



## **REGIONAL TRANSPORTATION COMMISSION**

*Metropolitan Planning • Public Transportation & Operations • Engineering & Construction*

Metropolitan Planning Organization of Washoe County, Nevada

**Meeting Date:** 9/16/2022

From: Mark Maloney, Director of Public Transportation and Operations

### **RECOMMENDED ACTION**

Approve a contract with New Flyer for the purchase of two (2) hydrogen fuel cell buses utilizing the State of Washington's Cooperative Purchasing Agreement for Transit Buses Master Contract No. 06719, in an amount not-to-exceed \$2,449,601.

### **BACKGROUND AND DISCUSSION**

In FY2021, the RTC budgeted for the purchase of twenty (20) hybrid electric buses for replacing existing diesel vehicles in the fixed-route service utilizing the Common Wealth of Virginia's state contract. Twelve (12) buses were delivered in early FY 2022 and six (6) of the remaining eight (8) buses were delivered earlier this month. The RTC has been purchasing fully electric buses and has a sustainability goal to be 100% zero emission by 2035 and remains on track to achieve this goal. As a result of being awarded the FY2021 Low or No Emission Bus Program (5339(c)) grant, for the Hydrogen Fuel Cell Electric Bus and Infrastructure Deployment project, two (2) of the twenty (20) hybrid electric buses rescheduled for replacement are being built for this project. These two (2) buses however were not available under the Common Wealth of Virginia's state contract at the time these buses were ordered.

By utilizing the State of Washington contract, the RTC will be able to capture the lower prices offered for this particular type of vehicle bus purchase.

### **FISCAL IMPACT**

Funding for these two buses is made possible through the FY 2021 Low or No Emission Bus Program (5339(c)) grant.

### **PREVIOUS BOARD ACTION**

3/18/2022 12:00:00 AM

Approved a contract with Krueger Transport, LLC, to provide a consultant study for the Hydrogen Fuel Cell Electric Bus and Infrastructure Deployment project in an amount not-to-exceed \$180,000.

**HYDROGEN FUEL CELL-ELECTRIC VEHICLE PURCHASE AGREEMENT**

**Between**

**Regional Transportation Commission of Washoe County**

**and**

**New Flyer of America Inc.**

\_\_\_\_\_, 2022

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I -- INTRODUCTORY PROVISIONS .....	1
SEC. 101    DEFINITIONS .....	1
SEC. 102    AGREEMENT TO PURCHASE .....	4
SEC. 103    CONTRACT DOCUMENTS .....	5
SEC. 104    CONTRACTOR REPRESENTATIONS AND WARRANTIES .....	5
SEC. 105    USE OF ENGLISH LANGUAGE AND UNITED STATES DOLLARS.....	6
ARTICLE II -- GENERAL CONDITIONS .....	6
SEC. 201    SCOPE OF WORK .....	6
SEC. 202    NOTICE TO PROCEED .....	7
SEC. 203    GENERAL OBLIGATIONS OF THE CONTRACTOR.....	8
SEC. 204    PROJECT MANAGEMENT.....	9
SEC. 205    CONTRACT MILESTONES AND CRITICAL PATH SCHEDULE .....	9
SEC. 206    MATERIALS AND WORKMANSHIP .....	11
SEC. 207    PRE-PRODUCTION AND FIRST ARTICLE VEHICLE INSPECTION MEETINGS .....	12
SEC. 208    QUALITY ASSURANCE REQUIREMENTS .....	13
SEC. 209    INSPECTIONS AND TESTING .....	16
SEC. 210    SUSPENSION OF WORK AND DELAY BY THE RTC.....	20
SEC. 211    CHANGE ORDER PROCESS .....	22
SEC. 212    EXTENSION OF TIME .....	24
SEC. 213    CONDITION OF SHIPMENT.....	26
SEC. 214    ARRIVAL AND REQUIRED CONDITIONS FOR VEHICLE DELIVERY .....	27
SEC. 215    ACCEPTANCE OF VEHICLES .....	28
SEC. 216    RESERVED .....	30
SEC. 217    RISK OF LOSS .....	30
SEC. 218    WARRANTIES .....	30
SEC. 219    WARRANTY REPAIRS AND DEFECTS .....	34
SEC. 220    INDEMNIFICATION .....	37
SEC. 221    INSURANCE.....	38
SEC. 222    MANUALS .....	41
SEC. 223    PARTS AVAILABILITY GUARANTEES .....	41
SEC. 224    LOCAL REPRESENTATION.....	42
SEC. 225    RESERVED .....	43
SEC. 226    ACCESS TO RECORDS .....	43
SEC. 227    LIQUIDATED DAMAGES.....	44
SEC. 228    DISPUTES.....	45
SEC. 229    ASSIGNMENT; CHANGE IN OWNERSHIP OR CONTROL .....	47
SEC. 230    SUBCONTRACTING .....	47
SEC. 231    GOVERNING LAW AND CONSENT TO JURISDICTION .....	48
SEC. 232    TERMINATION FOR CONVENIENCE .....	48
SEC. 233    TERMINATION BY MUTUAL AGREEMENT .....	49
SEC. 234    TERMINATION FOR DEFAULT .....	50
SEC. 235    WAIVER OF TERMS AND CONDITIONS.....	51
SEC. 236    SUCCESSORS AND ASSIGNS.....	51
SEC. 237    CONTRACT AMENDMENTS.....	51

SEC. 238	NOTICES UNDER AGREEMENT .....	51
SEC. 239	CONFLICT OF INTEREST.....	52
SEC. 240	TAXES.....	53
SEC. 241	DISCRIMINATION .....	54
SEC. 242	PUBLIC RECORDS .....	54
SEC. 243	CONFIDENTIALITY .....	54
SEC. 244	MARKETING RESTRICTIONS .....	55
SEC. 245	RESERVED .....	55
SEC. 246	RESERVED .....	55
SEC. 247	INTELLECTUAL PROPERTY .....	55
SEC. 248	ENTIRE AGREEMENT .....	56
ARTICLE III -- PAYMENT TERMS AND CONDITIONS .....		56
SEC. 301	CONTRACT PAY ITEMS AND PRICES.....	56
SEC. 302	PAYMENTS .....	57
SEC. 303	INVOICING .....	58
SEC. 304	FINAL PAYMENT .....	60
SEC. 305	COST OR PRICE ANALYSIS .....	61
SEC. 306	LACK OF FUNDS CLAUSE .....	61

**APPENDICES**

Appendix A	Technical Specifications for Vehicles
Appendix B	Critical Path Schedule
Appendix C	Testing Procedures and Protocols, including Acceptance Testing
Appendix D	Change Order Form
Appendix E	Applicable Federal Requirements and Certifications
Appendix F	Invoice Form

This Electric Hybrid Vehicle Purchase Agreement (Agreement) is made and entered into on \_\_\_\_\_, 2022 by and between the Regional Transportation Commission of Washoe County, Nevada (RTC) and New Flyer of America Inc. ("New Flyer") (Contractor), a corporation authorized to do business in the State of Nevada that is manufacturing and supplying the electric hybrid vehicles purchased under this Agreement. This Agreement implements the purchase of vehicles off of the State of Washington, Department of Enterprise Services through the Washington State Transit Bus Cooperative, as is expressly permitted by Section 3019 of the Fixing America's Surface Transportation Act.

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## ARTICLE I -- INTRODUCTORY PROVISIONS

### SEC. 101 DEFINITIONS

As used in this Agreement, the term –

(1) **"Acceptance"** means written documentation executed by the RTC evidencing the RTC's determination that a particular Vehicle, provided by the Contractor under this Agreement has been completed and delivered in full conformance with all requirements and provisions in the Technical Specifications and the other Contract Documents, and has been determined to be in acceptable operating condition under the Acceptance testing procedures described in Appendix C.

(2) **"Agreement"** means this written agreement executed by the RTC and the Contractor which sets forth the rights and obligations of the parties.

(3) **"Change Notice"** means a document issued by the RTC to the Contractor specifying a proposed change to the Work or to the Contract Documents, and directing the Contractor to provide, at Contractor's expense, price and/or other information relating to that change within the time specified in the notice. Unless otherwise expressly stated on its face, a Change Notice is a proposal which may result in a Change Order.

(4) **"Change Order"** means an order executed by the RTC and issued to the Contractor modifying the Work, the Technical Specifications, or the other Contract Documents. The Change Order establishes the basis for any adjustments in Contract Price or Contract Time resulting from the change, and becomes a part of the Contract Documents upon execution by the parties or issuance by the RTC, as the case may be.

(5) **"Contract Amendment"** means a document signed by duly authorized representatives of each Party that changes or modifies this Agreement.

(6) **"Contract Documents"** means the documents identified in Section 103 which collectively constitute the obligations of the Contractor.

(7) **"Contract Milestone"** or **"Milestone"** means an established event or occurrence that is a key element of the Critical Path Schedule as specified in Section 205 of this Agreement.

(8) **"Contract Price"** means the total compensation to be paid to the Contractor by the RTC, as set forth in Section 301 of this Agreement.

(9) **"Contract Time"** means the date by which the Contractor shall complete the Work to be performed under this Agreement (except warranty work and on-site support), including any authorized extensions of time.

(10) **"Contractor"** means New Flyer of America Inc. and includes any subsidiary, affiliate, or parent company thereof to which New Flyer of America Inc. assigns, transfers, or delegates in writing the obligation to perform all or any portion of the Work; provided that New Flyer of America Inc. shall remain responsible (notwithstanding any such assignment, transfer, or delegation) for the full performance of this Agreement and compliance with the Contract Documents.

(11) **"Critical Path Schedule"** means the schedule developed by the Contractor and agreed upon by the RTC for the performance of the Work, setting forth the specific tasks to be performed, including but not limited to the Contract Milestones, and establishing the schedule for the completion of each such task. The Critical Path Schedule is set forth in Appendix B.

(12) **"Days"** means calendar days; provided that where the term "business days" is used, it means Monday-Friday, excluding Federal holidays.

(13) **"Executive Director"** means the Executive Director of the RTC or the person designated in writing to carry out the Executive Director's rights or obligations under this Agreement.

