered prior to the date of the suspension and/or stop work order, the COMMISSION may be liable only for the costs, fees, and expenses, if any, for demobilization and close out of this Contract, based on actual time and expenses incurred by the CONTRACTOR. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

Or,

(B) TERMINATION: If at any time the funds anticipated for the fulfillment of this Contract are not forthcoming, or are 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 COMMISSION for the performance of this Contract, the COMMISSION shall have the right, upon ten (10) days written notice to the CONTRACTOR, to terminate this Contract without damage, penalty, cost, or expenses to the COMMISSION of any kind whatsoever. The effective date of termination shall be as specified in the notice, or at the end of any fiscal funding period wherein the funds are not available.

In addition to payment for services rendered prior to the date of the termination, the COMMISSION may be liable only for the costs, fees, and expenses, if any, for demobilization and close out of this Contract, based on actual time and expenses incurred by the CONTRACTOR. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

Section 14. Stop Work Order.

(A) Order to Stop Work. The COMMISSION may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the work called for by this CONTRACT. This order shall be for a specified period

not exceeding twenty-four (24) months after the order is delivered to the CONTRACTOR unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the COMMISSION shall either:

- (1) Cancel the stop work order; or
- (2) Terminate the work covered by such order according to and as provided elsewhere in this Contract.

Prior to the COMMISSION'S taking official action to stop work under this CONTRACT, the Executive Director of MDOT may notify the CONTRACTOR, in writing, of MDOT'S intentions to ask the COMMISSION to stop work under this Contract. Upon notice from the Executive Director of MDOT, CONTRACTOR shall suspend all activities under this Contract, pending final action by the COMMISSION.

(B) Cancellation or Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume work. If the COMMISSION decides that it is justified, an appropriate adjustment may be made in the delivery schedule. If the stop work order results in an increase in the time required for or in the CONTRACTOR'S cost properly allocable to the performance of any part of this Contract and the CONTRACTOR asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage, an equitable adjustment in this CONTRACT may be made by written modification of this CONTRACT as provided by the terms of this CONTRACT.

(C) Termination of Stop Work Order. If a stop work order is not canceled and the work covered by such order is terminated, the CONTRACTOR may be paid for services rendered prior to the Termination. In addition to payment for services rendered prior to the date of termination, the COMMISSION shall be liable only for the costs, fees, and expenses for demobilization and close out of this CONTRACT, based on actual time and expenses incurred by the CONTRACTOR in the packaging and shipment of all documents covered by this CONTRACT to the COMMISSION. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

Section 15. Termination of Contract.

- (A) Termination for Convenience of COMMISSION.

(1) The COMMISSION may terminate this contract for the convenience of the COMMISSION at any time by giving a written notice of termination to CONTRACTOR, specifying the effective date thereof. Such written notice shall be submitted by the COMMISSION to CONTRACTOR at least thirty (30) days prior to the effective date of the termination. As directed by the COMMISSION, CONTRACTOR shall forthwith:

- (a) Stop work under this contract;
- (b) Place no further purchase orders or subcontracts;
- (c) Cancel or terminate all current purchase orders or subcontracts;
- (d) Proceed to settle all outstanding liabilities and claims arising out of termination of such purchase orders and subcontracts; and
- (e) Disposal of the COMMISSION's property in CONTRACTOR'S possession as directed by the COMMISSION; and
- (f) CONTRACTOR'S termination claim in the form and with the substantiation reasonably required by the COMMISSION.

(2) If the contract is terminated by the COMMISSION as provided herein, equipment shall, at the option of the COMMISSION, become the property of the COMMISSION. Such finished or unfinished materials and equipment shall be delivered to the COMMISSION, at the option of the COMMISSION, by CONTRACTOR to the COMMISSION within forty-five (45) days of the date of the correspondence notifying CONTRACTOR of termination.

(B) Termination for Cause.