(14) **"First Article Vehicle"** means the first Vehicle to complete testing, production, and delivery to the RTC.

(15) **"Fleet Defect"** means a failure or defect in the same component, part, or system in four (4) or more of the two (2) Vehicles supplied under this Agreement.

(16) **"Force Majeure"** means acts of God; flood; war; terrorism; epidemic; natural disaster; lockout or commandeering of raw materials, plants, or facilities by the Government; or other similar unanticipated and unforeseeable event beyond the control of the Contractor which was not due to any act or omission of the Contractor and which could not have been avoided by due diligence and use of reasonable efforts by the Contractor. The term "Force Majeure" does

not include changes in law or strikes or work stoppages involving the Contractor's employees or personnel or the employees or personnel of the Contractor's suppliers, subsuppliers, Subcontractors, or shippers.

(18) **"Governing Body"** means the Board of Commissioners of the RTC.

(19) **"Inspector"** means the RTC's authorized representative with responsibility for reviewing and monitoring the Contractor's production and manufacturing processes, observing testing performed by the Contractor, conducting inspections and testing, and confirming the Contractor's compliance with the requirements of the Technical Specifications and other Contract Documents.

(20) **"Key Personnel"** means the Contractor's Project Manager, Manager of Design/Engineering, Manager of Quality Control, and Manager of Production, or equivalent positions.

(21) **"Materials"** includes equipment, material, components, subcomponents, assemblies, subassemblies, products, supplies, tools, accessories, and articles incorporated in the Work or otherwise used or furnished by the Contractor in performing this Agreement.

(22) **"Notice of Termination"** means written notice from the RTC to the Contractor and its Surety terminating the Agreement completely or partially, either for convenience of the RTC or for default due to the Contractor's failure to perform its contractual obligations, pursuant to Sections 232 or 234 of this Agreement.

(23) **"Notice to Proceed"** or **"NTP"** means written notice from the RTC to the Contractor that authorizes the Contractor to proceed with the Work.

(24) **"Party"** or **"Parties"** means the RTC and the Contractor.

(25) **"Product Data"** means drawings, plans, procedures, performance charts, instructions, brochures, warnings, and other information furnished by the Contractor to the RTC to illustrate or explain the assembly, production, installation, maintenance, or operation of the Vehicles, or other elements of the Work.

(26) **"Project"** means the RTC project funded by the Federal Transit Administration (FTA) to acquire 40' Heavy Duty Low-Floor Hydrogen Fuel Cell-Electric Buses (Model XHE40) .

(27) **"Project Site"** means the facilities and other property of the RTC where Work will be furnished, delivered, or performed under this Agreement.

(28) **"Project Manager"** means the Contractor's executive representative who is designated to direct the activities of the Contractor under this Agreement and to receive and carry out instructions from the RTC.

(29) **"Ready-to-Use"** means complete and fully operational with all materials, systems, and components incorporated.

(30) **"RTC"** or **"Regional Transportation Commission"** or **"Commission"** means the Regional Transportation Commission of Washoe County, Nevada. The rights and obligations of the RTC under this Agreement shall be carried out by the Executive Director or his designee.

(31) **"Samples"** means physical examples, which illustrate Materials, fixtures, and workmanship and which establish standards by which the Work may be judged to assess conformity with this Agreement and the other Contract Documents.

(32) **"Service Contractor"** means the entity responsible for the operation and maintenance of the RTC's fixed route or paratransit system in Washoe County, Nevada, pursuant to a contract with the RTC.

(33) **"State"** means the State of Nevada, U.S.A.

(34) **"Subcontractor"** means any individual, partnership, firm, corporation, or joint venture that contracts with the Contractor to furnish or supply services, labor, subsystems, components, or materials under this Agreement.

(35) **"Technical Specifications"** means the specifications for the Vehicles set forth in Appendix A of this Agreement that set forth the detail of the Work, including design, performance, material, testing, methods of manufacture, and other requirements of this Agreement.

(36) **"Vehicles"** means the two (2) 40' 40' Heavy Duty Low-Floor Hydrogen Fuel Cell-Electric Buses (Model XHE40) to be manufactured and supplied by the Contractor under this Agreement, as more specifically described in the Vehicle Technical Specifications in Appendix A.

(37) **"Work"** means the Vehicles, and other Materials to be supplied by the Contractor under this Agreement, and includes all the design, manufacturing, production, warranties, and technical and other professional services and responsibilities to be carried out by the Contractor in the performance of this Agreement, including all elements of the Scope of Work set forth in Section 201 hereof.

## **SEC. 102 AGREEMENT TO PURCHASE**

The RTC agrees to purchase from the Contractor, and the Contractor agrees to sell and supply to the RTC, in accordance with the terms of this Agreement, two (2) Vehicles, Materials, services and support as specified in this Agreement, for the total Contract Price of

\$2,449,600.08 in U.S. dollars. The individual pay items to be acquired under this Agreement are set forth in Section 301 of this Agreement.

### **SEC. 103 CONTRACT DOCUMENTS**

(a) Order of Precedence -- Each of the Contract Documents is an essential part of the Contract, and is binding upon the Contractor in the performance of the Work. The Contract Documents consist of the following, set forth hereafter in their order of precedence:

- (1) This Agreement, including any Change Orders and Amendments hereto.
- (2) Federal Requirements and Contract Clauses.
- (3) The Technical Specifications for the Vehicles.
- (4) All other Appendices to this Agreement.

(b) Conflicts between Contract Documents --

(1) Conflicts between Contract Documents (General) -- In case of conflicts between Contract Documents, the Contract Document order of precedence dictates which Contract Document governs, and thus, which corresponding provisions take precedence (between two Contract Documents).

(2) Conflicts between Contract Documents of Equal Precedence -- In case of conflicts between Contract Documents of equal precedence, the more stringent requirement (between the conflicting Contract Documents) shall govern.

(3) Conflicts Within a Contract Document -- In case of conflicts within a Contract Document, the more stringent requirement (within the conflicting Contract Document) shall govern.

### **SEC. 104 CONTRACTOR REPRESENTATIONS AND WARRANTIES**

The Contractor represents, warrants, and covenants as follows:

(a) Maintenance of Licenses and Permits -- The Contractor and its Subcontractors shall maintain all required licenses, permits, status, professional ability, skills and capacity to perform the Work, in accordance with the requirements of the Contract Documents.

(b) Laws, Regulations, and Governmental Approvals -- The Contractor has familiarized itself with the requirements of all applicable Federal, State, and local laws and regulations and the conditions of any required governmental approvals, prior to entering into this Contract. The Contractor acknowledges and agrees that it is responsible for complying with such laws and regulations, and, except as otherwise provided in the Contract Documents, for obtaining governmental approvals at its sole cost and without any increase in Contract Price on

account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents.

(c) Legal Proceedings -- There are no existing or threatened legal proceedings against the Contractor that would have an adverse effect on its ability to perform its obligations under the Contract, its financial condition, or its operations.

(d) Status and Authority -- (1) The Contractor is a corporation, joint venture, or partnership duly organized and licensed to do business in the State of Nevada, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted; (2) if a joint venture or partnership, each member of the Contractor is duly qualified to do business, and is in good standing, and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents; and (3) the execution and performance of this Contract will not result in a breach or default under the organizational documents of any such person or under the terms of any indenture, loan, credit agreement, or related instrument to which such person is a party or by which it is otherwise bound.

## **SEC. 105 USE OF ENGLISH LANGUAGE AND UNITED STATES DOLLARS**

(a) Use of English -- All Contract Documents, conferences, negotiations, correspondence, Technical Specifications, technical manuals, Drawings, Product Data, and financial information, shall be prepared, conducted, or provided solely in the English language and using U.S. customary system of weights and measures. Metric units may be used as supplementary information but not to the exclusion of U.S. system units.

(b) Use of Dollars -- All Contract Documents, computations required by this Agreement, applications for payment, invoices, and statements of costs and prices (including supporting information for the cost and price analysis) shall be conducted or presented solely in United States dollars. Any and all payments shall also be made solely in United States dollars.

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## **ARTICLE II -- GENERAL CONDITIONS**

### **SEC. 201 SCOPE OF WORK**

(a) General Scope -- The Contractor shall design, test, produce, manufacture, deliver, and provide warranties for two (2) Vehicles, and related Materials, as required under this

Agreement. The Vehicles and other Materials provided under this Agreement shall conform in all respects to the Technical Specifications set forth in Appendix A of this Agreement.

(b) Specific Elements of Scope -- The Contractor shall -

- (1) Design the Vehicles
- (2) Develop Product Data for the Vehicles.
- (3) Manufacture, test, and deliver the Vehicles.
- (4) Provide appropriate diagnostic and operational software for the Vehicles and manuals required for testing.
- (5) Provide other Materials as specified in the Contract Documents.
- (6) Participate in Pre-Production and First Article Vehicle Inspection meetings.
- (7) Provide operator manuals, maintenance manuals, parts manuals, training materials, and other technical support manuals and materials required by this Agreement, and the Technical Specifications.
- (8) Provide parts availability as required by this Agreement.

(c) Inclusion in Price – The Contractor agrees that all elements of the Scope of Work are included in, and will be performed and delivered for, the Contract Price set forth in Section 102 of this Agreement.

## **SEC. 202 NOTICE TO PROCEED**

(a) Submittals -- After the date this Agreement is executed by the RTC and the Contractor, the Contractor shall submit the following to the RTC within ten (10) Days: (1) the certificates of insurance, as specified in Section 221(a); (2) the designation of the Contractor's Project Manager and other Key Personnel; (3) the Contractor's organizational chart; and (4) executed Federal certifications.

(b) Notice to Proceed -- Within three (3) Days after receipt from the Contractor of the documentation required under subsection (a), the RTC will issue a Notice to Proceed (NTP) to the Contractor. The Contractor is not authorized to perform Work under this Agreement prior to receiving the NTP. Upon receipt of the NTP, the Contractor shall promptly commence the Work. Contract Time shall begin upon the date of issuance of the NTP.