(1) If, for any cause, CONTRACTOR shall fail to fulfill in a timely and proper manner under this contract, or if CONTRACTOR shall violate any of the terms of this contract, or if the funding from the Federal or State grantor agency under which this contract is made is delayed or terminated, the COMMISSION shall thereupon have the right to terminate this contract by giving a written notice of termination to CONTRACTOR specifying the effective date thereof. Such written notice shall be submitted by the COMMISSION to CONTRACTOR at least thirty (30) days prior to the effective date of the termination. CONTRACTOR may appeal the termination of the contract to the COMMISSION by filing a written notice of such appeal to the COMMISSION within fifteen (15) days of the date of the notice of termination. CONTRACTOR shall include in the notice of intent to appeal the termination, the basis of the appeal, and a remedial action plan to remedy any violations cited by the COMMISSION in the notice of termination with specific actions and dates contained therein. The acceptance by the COMMISSION of the CONTRACTOR'S remedial action plan shall suspend the thirty (30) day termination notice. The completion of the CONTRACTOR'S remedial

action plan shall dissolve the COMMISSION's thirty (30) days termination notice. This provision shall not be applicable if the funding source used to support the functions of this contract is terminated.

(2) If CONTRACTOR is unable or unwilling to comply with any additional conditions as may be lawfully imposed by the United States of America, the State of Mississippi, or the COMMISSION under this contract, CONTRACTOR shall have the right to terminate this contract by giving written notice to the COMMISSION signifying the reason for noncompliance and signifying the effective date thereof. Such written notice shall be submitted by CONTRACTOR to the COMMISSION at least thirty (30) days prior to the effective date of the termination. CONTRACTOR agrees to forfeit all materials, finished and unfinished prepared under the terms of this contract and equipment purchased under the terms of this contract to the COMMISSION within thirty (30) days of the effective date of the termination.

In the event of termination of this contract all property, data, supplies, and reports purchased or prepared by CONTRACTOR under this contract shall, at the option of the COMMISSION, become the property of the COMMISSION. CONTRACTOR shall not be relieved of liability to the COMMISSION for damages sustained by the COMMISSION by virtue of any breach of the contract by CONTRACTOR. The COMMISSION may withhold any payment to CONTRACTOR until such time as the exact amount of damages due the COMMISSION from CONTRACTOR is agreed upon or otherwise determined.

Section 16. Interest of Members of, or Delegates, to Congress: No member of, or delegate to, the Congress of the United States shall be permitted to share in any part of this Contract Agreement or to share in any benefit arising there from.

Section 17. Prohibited Interest: No member, officer, or employee of the COMMISSION or the Mississippi Department of Transportation shall have any interest, direct or indirect, in this Contract Agreement or the proceeds there from.

Section 18. Civil Rights: During the performance of this Contract Agreement, the CONTRACTOR, for itself, its assignees, and successors in interest (hereinafter referred to as the CONTRACTOR), agrees as follows:

(A) Compliance with Regulations: The CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, 42 and 49 U.S.C., and the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (49 CFR, Parts 21, 23, and 25-28, as amended, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(B) Nondiscrimination: The CONTRACTOR, with regard to the work performed by it during the contract shall not discriminate on the grounds of sex, race, color, religion, age, national origin or disability in the selection and retention of subcontractors, including procurement of materials

and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Part 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(C) Solicitations for Subcontract, Including Procurement 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 procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this Contract Agreement and the Regulations relative to nondiscrimination on the ground of race, color, national origin or sex.

(D) Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations, or orders and instruction issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COMMISSION to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the COMMISSION, and shall set forth what efforts it has made to obtain the information.

(E) Sanctions for Noncompliance: In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of this Contract Agreement, the COMMISSION shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to,

(1) Withholding the payments to the CONTRACTOR Contract Agreement until the CONTRACTOR COMPLIES, and/or

(2) Cancellation, termination, or suspension of the Contract Agreement, in whole or in part.

(F) Incorporation of Provision: The CONTRACTOR shall include the provisions of paragraph (A) through (G) of this Section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the COMMISSION may direct as a means of enforcing such provisions including sanctions for noncompliance; however, in the event a 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 COMMISSION to enter into such litigation to protect the interests of the COMMISSION.