(c) Schedule -- Time is of the essence in this Agreement. The Contractor shall diligently prosecute the Work to completion in accordance with the Critical Path Schedule in Appendix B and the other requirements in this Agreement. The RTC will cooperate in assuring adherence to the Critical Path Schedule.

## **SEC. 203 GENERAL OBLIGATIONS OF THE CONTRACTOR**

(a) Overall Obligations -- The Contractor shall (directly or through its Subcontractors) design, build, and deliver the Vehicles, all strictly in accordance with the requirements of this Agreement, the Technical Specifications, and the other Contract Documents (and subject to any scope or specification modifications agreed to in writing pursuant to the pre-production meeting process). The Contractor represents and warrants that it will, throughout the term of performance of this Agreement, have and maintain all required authority, licenses, certifications, and registrations applicable to the Work to be performed under this Agreement, and the professional ability, skills, and capacity to perform its obligations under this Agreement.

(b) Standard of Performance -- The Contractor shall perform the Work diligently, carefully, and in a timely and professional manner, in accordance with the standards and requirements in the Contract Documents and in accordance with standards and practices generally accepted as standards of the industry; and shall have and maintain all required authority, licenses, professional ability, skills, personnel, and capacity to perform its obligations under this Agreement. The Contractor shall perform all Work in its own name and as an independent contractor and not in the name of, or as an agent for, the RTC.

(c) Labor and Materials --

(1) Duty to Furnish -- The Contractor shall furnish all labor and Materials, plant, tools, test equipment, and transportation required for the performance and completion of the Work in the manner and within the time specified in this Agreement. The Contractor shall perform all the Work necessary to design and manufacture the Vehicles.

(2) Fitting and Functioning -- The Contractor shall assume responsibility for the proper working and fitting together of all parts and components, and for the proper functioning and system integration of all aspects of the Vehicles, in order to assure successful operation in accordance with this Agreement, the Technical Specifications, and the other Contract Documents.

(d) Critical Path Schedule -- The Contractor has established, after consultation with the RTC, a Critical Path Schedule for the performance of the Work (set forth in Appendix B). The Critical Path Schedule identifies the major milestones of engineering, materials procurement, manufacturing, and testing, and is designed to assure compliance with the Contract Milestones and delivery schedule set forth in Section 205.

(e) Quality Assurance Program-- The Contractor shall prepare a quality assurance program, in accordance with Section 208, which outlines how all of the quality assurance requirements and functions will be defined, implemented, executed, managed, controlled, recorded and reported.

(f) Fees and Permits-- The Contractor shall perform, at no additional expense to the RTC, all of its obligations under this Agreement, and shall pay all fees, permits, and royalties for all intellectual property and all patented appliances, products, or processes incorporated in the Work.

#### **SEC. 204 PROJECT MANAGEMENT**

(a) Project Manager and Key Personnel -- The Contractor shall designate in writing the name, qualifications, and experience of its proposed Project Manager and other Key Personnel, as part of the documentation required under Section 202(a). The Project Manager shall have full authority to represent and act for the Contractor.

(b) Reassignment -- The Contractor shall provide the RTC with advance written notice if it desires to change the Project Manager or other Key Personnel. The Project Manager and other Key Personnel shall not be changed without prior written concurrence of the RTC, which shall not be unreasonably withheld. At the time notice of a proposed change is provided, the Contractor shall provide the RTC with the information specified in subsection (a) for the proposed new Project Manager or other Key Personnel. Any replacement Project Manager or other Key Personnel must have qualifications and experience comparable to the individual being replaced.

(c) Contractor Organization -- The Contractor shall provide the RTC with an organizational chart showing lines of authority in the Contractor's organization and individuals responsible for the performance of the Work.

(d) RTC Project Director -- The RTC shall designate in writing, in the NTP provided under Section 202(b), a Project Director who shall be responsible for overseeing the Contractor's performance of this Agreement.

#### **SEC. 205 CONTRACT MILESTONES AND CRITICAL PATH SCHEDULE**

(a) Contract Time -- The total Contract Time provided for the completion of the Work (except warranty work and on-site support) under this Agreement and delivery of all the Vehicles is TBD [INSERT DELIVERY DATE ONCE KNOWN];, unless there is an unavoidable delay documented and noticed by the Contractor in a status report under subsection (e) of this

Section and the RTC approves a requested extension under subsection (f) of this Section. Time is of the essence and failure to meet the delivery time specified shall constitute a breach of this Agreement.

(b) Critical Path Schedule -- The Contractor has developed a Critical Path Schedule for the Project, set forth in Appendix B, which includes the Contract Milestones listed in subsection (c) as well as other specific tasks to be performed by the Contractor and the RTC. The Critical Path Schedule shall be updated monthly by the Contractor to reflect actual versus planned (as per the original schedule) progress for each Milestone or other task listed.

(c) Contract Milestones – The Contractor shall proceed with the Work and contract deliverables in accordance with the following the schedule:

<b>Milestone</b>	<b>Date</b>
Begin Procurement of Critical Materials	10 Days after NTP
Delivery of Manuals	30 Days prior to Delivery of First Vehicle
Delivery of First Vehicle	By TBD
Delivery of Vehicle 2	By TBD

(d) Delivery Schedule -- The Contractor shall deliver the Vehicles as indicated in the Critical Path Schedule in Appendix B. The Contractor shall immediately notify the RTC in writing upon learning of any circumstance that may result in a delay in this delivery schedule. The dates set forth in subsection (c) shall be used as the basis for the assessment of Liquidated Damages under Section 227.

(e) Monthly Status Reports -- The Contractor shall submit monthly status reports to the RTC detailing its progress in completing the Work and adhering to the Critical Path Schedule, and summarizing the significant issues addressed and decisions made at the most recent meeting. The monthly report shall be submitted to the RTC by the 10<sup>th</sup> of every month until all Vehicles are delivered.

(f) Recovery Schedule -- If any monthly report indicates a delay in the schedule of more than seven (7) Days or a failure to achieve a Contract Milestone, the Contractor shall include a Recovery Schedule with such report, setting forth its proposed plan and proposed

revised schedule for addressing such delay or failure, which are subject to RTC approval. The Contractor shall also provide a full report on its progress in the implementation of such plan and revised schedule, as approved by the RTC, within the next thirty (30) Days.

## **SEC. 206 MATERIALS AND WORKMANSHIP**

(a) Workmanship -- The Contractor shall perform all Work under this Agreement in a skillful and workmanlike manner. Workmanship shall be of the best quality and shall conform in all respects to the best practice in the industry. All employees, agents, and other workers used by the Contractor shall have sufficient skill and training to perform the work assigned to them.

(b) Materials --

(1) Quality -- The Contractor shall assure that all Materials incorporated into the Vehicles, and other elements of the Work covered by this Agreement are of the grade and quality specified in the Technical Specifications.

(2) Duty to Furnish -- The Contractor shall furnish all Materials and components required to complete the Work, other than any identified in the Contract Documents as being furnished by the RTC. Notwithstanding any prior inspection and approval by the RTC, the Contractor shall assure that only Materials conforming to the requirements of this Agreement are incorporated in the Work. Any necessary modifications to Materials shall be made at the Contractor's manufacturing facility or at the manufacturing facilities of its Subcontractors. All Materials and components shall be manufactured, handled, and incorporated so as to ensure completed Work in accordance with this Agreement and the other Contract Documents.

(c) New Materials Required -- The Contractor shall assure that all Vehicles, and all Materials incorporated into the Vehicles, and other elements of the Work, are new and are the latest model of current production, consistent with the Technical Specifications. A new Vehicle, as required by this subsection, must be made up completely of unused genuine original parts, and which has not been operated for any purpose other than routine operational testing. Demonstrator equipment does not meet this definition and is not acceptable.

(d) Handling of Materials -- The Contractor shall transport, handle, and store all Materials in a manner which will ensure the preservation of their quality, appearance, and fitness for the Work. All Materials shall be stored in a manner to facilitate inspection by the Contractor and the RTC.

(e) Reliability of Products -- The Vehicles shall be designed and constructed by the Contractor to assure a high degree of reliability, to minimize down-time during maintenance, and

to reduce break downs and failures that result in service delays and interruptions. In addition, the Contractor shall comply with all reliability standards and representations set forth in its warranties.

## **SEC. 207 PRE-PRODUCTION AND FIRST ARTICLE VEHICLE INSPECTION MEETINGS**

(a) Production Facility – The Parties agree that one (1) Pre-production and one (1) First Article Vehicle Inspection meeting will be held either through teleconference or video conference, or if feasible at the Contractor’s production facility in Anniston, Alabama. The Contractor reserves the right to build these Vehicles in its production facilities other than the facility in Anniston, Alabama. Regardless of which production facility (or facilities) are used, the Contractor is required, consistent with the Buy America Certification executed by the Contractor in Appendix E, to produce all Vehicles in a manner that is compliant with Buy America requirements and in compliance with all other applicable requirements of this Agreement. The Contractor shall immediately advise the RTC of any changes in the production facility to be utilized.

(b) Basic Requirement - At the Pre-production and First Article Vehicle Inspection meetings, the Parties shall review the Technical Specifications, and related Contract Documents and the overall progress of the Work, as more specifically described in this Section. Each party shall assure that appropriate staff and representatives are available for the meetings.

(c) Purposes and Subject Matter -- The purposes of the meetings shall be as follows:

- (1) To review the overall progress of and schedule of the Work, particularly in relation to the Critical Path Schedule.
- (2) To make and agree upon any necessary revisions or modifications to the Technical Specifications.
- (3) To address the content and language of passenger decals and safety information materials.
- (4) To review any Change Notices and review and finalize Change Orders.
- (5) To review the tests and inspections planned by the Contractor to assure compliance and compatibility with the Technical Specifications and to conduct an inspection of the First Article Vehicle.
- (6) To address Federal Motor Vehicle Safety Standards (FMVSS), Buy America requirements, Americans with Disabilities Act requirements, and other regulatory compliance requirements.

- (7) To review and address any issues regarding the Product Data.
- (8) To discuss and resolve any other issues relating to the progress of the work and the successful implementation of the Project.

(d) Minutes and Follow-up -- The Contractor shall prepare minutes at the conclusion of each meeting, reflecting an accurate record of the discussions held and agreements reached at that meeting, and identifying the actions to be taken and the key agenda items for any subsequent meetings. The minutes shall be reviewed by the RTC and co-signed by the Parties. The Parties shall make reasonable best efforts to resolve all of the actions and issues identified at a meeting within six (6) weeks after the meeting. Based on the needs of the Project, the parties may agree to hold a second Pre-Production meeting or to conduct additional Vehicle inspections.

(e) Contractor Responsibility -- Review of the Contractor's Product Data by the RTC under this Section (including agreement to specific drawings) shall not relieve the Contractor of any responsibility, including but not limited to, responsibility for accuracy of dimensions and details. The Contractor shall remain responsible for agreement and conformity of its Product Data with the Contract Documents, and for conformity of the completed Vehicles, and all components thereof, and with the Technical Specifications and other Contract Documents.

## **SEC. 208 QUALITY ASSURANCE REQUIREMENTS**

(a) Required Certification -- The Contractor has provided the RTC its current ISO 9001 Certification for the design, development, manufacturing, and servicing of transit buses and the supply of bus parts.

(b) Quality Assurance Organization --

(1) Required Organization -- The Contractor shall establish and maintain an effective in-plant quality assurance organization. It shall be a specifically defined organization and should be directly responsible to the Contractor's top management. The Contractor shall designate an individual to serve as Quality Manager. The Quality Manager shall be responsible for all quality assurance issues, quality control, documentation, and reporting.

(2) Quality Control -- The Contractor's quality assurance organization shall exercise quality control over all phases of production from initiation of design through manufacture and preparation for delivery. The organization shall also control the quality of Vehicles, and other Materials to be supplied under this Agreement.

(3) Authority and Responsibility -- The quality assurance organization shall have the authority and responsibility for reliability, quality control, inspection planning, establishment of the quality control system, and acceptance and rejection of materials and manufactured articles in the production of Vehicles, and other Materials to be supplied under this Agreement.

(c) Functions of Quality Assurance Organization -- The Contractor's quality assurance organization shall include the following minimum functions:

(1) The quality assurance organization shall verify inspection operation instructions to ascertain that the Vehicles, and other Materials meet all prescribed requirements.

(2) The quality assurance organization shall maintain and use records and data essential to the effective operation of its program. These records and data shall be available for review by the RTC's Inspectors, and shall remain available for a minimum of one (1) year after inspections and tests are completed.

(3) The quality assurance organization shall detect and promptly assure correction of any conditions that may result in the production of defective Vehicles. These conditions may occur in design, purchases, manufacture, tests, or operations that culminate in defective materials, supplies, services, facilities, technical data, or standards.

(4) The quality organization shall provide a system for commissioning of each material element of the completed Vehicle.

(d) Standards and Facilities -- The following standards and facilities shall be included in the Contractor's quality assurance process:

(1) The Contractor shall maintain Drawings, Product Data, assembly procedures, and other documentation that completely describe a qualified Vehicle that meets all of the requirements of this Agreement. The quality assurance organization shall verify that all Vehicles are manufactured in accordance with the controlled Drawings, Product Data, procedures, and documentation.

(2) The Contractor shall provide and maintain the necessary gauges and other measuring and testing devices for use by the quality assurance organization to verify that the Vehicles conform to all requirements of the Technical Specifications set forth in Appendix A. These devices shall be calibrated at established periods against certified measurement standards that have known, valid relationships to national standards.

(3) When production jigs, fixtures, tooling masters, templates, patterns, and other devices are used as media of inspection, they shall be proved for accuracy at formally established intervals and adjusted, replaced, or repaired as required to maintain quality.

(4) The Contractor's gauges and other measuring and testing devices shall be made available for use by the RTC's Inspectors to verify that the Vehicles conform to all requirements of the Technical Specifications. If necessary, the Contractor's personnel shall be made available to operate the devices and to verify their condition and accuracy.

(e) Purchasing Quality Control --

(1) General Requirement -- The Contractor shall maintain quality control over the purchase of all Materials and components to be incorporated into or otherwise needed for the Vehicles

(2) Subcontractors -- The Contractor shall require that each Subcontractor maintain a quality control program for the services and supplies that it provides. The Contractor's quality assurance organization shall inspect and test Materials provided by Subcontractors for conformance to the requirements of the Technical Specifications and shall establish controls to prevent inadvertent use of nonconforming materials. Materials that have been inspected, tested, and approved shall be identified as acceptable to the point of use in the manufacturing or assembly processes.

(3) Inclusion of Technical Specifications -- The Contractor shall verify that all applicable requirements of the Technical Specifications are properly included or referenced in purchase orders of components or other Materials to be used on the Vehicles.

(f) Manufacturing Quality Control --

(1) General Requirement -- The Contractor shall ensure that all basic production operations, as well as all other processing and fabricating, are performed under controlled conditions. Establishment of these controlled conditions shall be based on the documented work instructions, adequate production equipment, and special working environments if necessary.

(2) Inspection and Testing -- The Contractor's quality assurance organization shall establish and implement a system for commissioning of completed Vehicles. Such system shall measure the overall quality of each completed Vehicle.

(3) Non-Conforming Materials -- The Contractor's quality assurance organization shall monitor the system for controlling nonconforming Materials. Such system shall include procedures for identification, segregation, and disposition of such Materials.

(4) Statistical Analysis -- The Contractor's quality assurance organization may use statistical analysis, tests, and other quality control procedures when appropriate in the quality assurance process.

(g) Quality Assurance Audits -- The Contractor's quality assurance organization shall establish and maintain a quality control audit program. Records of this program shall be subject to review by the RTC.

## **SEC. 209 INSPECTIONS AND TESTING**

(a) Contractor Inspections and Tests --

(1) General Requirement -- The Contractor shall perform or have performed the inspections and tests (except those performed solely by the RTC) required to substantiate that the Work provided under the Agreement conforms to the Technical Specifications and other Contract Documents. The required Testing Procedures and Protocols are set forth in Appendix C hereto. All inspections and testing shall be carried out in accordance with the quality assurance program described in Section 208 of this Agreement.

(2) Timing -- The Contractor shall conduct inspections at appropriate points in the production and manufacturing process, as specified in the Critical Path Schedule, to ensure compliance with test specifications, process specifications, and quality standards.

(3) Samples -- All Samples for analyses and tests shall be taken in such manner as to be truly representative of the entire lot under test and shall not be worked on in any way to alter the quality before testing. All testing shall provide a measure of the overall quality of the completed product and shall be performed so that it simulates end product use and function. When modification, repairs, or replacements are required, the Contractor shall conduct a reinspection or retest of the characteristics affected.

(4) Records -- The Contractor shall maintain inspections system records covering the Work under this Agreement and shall make such records available to the RTC and the RTC's Inspector during the performance of this Agreement and for the

duration of the warranty periods or for such longer period as may be specified elsewhere in this Agreement.

(5) Body Subcontractor – The Contractor shall have its personnel periodically present at the plant of the body Subcontractor during the production of the Vehicle bodies. The Contractor shall conduct inspections and testing of the body production and maintain inspection records consistent with this Section, and otherwise shall fully comply with the quality assurance requirements of this Agreement.

(b) RTC Inspections and Testing--

(1) General Requirement -- All Work of the Contractor under this Agreement shall be subject to review, inspection, and testing by the RTC or its Inspectors. RTC inspections and tests may be conducted at all times and places during the term of this Agreement, provided that such inspections and tests shall be made in a manner that does not unduly delay the Work. The RTC's right to review extends to all Product Data relating to the Vehicles.

(2) Inspectors in Plant -- The RTC may station its Inspectors at the Contractor's and any Subcontractors' (including the body Subcontractor) plant and facilities during the manufacturing and production process, at the RTC's own expense. The RTC's Inspectors shall have the right to view and participate in all inspections and testing conducted by the Contractor. The Contractor shall provide adequate working space (including a desk, a telephone, and internet access) at its plant and facilities for the RTC's resident Inspector.

(3) Full Cooperation Required -- The Contractor shall fully cooperate with the Inspector in the performance of his or her duties, and permit full access to the Contractor's facilities and production lines. The Contractor shall ensure that the RTC's Inspector has full access to its Subcontractors' facilities and production lines and that the Subcontractors fully cooperate with the RTC's Inspector in the performance of his or her duties. The RTC has the unilateral right and discretion to select its Inspector and the Contractor shall not refuse access to the RTC's Inspector or otherwise impede the Inspector in the performance of his or her responsibilities; provided that (A) the Inspector shall be subject to such reasonable health, safety, and confidentiality rules as the Contractor may establish; and (B) the Inspector shall not unreasonably interfere in the Contractor's manufacturing process. The Contractor shall provide five (5) business days advance notification to the RTC and to the RTC's Inspector of any changes to the

production schedule, and shall not engage in any production activities without the RTC's Inspector being present if such notice has not been provided.

(4) Right to Enter -- The RTC and its Inspector shall have the right to enter the premises used by the Contractor or any Subcontractor (including any plant or place where Materials, Work, or any part thereof, are made, performed or stored) for purposes of tests, inspecting the Vehicles, and auditing data and records relating to the Contractor's performance under this Agreement.

(5) Inspector Reports -- The RTC's Inspectors will immediately report to the RTC if the Work performed by the Contractor or a Subcontractor fails to conform to the requirements of the Technical Specifications or other Contract Documents, stating the reasons for this failure and identifying the Technical Specifications or other Contract Documents that are not being complied with.

(6) RTC Testing -- In addition to testing by the Contractor under subsection (a), the RTC reserves the right to conduct its own testing during the production and manufacturing process if it determines that such testing is necessary to assure the production and delivery of safe and reliable Vehicles.

(7) Impact of Extensions of Time -- If the RTC grants an extension of time at the request of the Contractor pursuant to Section 211 or 212 of this Agreement, the Contractor shall be liable for and shall pay the cost of the Inspector during the period of such time extension. In addition, if the Contractor impedes the work of the RTC's Inspector resulting in a delay in the schedule, the Contractor shall be liable for and shall pay the cost of the RTC's Inspector during the delay period, as well as any extended time that the Inspector needs to be on-site due to the Contractor-caused delay. The Contractor shall not be eligible for any extension in Contract Time by reason of such a delay.