(G) Disadvantaged Business Enterprises (DBE). (1.) This contract 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 **10.1%**. A separate contract goal [of __%DBE participation has] has not been established for this procurement.

(H) The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the COMMISSION deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(I) *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]:

- (1) The names and addresses of DBE firms that will participate in this contract;
- (2) A description of the work each DBE will perform;
- (3) The dollar amount of the participation of each DBE firm participating;
- (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- (5) Written confirmation from the DBE that it is participating in the contract as provided in the prime CONTRACTOR'S commitment; and
- (6) If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above [as a matter of responsiveness] [with initial proposals] [prior to contract award] (see 49 CFR 26.53(b)(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(J) The CONTRACTOR is required to pay its subcontractor performing work related to this contract for satisfactory performance of that work no later than 30 days after the CONTRACTOR'S receipt of payment for that work from the COMMISSION. In addition, the

CONTRACTOR [may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the COMMISSION and CONTRACTOR'S receipt of the partial retainage payment related to the subcontractor's work.]

(K) The CONTRACTOR must promptly notify the COMMISSION whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The CONTRACTOR may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the COMMISSION.

Section 19. Equal Employment Opportunity: In connection with the execution of this Contract Agreement, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The CONTRACTOR shall comply with Executive Order 11246 as amended by Executive Order 11375, and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60) and shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but are not 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. CONTRACTOR further agrees to insert similar provisions in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

Section 20. Contract Work Hours and Safety Standards: No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Section 21. Clean Air.

(A) 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 COMMISSION and understands and agrees that the COMMISSION will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(B) 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.

Section 22. Environmental Regulations: The CONTRACTOR agrees to comply with all applicable standards, orders or requirements issued under Executive Order 11738, and Environmental Protection Agency regulations (40 CFR). All violations shall be reported to the COMMISSION and to the U.S.E.P.A. Assistant Administrator for enforcement (EN-329).

Section 23. Clean Water.

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

(B) 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.

Section 24. Energy Efficiency: The CONTRACTOR agrees to recognize 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 (P.L. 94-163).

Section 25. Audit and Inspection: The CONTRACTOR shall permit and shall require third party contractors to permit the COMMISSION, the Comptroller General of the United States, and the Secretary of the DOT or their authorized representatives to have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to the Contract Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

Section 26. Effective Date: The effective date of this Contract Agreement shall be upon Contract latest execution date and through **December 31, 2020** with an option to extend this contract period on a year to year basis for up to **four (4) twelve (12) month extensions or forty-eight (48) months**, upon written acceptance of both parties. The contract may not be extended beyond a five (5) year period of sixty (60) months, including the initial proposal year. Any cost incurred prior to the effective date is ineligible unless specifically authorized by the COMMISSION.

Section 27. Purchase Order: Purchase orders as described in Section 4(B), may be issued at any time during the Period of Performance, as defined in Section 3.

Section 28. Certification Regarding Lobbying: The undersigned certifies to the best of his or her knowledge and belief, that:

(A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.

(B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 undersigned shall complete and submit Standard Form-LLL. "Disclosure Form to Report Lobbying,": in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413" (1/19/96).

(C) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

(D) The CONTRACTOR agrees to comply with and adhere to all applicable provisions of the Hatch Act.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Section 29. Buy America: The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have more than 60 percent domestic content for vehicles delivered in FY 2016 and FY 2017; more than 65 percent domestic content for vehicles delivered in FY 2018 and FY 2019 and more than 70 percent domestic content for vehicles delivered in FY 2020 and beyond.

A bidder or offeror must submit to the FTA contractor the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature_____

Company Name_____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Section 30. Certification Regarding Suspension and Debarment: The undersigned certifies to the best of his or her knowledge and belief that its principals:

(A) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(B) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

(D) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Section 31. Cargo Preference-Use of United States-Flag Vessels: The CONTRACTOR agrees:

(A) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at a fair and reasonable rates for United States-Flag commercial vessels;

(B) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, on-board commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA contractor (through the CONTRACTOR in the case of a subcontractor's bill-of-lading.);

(C) To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Section 32. No Obligation by the Federal Government.