(c) Continuing Contractor Obligations -- The inspection or testing by the RTC of any Work does not relieve the Contractor from any responsibility regarding defects or other failures to meet the requirements of this Agreement or regarding the proper functioning of the Vehicles, or other Materials which may be discovered after acceptance.

(d) Inspections of Defective Work or Materials -- If the RTC has reasonable evidence that defective work has been permitted by the Contractor or the Subcontractors or that defective Materials have been used, and desires to make an examination of Work partly or fully completed, the Contractor or Subcontractor shall, at no additional expense to the RTC, furnish

the appliances and labor for making such investigation and inspection as may be required by the RTC.

(e) Corrections to Defective Work or Materials –

(1) Rejection or Re-performance -- If any Work or Materials inspected under subsection (d) are found to not be in conformity with the requirements of this Agreement, the RTC (or its Inspectors) shall have the right either to reject that Work or require the Contractor to perform the Work again in conformity with such requirements at no increase in the total Contract Price. Work which has been rejected or required to be corrected shall be removed or, if permitted or required by the RTC, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed to the RTC.

(2) Reductions in Price -- When the Work to be performed is of such a nature that the defect cannot be corrected by reperforming the Work, the RTC shall have the right to (A) require the Contractor to immediately take all necessary steps to ensure future performance of the Work in conformity with the requirements of this Agreement; and (B) reduce the Contract Price to reflect fairly the reduced value of the Work performed.

(3) RTC Corrections -- In the event the Contractor fails promptly to perform the Work again or take necessary steps to ensure future performance of the Work in conformity with the requirements of this Agreement, the RTC shall have the right to (A) have the Work performed in conformity with the requirements of this Agreement and charge to the Contractor any costs to the RTC related to the performance of such Work; or (B) terminate this Agreement for default under Section 234.

(f) RTC Responsibility for Cost -- If an inspection under subsection (d) by the RTC discloses no defect in the Work or Materials reviewed, the expense of such investigation, including any additional cost incurred by the Contractor as a result thereof, shall be borne by the RTC, and if such inspection impacted the Critical Path Schedule, the delivery schedule for the Vehicles shall be adjusted accordingly.

(g) Audits and Due Diligence Reviews -- The RTC will conduct pre-award and post-delivery audits of the Contractor and the Vehicles consistent with the standards and processes set forth in the Federal Transit Administration (FTA) Regulations on Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, set forth in 49 C.F.R. Part 663. The Contractor shall cooperate with the RTC in these audits and provide requested documentation.

(h) First Article Vehicle -- The Contractor shall provide the RTC a First Article Vehicle manufactured in accordance with the Technical Specifications and manufactured, tested, and delivered in accordance with the Critical Path Schedule. The First Article Vehicle shall be made available for inspection, acceptance testing and demonstration services at the RTC for a period of not less than thirty (30) Days from the date of delivery.

## **SEC. 210      SUSPENSION OF WORK AND DELAY BY THE RTC**

(a) Stop Work Orders --

(1) Right to Issue -- If the RTC (or its Inspector) determines that a problem in the production or manufacturing process may impact the safe construction, operation, or delivery of the Vehicles being produced or may affect the performance of any major system or component, as defined in the Technical Specifications, the parties shall meet within seventy-two (72) hours in order to discuss and agree upon the solution to the problem and the issuance, if necessary, of a Change Order. If the parties are unable to agree, then RTC may, by written order to the Contractor, require the Contractor to stop the part of the Work related to the problem discussed.

(2) Elements -- Any order issued under this subsection shall be specifically identified as a "stop work order." At a minimum, any such stop work order shall be authorized in writing by the RTC Executive Director and shall include the following in writing:

- (A) A clear description of the Work to be suspended.
- (B) Instructions as to the issuance of further orders by the Contractor for materials or services.
- (C) Guidance as to action to be taken on subcontracts.
- (D) Other suggestions to the Contractor for minimizing costs.
- (E) The time period (not to exceed fifty (50) Days) during which the order will remain in effect.

(b) Actions in Response -- Upon receipt of a stop work order, the Contractor shall promptly comply with the terms of such order and shall take all reasonable steps to minimize the incurring of costs allocable to the Work covered by the order, during the period of work stoppage. Within the time period specified in the stop work order, or within any extension of that period to which the parties agree, the RTC shall either --

- (1) cancel the stop work order; or

(2) terminate the Work covered by such order as provided in Section 230 on termination for convenience or Section 232 on termination for default.

(c) Impact on Price and Schedule --

(1) Equitable Adjustment -- If a stop work order issued under this subsection is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in Contract Time or Contract Price, or both, and this Agreement shall be modified in writing accordingly, if --

- (A) 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 Agreement; and
- (B) the Contractor asserts a claim for such adjustment within twenty (20) Days after the end of the period of work stoppage.

(2) Impact on Production Schedule -- In making an equitable adjustment in price or schedule under this subsection, the RTC will consider the costs incurred by the Contractor as a consequence of the delay resulting from the stop work order, and will also take into account the impact of the delay on the production schedule for the RTC's order as well as on the production planning at the Contractor's facility and the Contractor's obligations to its other customers.

(3) Termination Settlement -- If a stop work order is not cancelled and the Work covered by such order is terminated for the convenience of the RTC, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(4) Allowable Costs -- If a stop work order is not cancelled and the Work covered by such order is terminated for default, the reasonable costs resulting from the stop work order shall be allowable by equitable adjustment or otherwise.

(d) RTC Caused Delays --

(1) Adjustments to Cost or Time -- If the performance of all or any part of the Work is, suspended, delayed, or interrupted for an unreasonable period of time, by an act of the RTC or by the failure of the RTC to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) and/or for any delay in the time for completion of the Work necessarily caused by such unreasonable suspension, delay, or interruption, and this Agreement shall be modified in writing accordingly. In making an adjustment in price or delivery schedule, the RTC will consider the costs and impacts described in subsection (c)(2) of this Section.

(2) No Adjustments -- No adjustment shall be made under this subsection for any suspension, delay, or interruption (A) to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or the Contractor's failure to comply with the provisions of this Agreement; or (B) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

(3) No Claims -- No claim under this subsection shall be allowed unless the Contractor asserts the claim in writing, including the amount thereof, within twenty (20) Days after the termination of such suspension, delay, or interruption.

## **SEC. 211 CHANGE ORDER PROCESS**

(a) Writing Required -- Changes to the requirements of this Agreement, the Technical Specifications or the other Contract Documents may only be made by a written Change Order issued by the RTC or by a Contract Amendment. Oral Change Orders or oral contract amendments or modifications are not and will not be permitted. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any change in the Technical Specifications not properly ordered by written Change Order signed by the RTC. The form to be used for Change Orders is included as Appendix D to this Agreement.

(b) RTC Proposed/Directed Change Orders --

(1) Change Notice -- The RTC may, at any time, issue a written Change Notice to the Contractor proposing modifications in the Work that are within the general scope of this Agreement. Any such Change Notice shall be in sufficient detail to clearly show the Contractor the Work to be done and provide a basis for assessing any impact on contract cost or schedule.

(2) Response by Contractor to Change Notice -- The Contractor shall, within ten (10) Days after receipt of a Change Notice, notify the RTC in writing of any potential impact on contract cost or delivery schedule, and provide the RTC with its assessment of the feasibility of making the change proposed. If the Contractor notifies the RTC that the change is not feasible, the parties shall meet as soon as possible to review the proposed change. Following those discussions, the RTC will either issue a Change Order directing that the change proceed as stated in the original notice, issue a modified Change Notice, or withdraw the original notice.

(3) Agreement on Change -- If the RTC agrees that the Change Notice will cause an increase or decrease in the Contractor's cost or the time required to perform

the Work, an equitable adjustment shall be made in the Contract Price or Contract Time (or both), and such adjustment shall be reflected in a Change Order or written modification to this Agreement. The RTC shall thereafter issue a written Change Order implementing the change in the Work, which will be executed by both parties. A bilateral Change Order under this paragraph or subsection (c)(3) hereof will include all time and amounts to which the Contractor is entitled as a result of the change. There will be no reservation of rights by either Party on a bilateral Change Order.

(4) Absence of Agreement -- If the RTC and the Contractor are unable to agree on an equitable adjustment in price or schedule in connection with a Change Notice, the RTC may nonetheless issue a unilateral written Change Order implementing the changes in the Work, and in that event the Contractor shall proceed with the Work under this Agreement, as changed. The Contractor may submit the dispute over the cost or schedule impact of the change to dispute resolution under Section 228, and the Contractor's proceeding with the Work shall not prejudice its position in the dispute resolution process.

(5) Cost or Price Analysis -- The RTC reserves the right to conduct a cost or price analysis on any Change Order, including a change requested by the Contractor under subsection (c) of this Section.

(c) Contractor Proposed Changes --

(1) General -- The Contractor may also propose changes to the Work for the consideration and review of the RTC. No such change shall be made unless the RTC gives prior written approval of the requested change by issuance of a Change Order. Oral Change Orders are not recognized or permitted. The Contractor shall use the Change Order form included as Appendix D to this Agreement to make its request for a change.

(2) Basis for Request for Change -- Contractor-proposed changes under this subsection may include a request for a Change Order on the basis of an extraordinary and unanticipated increase in the cost of Materials or components used to manufacture or produce the Vehicles that arises after the date of this Agreement and that directly results in additional cost or time to perform the Work. The RTC is not obligated to agree to such a request for a Change Order, but agrees to review, discuss, and consider any such request in good faith.

(3) Price and Schedule Proposal -- Within ten (10) Days after the Contractor submits a written request for a Change Order to the RTC, the Contractor shall submit to the RTC a detailed price and schedule proposal for the change or Work to be performed,

provide an assessment of the feasibility of making the change proposed, and identify any Technical Specification to be modified by the change. The RTC shall consider the proposed Change Order and, after consultation with the Contractor, may accept, reject, or modify the Change Order requested. An accepted or modified Change Order under this subsection shall be in writing and executed by both parties.