(A) 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 contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract 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 contract.

(B) The CONTRACTOR agrees to include the above 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 its provisions.

Section 33. Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any

Mississippi Department of Transportation requests which would cause the Mississippi Department of Transportation to be in violation of the FTA terms and conditions.

Section 34. Program Fraud and False or Fraudulent Statements or Related Acts.

(A) The CONTRACTOR 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 this Project. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it 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 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.

(B) 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 reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307, as amended, on the CONTRACTOR, to the extent the Federal Government deems appropriate.

(C) 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.

Section 35. Immigrant Status Certification: CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CONTRACTOR agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. CONTRACTOR further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of

Mississippi. CONTRACTOR understands and agrees that any breach of these warranties may subject CONTRACTOR to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to CONTRACTOR by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, CONTRACTOR would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit. As of July 1, 2008, the CONTRACTOR is required to provide to the Mississippi Department of Transportation ("MDOT") a Certification and Agreement (**Exhibit 1**) prior to the execution of the contract. The CONTRACTOR is solely responsible for compliance with the requirements of the Mississippi Employment Protection Act.

It is agreed by the parties that no person employed by the CONTRACTOR pursuant to the provisions hereof will be considered an agent or employee of the COMMISSION or the Mississippi Department of Transportation.

It is further agreed by the parties that no provision of this Agreement is intended nor shall it be construed to give rise to a third party beneficiary claim on the person or entity not a party hereto.

Section 36. Section 504 and ADA Requirements: The CONTRACTOR shall comply with all the requirements imposed by Section 504 of the Rehabilitation Act of 1973 (P.L. 93.112, 29 U.S.C. 794 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336, 42 U.S.C. 12101 – 12213), the Regulations of the United States Department of Transportation issued thereunder (49 CFR, Part 27), the Americans with Disabilities Act of 1990 (ADA) (49 CFR, Parts 27, 37 and 38) and the Assurance by the CONTRACTOR pursuant thereto including any amendments.

Section 37. Notification of Federal Participation: To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the CONTRACTOR agrees to specify the amount of Federal assistance intended to be used to finance that acquisition and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract.

Section 38. Notice: The COMMISSION executes all directives and orders through the Mississippi Department of Transportation and its Executive Director. In addition to providing all notices, communications, and correspondence to the COMMISSION by noticing the Executive Director of MDOT, a copy of the written notice shall also be provided to MDOT Legal Division.

Unless otherwise notified in writing to the contrary, the appropriate contact persons for the TRANSPORTATION COMMISSION and the MDOT Legal Division for matters pertaining to this Contract shall be:

Melinda L. McGrath, P.E., Executive Director And,
Mississippi Department of Transportation
401 North West Street
Post Office Box 1850
Jackson, Mississippi 39215-1850
Telephone: (601) 359-7002
Facsimile: (601) 359-7050

MDOT Legal Division
Attn: Roy M. Tipton, Esq.
401 North West St.
Post Office Box 1850
Jackson, MS 39215
Telephone: (601) 359-7600
Facsimile: (601) 359-7774

Section 39: Entire Agreement: This contract document, supplemented by the Notice and Instructions to Bus Manufacturers and the proposal, all incorporated herein by reference as if fully copied in words and figures, constitutes the sole and entire Agreement between the COMMISSION and the CONTRACTOR with respect to the project hereof and supersedes any and all prior agreements discussions and negotiations, if any, between the COMMISSION and the CONTRACTOR.

IN WITNESS WHEREOF, this Contract Agreement has been executed by the COMMISSION and by the CONTRACTOR.

XXXXXXXXXXXXXXXXXXXX

Date

Attest

**MISSISSIPPI DEPARTMENT OF TRANSPORTATION
FOR THE MISSISSIPPI TRANSPORTATION
COMMISSION**

Melinda L. McGrath, P.E.
Executive Director

Date

Minute Book & Page Number