(4) Contractor Obligation to Proceed -- If the RTC and the Contractor are unable to agree on the price or schedule impact of a Contractor proposed change under this subsection, the dispute may be submitted by either party for resolution in accordance with Section 228 of this Agreement. In the event of such a dispute, the RTC retains the discretion to order the change to be implemented by the Contractor or to direct the Contractor not to proceed with the change. The Contractor has a continuing obligation to proceed with the Work under this Agreement as directed by the RTC, notwithstanding the pendency of any such dispute; provided that the Contractor's proceeding with the Work shall not prejudice its position in the dispute resolution process.

(d) Scope and Specification Changes – Any changes to the Technical Specifications for the Vehicles shall be made by written Change Order.

(e) Minor Changes -- In addition to written Change Orders, the RTC shall have the authority to direct minor changes in the Work not involving extra cost or changes in schedule when such changes are in the RTC's opinion necessary or expedient to the satisfactory performance and completion of the Work. The Contractor may also propose such minor changes to the RTC for its review and approval.

## **SEC. 212 EXTENSION OF TIME**

(a) Granting of Extensions -- The Contractor will be granted an extension in Contract Time for a delay in completion of the Work, or any specified portion thereof, that arises directly from a Force Majeure event; provided that: (1) the causes were not foreseeable, did not result from the fault or negligence of the Contractor, or any person for whom the Contractor is legally or contractually responsible, and could not have been avoided by the exercise of due diligence and care by the Contractor; (2) the Contractor has taken reasonable precautions to prevent further delays owing to such causes; and (3) the Contractor notifies the RTC in writing of the cause or causes of delay within five (5) Days from the beginning of any such delay. Force Majeure events may result in an extension in the delivery schedule but are not a basis for an increase in the Contract Price.

(b) Information Regarding Cause of Delay -- Within ten (10) Days after the end of the delay, the Contractor shall furnish the RTC with detailed information concerning the causes and circumstances of the delay, the number of Days actually delayed, and the Contractor's request for an extension in the time for the completion of the Work or any portion thereof. The Contractor shall also provide the RTC satisfactory evidence that non-performance is not due to any fault or negligence on the part of the Contractor or any person for whom it is legally or contractually responsible. Failure to submit this information within such ten (10) Day period will be sufficient cause for denying the claim for an extension of time.

(c) RTC Response --

(1) Timing -- Within ten (10) Days after receipt of all information required under subsection (b), the RTC shall notify the Contractor whether it agrees that the event causing the delay was a Force Majeure event meeting the conditions of subsection (a).

(2) Agreement -- If the RTC concurs that the event was a Force Majeure event and that the Contractor has met the conditions of subsection (a), it shall also notify the Contractor whether it agrees with the amount of the extension in the Contract Time requested by the Contractor for the completion of the Work or any portion thereof. If the RTC does not agree to the amount of time requested, it shall establish the approved amount of the extension in Contract Time, which decision shall be final subject to dispute resolution under Section 228 of this Agreement.

(3) No Agreement -- If the RTC does not agree that the event was a Force Majeure event or determines that the Contractor has not met the conditions of subsection (a), it will deny the extension, which decision shall be final subject to dispute resolution under Section 228 of this Agreement.

(d) Change Orders -- The RTC will issue a Change Order to the Contractor within a reasonable period of time after the granting of an extension of Contract Time under this Section, specifying the number of Days allowed and the new date for completion of the Work or specified portions of the Work. Any extension of time must be in writing to be effective.

(e) Relation to Other Provisions --

(1) No Waiver -- The granting of an extension of Contract Time for delay shall not be deemed to be a waiver by the RTC of the RTC's right to impose and deduct liquidated damages for other delays (but not a delay caused by a Force Majeure event), or of any other rights to which the RTC is entitled under this Agreement.

(2) No Increase in Price -- An extension of Contract Time granted pursuant to this Section shall not be the basis for an increase in the Contract Price or claim for other

additional compensation or damages, and no damages or costs of any kind or nature will be paid for any such extension of time. A time extension must be approved by the RTC prior to any interim or final completion dates being extended.

(f) Other Extensions of Time – In addition to granting an extension in Contract Time for a Force Majeure event, the RTC may grant an extension in Contract Time in a Change Order agreed upon or issued by the RTC under Section 211.

## **SEC. 213     CONDITION OF SHIPMENT**

(a) Post Production Testing -- The Contractor shall assure that each Vehicle successfully completes the post-production performance and conformance testing required under Appendix C prior to shipment.

(b) Required Condition --

(1) Standards for Shipment -- Unless specifically excepted at the sole discretion of the RTC, each Vehicle shipped from the Contractor's plant to the RTC shall be complete (other than any components to be incorporated at the Project Site), Ready-to-Use, and in compliance with all provisions of the Technical Specifications and the other Contract Documents.

(2) Packing and Shipping -- The Contractor shall be responsible for packaging all shipments in accordance with the best commercial standards and practices to insure the integrity, safety and security of the Vehicles, and Materials during transportation and handling.

(c) Shipping Release -- Prior to the shipment of each Vehicle, the Contractor shall secure a "Shipping Release" signed by the RTC's Inspector or other authorized representative at the Contractor's plant. The Shipping Release shall certify that the Vehicle is complete (other than components to be incorporated at the Project Site), Ready-to-Use, and complies with the Technical Specifications, the Contractor's approved Drawings and Samples, and other agreed upon conditions for shipment. The Shipping Release shall not, however, be construed or inferred to constitute any acceptance of such Vehicle by the RTC. Execution of the Shipping Release by the RTC will not be unreasonably withheld.

(d) Transportation Costs -- The Contractor acknowledges and agrees that all costs associated with the shipment and transport of the Vehicles, including delivery and unloading costs; insurance costs; import duties, fees, and taxes; sales taxes; port fees; license fees; and all other associated costs, are included in the Contract Price, and that the Contractor is not entitled to and will not seek any additional compensation in connection with any such costs.

## **SEC. 214 ARRIVAL AND REQUIRED CONDITIONS FOR VEHICLE DELIVERY**

(a) Arrival Notice -- The Contractor shall give the RTC Project Director three (3) Days' notice prior to the arrival of Vehicles. Upon arrival at the Project Site, each completed Vehicle shall be examined jointly by representatives of the RTC and the Contractor. The RTC will then issue an "Arrival Notice" to the Contractor, for each Vehicle, which will acknowledge arrival of the Vehicle and furnish appropriate notation as to its apparent condition. The Arrival Notice will describe any missing parts or any damage that may have occurred during shipment and will also note or reference any components to be added at the Project Site. The Arrival Notice will be signed by both the RTC's representative and the Contractor's representative to attest to the stated condition of the Vehicle.

(b) Delivery Requirements -- To be considered "delivered", each Vehicle, subsequent to arrival and issuance of an Arrival Notice, must (after incorporation of any remaining components) be Ready-to-Use and fully in compliance with the Contract Documents, including having successfully completed performance and conformance tests at the Contractor's facilities in accordance with the Testing Procedures and Protocols set forth in Appendix C. If the RTC agrees to allow Vehicles to be shipped to the Project Site or other property while such testing work remains to be done, the Vehicles shall not, unless otherwise agreed upon by the RTC, be considered to be "delivered" until the Contractor has satisfactorily completed all such testing work.

(c) Failure to Meet Conditions -- If Vehicles arrive at the Project Site but do not meet the standards required to be considered "delivered" under subsection (b), the RTC may assess liquidated damages under Section 227. In addition, the RTC may require such Vehicles to be removed from the Project Site or may, in its discretion, require the Contractor to pay daily storage costs for use of the Project Site.

(d) Motor Vehicle Title and Fees -- The Contractor shall present, with each Vehicle delivered to the RTC, a copy of Contractor's title documents, an invoice, certificate of origin, a VIN inspection certificate, and all other documents necessary for the transfer of title to the RTC. The Contractor warrants that the title to each Vehicle delivered to the RTC will be free, clear, unencumbered and fully marketable, and that Contractor will have the right to convey such title to the RTC. All documents or parts of documents which must be executed in order to transfer ownership and secure a Nevada Title for each Vehicle shall be fully and properly executed and submitted to the State of Nevada, Department of Motor Vehicles. All costs for title fees shall be borne by the Contractor. Title to each Vehicle shall be conveyed to the RTC, at the address set

forth in Section 238, within sixty (60) Days after issuance of a Certificate of Acceptance under Section 215.

(e) Fire Suppression System and Extinguisher Certificates - The Contractor shall provide Nevada Fire Suppression System and Extinguisher certificates for each Vehicle at the time of delivery.

(f) Registration – The RTC shall be responsible for obtaining the registration for each Vehicle.

## **SEC. 215 ACCEPTANCE OF VEHICLES**

(a) Inspection and Testing --

(1) Timing and Standards -- Except as provided in paragraph (2), within fifteen (15) Days after delivery to the RTC, each Vehicle shall (A) be given an inspection to determine if such Vehicle has been completed in full compliance with the Technical Specifications and other Contract Documents; and (B) be subjected to pre-revenue service Acceptance testing (as described in Appendix C) to determine if the Vehicle is in acceptable operating condition. The RTC and the Contractor will provide personnel for participation in proof of design and Acceptance testing at the Project Site or other RTC facilities. The Contractor shall ensure that a Trapeze technician is on site to commission all the Vehicles during Acceptance testing. All Contractor personnel shall be qualified and properly licensed to operate the Vehicle.

(2) First Article Vehicle -- The RTC will be provided thirty (30) Days after delivery to conduct the inspection and Acceptance testing of the First Article Vehicle. The Acceptance inspection and testing of other Vehicles under paragraph (1) above is not required to be completed prior to the end of this thirty (30) Day period for the First Article Vehicle.

(b) Acceptance or Rejection by RTC -- Within five (5) working days after the completion of pre-revenue service Acceptance testing of a Vehicle under subsection (a), the RTC will notify the Contractor, in writing, whether such Vehicle has or has not been accepted. If a Vehicle is not accepted, the RTC will include in its notice a written explanation of the reasons for the rejection, identifying the particular component, system, or operating characteristic or feature found unacceptable. The RTC will not accept a Vehicle until the RTC is able to confirm that the Trapeze ITS system functions properly.

(c) Resubmittal --

(1) Correction of Defects -- Within seven (7) Days, or a mutually agreed upon schedule, after receipt of a notice under subsection (b), the Contractor shall correct any defects identified, and shall resubmit the Vehicle to the RTC for Acceptance; provided that if the defect cannot be corrected within seven (7) Days, the Contractor shall explain in writing the reasons additional time is needed and commit to a date for resubmittal. At its option, the RTC may require the Contractor to remove the Vehicle from the Project Site or other RTC premises, or may charge the Contractor a daily storage fee for use of the Project Site, while repairs are being made or defects corrected until the Vehicle is accepted. While a Vehicle is under repair or correction and until Acceptance, the Contractor shall retain all risk of loss.

(2) Work Orders -- All work performed by the Contractor to correct identified defects under this Section shall be documented with work orders. Each work order shall provide the following information needed for the repair: explanation of the repairs performed; procedure used to effect the repair; list of parts needed for the repair; and list of Vehicles subject to the repair work. The list of Vehicles shall include the fleet vehicle number, the VIN, license plate, serial number, the date when the work was performed, and the mileage, as applicable. Such work orders shall be provided to the RTC upon the completion of the repair work and resubmittal of a Vehicle for Acceptance.

(3) RTC Review -- The RTC shall, within ten (10) Days from the date of resubmittal of a Vehicle, complete additional inspection and/or testing, and either accept, reject, or conditionally accept the resubmitted Vehicle. If a Vehicle is not accepted, the RTC will notify the Contractor and include a written explanation of the reasons for rejection, identifying the particular component, system, or operating characteristic of feature found unacceptable. The Contractor shall correct any continuing defects identified by the RTC within five (5) Days of notice by the RTC.

(d) Certificate of Acceptance -- Upon Acceptance of a Vehicle, the RTC shall execute a written "Certificate of Acceptance" (the RTC's Acceptance Test Procedure (ATP) form) accepting the Vehicle as in conformance with the Technical Specifications and other Contract Documents, releasing the Vehicle for service. The date of Acceptance shall be the date of issuance of the Certificate of Acceptance by the RTC.

(e) Security of Vehicles -- The RTC shall make all reasonable efforts to assure the integrity, safety, and security of the Vehicles at the Project Site or other RTC facilities during the Acceptance testing process.

(f) Relation to Milestones and Critical Path Schedule –The time periods provided in this Section for inspections, testing, and other actions in the Vehicle Acceptance process shall prevail over any differing periods set forth in the Milestone Schedule or the Critical Path Schedule.

**SEC. 216     RESERVED**

**SEC. 217     RISK OF LOSS**

(a) Responsibility of Contractor -- Risk of loss or damage to any Vehicle or to any part or portion thereof (including responsibility for insurance coverage), is assumed and shall be borne by the Contractor at its own expense until a Certificate of Acceptance has been issued for such Vehicle in accordance with Section 215(d) of this Agreement. The Contractor acknowledges that it shall bear all risk of loss or damage for each Vehicle, and any part or portion thereof, during the acceptance testing process. The Contractor shall assure that the Vehicles remain fully insured (including coverage of RTC personnel involved in acceptance testing) until Acceptance. The Contractor shall continue to perform the Work and carry out this Agreement, in accordance with its terms and the other Contract Documents, without additional cost to the RTC by reason of any such loss or damage.

(b) Transfer to RTC -- Risk of loss of each Vehicle shall pass to the RTC upon the RTC's issuance of a Certificate of Acceptance for such Vehicle in accordance with Section 215(d) of this Agreement.

**SEC. 218     WARRANTIES**

(a) General Warranty -- To ensure the maximum safety, protection and satisfaction to the RTC, and to its passengers, the Contractor warrants and guarantees that each Vehicle, subsystem, component, and replacement part is fully operational and free from defects and related defects in design, materials, workmanship and construction, and is designed in conformance with the Technical Specifications and other Contract Documents to provide the services and functions intended. As used in this Section, a "related defect" is a defect that arises directly or indirectly as a result of a separate defect in the Vehicle as the case may be.

(b) Start of Warranty Period -- The warranties of this Section shall start to run, with each Vehicle, subsystem, and component, on the date of issuance of a Certificate of Acceptance by the RTC for that Vehicle under Section 215 of this Agreement.

(c) Warranty for Complete Vehicle -- The Contractor warrants and guarantees the entire Vehicle, bumper-to-bumper, to be free of any defects and related defects for one (1) year or 50,000 miles, whichever first occurs, from the date of issuance of a Certificate of Acceptance. During this warranty period, the Vehicle shall maintain its structural and functional integrity. This warranty is based on regular operation of the Vehicle under the operating conditions and physical environment that exists in the Washoe County, Nevada area. Unless a longer warranty is provided in this Section, this warranty includes integral and peripheral components, materials, parts, assemblies and subassemblies including but not limited to the body, chassis, engine, transmission, cooling, drive train, suspension, electrical and manual controls, steering, starter and alternator, safety equipment, heater, and air conditioning. This warranty includes all services by the Contractor that are necessary to correct any malfunction or defect in materials or workmanship that occurs during the warranty period, and to keep the Vehicles in good operating condition and preserve their operating efficiency in accordance with all OEM technical specifications and operating standards.

(d) Standard Warranty for Subsystems and Components --

(1) Basic One -Year Warranty -- The Contractor warrants and guarantees all major subsystems and components to be free of defects and related defects for one (1) year from the date of issuance of a Certificate of Acceptance, without any mileage limit, unless a longer period is provided by the supplier. The subsystems and components covered by this warranty include, but are not limited to, the following: brake system, electrical systems; heating, ventilation and air conditioning systems; all axles; differential; driveshaft; gearbox; steering box; passenger seats; complete destination sign system; suspension; assemblies; door systems; interior lighting; air compressor and dryer; wheelchair ramp system; engine starter; alternator; fire suppression system; methane detection systems; on board camera system; radio communication equipment; voice annunciation system; hydraulic system; cooling system; and paint and finish.

(2) Propulsion System Warranty -- The Contractor warrants and guarantees all propulsion system components, including the engine, transmission, and drive and non-drive axles, to be free from defects and related defects for one (1) year or 100,000 miles (whichever comes first) from the issuance of a Certificate of Acceptance.

(e) Structural Warranties -- In addition to the warranties described in the preceding subsections of this Section, the Contractor warrants and guarantees (1) the body, body structure, and structural elements of the suspension to be free from defects and related defects for three (3) years and (2) primary load-carrying members of the bus structure, including

structural elements of suspension, against corrosion failure and/or fatigue failure sufficient to cause a Class I or Class II failure for a period of twelve (12) years or 500,000 miles, whichever comes first. For purposes of this Section, the “structure” of the body work means the body framework, including any side, roof and exterior panels; and the “structure” of the chassis means the chassis longitudinal, cross-members, structural elements of the suspension, outriggers and sole bars, and load bearing members and components.

(f) Bus Battery Warranty – The Contractor warrants and guarantees the hybrid system battery in a Vehicle to be free of defects and related defects for five (5) years from the issuance of a Certificate of Acceptance for such Vehicle.

(g) Applicability of Warranty -- The warranties specified in this Section shall not apply to any defect to the extent it occurs by reason of the following:

(1) external causes such as road accidents, bumps, scratches, and similar events; that are the direct result of the operational use by the RTC, unless the accident or event is caused by the negligent or intentional acts or omissions of the Contractor or its agents;

(2) failure to inspect, service, and maintain (including preventative maintenance) the Vehicle in accordance with the Contractor’s recommendations (including recommended daily checks and use of Contractor supplied spare parts);

(3) any abuse or misuse by the RTC (or its employees, agents, or the RTC’s Service Contractor);

(4) alterations, repairs, or replacements carried out other than by the Contractor, its duly authorized service representative, or the Service Contractor;

(5) normal wear and tear of the Vehicle, including the gel-coating or finish, and components; or

(6) vandalism.

For purposes of these limitations on warranty applicability, the RTC shall require its Service Contractor to document that its maintenance activities are carried out in conformance with the Contractor’s documentation and maintenance manuals and to maintain copies of all maintenance records and receipts for review by the Contractor.

(h) Exclusions From Warranty -- The following are excluded from warranty coverage:

(1) any accessories, equipment, or parts not manufactured, approved or supplied by the Contractor (except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible);

(2) any unauthorized modification of the Vehicle, or of the parts manufactured by the Contractor; and

(3) scheduled maintenance items, consumables and normal "wear-out" items (such as tires, filters, belts, tubes, bulbs and wiper blades), or items with progressive wear characteristics (bushings, friction surfaces).

(i) Supplier Warranties -- In the event the Vehicles, or any other Materials or equipment supplied under this Agreement (or any components of any of the foregoing) are covered by warranties of the manufacturer or supplier other than the Contractor, and such warranties extend beyond the periods specified in this Section, then the RTC shall receive the benefit of such longer warranties. The Contractor shall furnish copies of such superior warranties to the RTC at the time of Vehicle delivery. If requested by the RTC, the Contractor shall assign any such superior warranty to the RTC; provided that notwithstanding any such assignment, the manufacturer and supplier warranties shall be managed and administered by the Contractor for the extended warranty period, and such assignment shall not relieve the Contractor of any of its obligations under this Agreement.

(j) Engineering Changes - Contractor sponsored modifications to the Vehicles and/or engineering changes shall be made with the prior written consent of the RTC at no additional charge for a period of one (1) year from the date of Acceptance. The RTC reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the RTC.

(k) Disclaimers Not Effective -- No disclaimer of liability, limitations on time of warranty, limitations on scope of warranty, or limitations on damages inconsistent with the warranties contained herein shall be effective for any purpose. No warranty contained herein or otherwise given shall be construed to limit or waive any other right or remedy available to the RTC by law or to limit the time in which such other remedy may be sought.

(l) Warranties Non-Assignable -- The warranties provided in this Section shall not be assigned by the RTC to any third party or be enforced by any third party; provided that this limitation shall not be construed to affect the ability of the RTC's Service Contractor to administer the warranty provisions in this Section and Section 220.

(m) Reservation of Other Rights -- The warranties, rights and remedies specified in this Section are in addition to any remedies, warranties (express or implied), or guarantees imposed on the Contractor by statute, common law, or other provisions of law or contract.

(n) Damages -- The Contractor shall be liable for actual damages resulting from the breach of an express or implied warranty or other defect in the Work.

## **SEC. 219     WARRANTY REPAIRS AND DEFECTS**

### **(a)     Warranty Repairs by RTC --**

(1)     In General -- Warranty covered repairs shall be performed by trained personnel of the RTC's Service Contractor, in accordance with commercially reasonable industry standards, with reimbursement by the Contractor. Warranty-covered repairs for major components (such as the engine, transmission, HVAC and destination sign) shall be performed by an authorized dealer of the OEM or trained personnel of the RTC's Service Contractor. The RTC shall correct or repair the defect and any related defects using parts specified or approved by the Contractor that are specifically available for the repair.

(2)     Parts Shipment – The RTC may request the Contractor to supply new components or parts necessary for warranty covered repairs being undertaken by the RTC or its authorized representative. These parts shall be shipped prepaid by the Contractor to the RTC within one (1) Day or according to a mutually agreed schedule of the request of such parts. Parts supplied by the Contractor shall be OEM equivalent or superior to those used in the OEM. In case of expedited rush orders for parts placed by the RTC for a “bus down,” the Contractor shall prepay the costs for expedited (air express) delivery or, where this is not practicable, shall provide for some other expedited form of delivery. The Contractor may request that parts covered by warranty be returned to the manufacturing plant, at its cost. Parts shall be returned in accordance with the Contractor's instructions.

(3)     Failure Analysis – At the request of the RTC, the Contractor shall provide a failure analysis of parts for components removed from Vehicles under the terms of the warranty. Such reports shall be delivered within sixty (60) Days, or according to a mutually agreed schedule, of the receipt of failed parts or components.

### **(b)     Reimbursement for RTC Repairs --**

(1)     Timing of Reimbursement -- The Contractor shall reimburse the RTC for any repairs performed by the RTC's Service Contractor within thirty (30) Days of receipt of the claim or return of the returned part for review by the Contractor, as applicable. The RTC shall submit to the Contractor a warranty claim for any repairs undertaken by the RTC for reimbursement for the cost of repairs and/or the replacement of parts. The warranty claim shall be submitted electronically in accordance with the Contractor's Customer Warranty Portal User Manual. If the Contractor fails to reimburse the RTC within the thirty (30) Day period, the outstanding amount shall accrue interest at the Prime Rate

as quoted in the interest rates and bonds section of The Wall Street Journal on the last date reimbursement was due.

(2) Inclusion in Reimbursable Costs -- The costs for warranty repairs to be reimbursed by the Contractor shall include labor costs as well as any necessary parts. Reimbursement for any RTC supplied parts shall be calculated from the original equipment manufacturer (OEM) parts price list in effect at the time of the repair.

(3) Labor Rates -- Labor costs incurred by the RTC and reimbursable by the Contractor for warranty repairs shall be determined by multiplying the number of manhours actually required to correct the defect by the then current hourly rate of the RTC's authorized representative. At the time of execution of this Agreement, the current rate is \$97.50 per hour.

(4) OEM Repairs - The RTC will refrain from performing any maintenance and/or repairs which could void OEM warranties and shall maintain the Vehicles in accordance with OEM and Contractor furnished specifications, manuals, and documents. If repairs are required to components or major subsystems and are undertaken by an OEM authorized warranty facility, the RTC shall include such cost on the warranty claim submitted to the Contractor.

(c) Safety Defects --

(1) Determination and Notification by RTC -- The determination of whether a defect constitutes a safety defect shall be made by the RTC, following consultation and agreement with the Contractor. If the RTC determines that a safety defect exists in any Vehicle purchased under this Agreement, the RTC will immediately notify the Contractor.

(2) Inspection and Repairs by Contractor -- Within two (2) Days after notification by the RTC of a safety defect, the Contractor shall inspect the entire Vehicle fleet to determine whether the safety defect exists in other Vehicles. Within two (2) Days after completion of inspection by the Contractor, the Contractor shall meet with the RTC and present an action plan to design, engineer and correct the safety defect. The action plan shall be subject to approval by the RTC.

(3) Scope of Repairs -- Whenever any change or repair is required to correct a defect that relates to safety in the Vehicle, structure, parts, subsystems, or components, the RTC shall make this repair for all Vehicles, structure, parts, subsystems, or components where such defect exists, at the Contractor's sole expense. The RTC shall file a warranty claim with the Contractor for all costs it incurs in making such repairs to the Vehicle fleet.

(4) Applicability -- The requirements of this subsection shall extend for four (4) years after Acceptance of the last Vehicle.

(d) Fleet Defects --

(1) Notice of Fleet Defects -- The RTC shall promptly notify the Contractor whenever it determines that a Fleet Defect has occurred. As defined in Section 101 of this Agreement, a Fleet Defect is a failure or defect in the same component, part, or system in four (4) or more Vehicles.

(2) Notice and Work Program -- Within two (2) Days after notice of a Fleet Defect, the Contractor shall submit to the RTC an action plan to design, engineer and correct the defect. The action plan shall be reasonably designed to prevent the occurrence of the same defect in other Vehicles and parts purchased under this Agreement, and shall include, as applicable, redesign and/or replacement of defectively designed or manufactured parts, and inspection of all Vehicles purchased under this Agreement. The action plan shall be subject to approval by the RTC. If the RTC determines the action plan as submitted is unacceptable, the Contractor shall promptly submit a revised action plan to address the RTC's concerns with the initial submittal.

(3) Scope of Repairs -- Whenever any change or repair is required to correct a Fleet Defect in the Vehicles, structure, parts, subsystems, or components, the RTC shall make this repair for all Vehicles, structure, parts, subsystems, or components where such defect exists, at the Contractor's sole expense. The RTC shall file a warranty claim with the Contractor for all costs it incurs in making such repairs to the Vehicle fleet.

(4) Applicability -- The requirements of this subsection shall extend for a four (4) year period after Acceptance of the last Vehicle.

(e) Warranty After Replacement or Repair -- If any component, system, subsystem, or part is repaired, rebuilt, or replaced by the RTC such component, system, subsystem, or part shall be warranted for the remainder of the full original warranty period. This warranty shall commence on the date the repaired, rebuilt or replaced component, system, subsystem or part is installed on the Vehicle.

(f) Disputes -- Any disputes regarding the warranty provisions of this Section (including whether specific repairs are covered by warranty and the reimbursable cost of repairs) shall be subject to the dispute resolution procedures set forth in Section 228 of this Agreement; provided that the Contractor shall comply with its obligations for warranty repairs, in accordance with the direction of the RTC, notwithstanding the pendency of any dispute.

(g) Damages and Costs -- In the event of any action by the RTC to recover damages for breach of warranty, the Contractor agrees to pay the RTC for such damages and the costs associated with such action, including reasonable attorneys' fees. In the event the RTC determines it is necessary to rent or lease vehicles while warranty repairs are conducted, the costs of such rentals or leases shall be borne by the Contractor.

## **SEC. 220 INDEMNIFICATION**

(a) Scope of Indemnity -- The Contractor agrees to protect, defend, and indemnify and hold the RTC, its officers, board members, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, title and professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (hereinafter collectively "claims") in connection with or arising out of the performance or implementation of this Agreement by the Contractor or any Subcontractor, or any other person for whom the Contractor is legally or contractually responsible, whether or not it is alleged or determined that the action on which the claim is based was caused by the negligence of the Contractor or any Subcontractors, or any other person for whom the Contractor is legally or contractually responsible, or their agents or employees. The Contractor shall not assert any assumption of the risk or any other defense to the obligation to indemnify the RTC under this Section. Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to bear all costs and expenses of investigating, defending, or otherwise handling all claims described in this subsection, without regard to the merits or final disposition of such claims. For purposes of this subsection, the term "Subcontractor" does not include the RTC's fixed route Service Contractor.

(b) Handling of Claims -- The RTC agrees that it will notify the Contractor in writing within ten (10) Days of receipt or notice of any claim described in subsection (a); provided that failure of the RTC to so notify the Contractor shall not relieve the Contractor of any of its obligations under this Section. The Contractor shall have the right to assume the defense of all claims that might be threatened or instituted, and agrees that it will assume all responsibility for the investigation, handling, and defense of such claims unless the RTC notifies the Contractor

that it elects to be represented by counsel of its own selection in connection with any such claim. The RTC shall provide such assistance (except financial) for the defense of any claim as is reasonably requested by the Contractor. The RTC shall not make any admission of liability with respect to a claim or seek to settle or compromise a claim without the prior written consent of the Contractor. The Contractor agrees to inform the RTC as to all correspondence and proceedings in respect of any claim as to which indemnity is sought and to consult with the RTC with respect to all matters relating to any claim.

(c) Patent Infringement -- The Contractor shall advise the RTC of any anticipated, known or pending patent infringement action or other proceeding and shall provide all information available relating to the action. The Contractor shall defend any suit or proceeding brought against the RTC based on a claim that any Vehicle, equipment, Materials, or any part thereof, furnished under this Agreement, constitutes an infringement of any patent; and the Contractor shall pay all damages and costs awarded therein, including incidental and consequential damages, against the RTC. In case such Vehicle, equipment, or Materials, or any part thereof, is held in such suit to constitute infringement and its use is enjoined, the Contractor shall, at its own expense and at its option, either procure for the RTC the right to continue using such Vehicle, equipment, Materials or parts, or replace the same with non-infringing equipment, or modify it so it becomes non-infringing.

(d) Service Contractor -- The RTC acknowledges that the Service Contractor operating and maintaining the Vehicles has its own specific indemnification and insurance obligations to the RTC under its Operations and Maintenance Agreement. The Contractor's indemnification obligations under this Section do not extend to or cover any negligent or willful actions of such Service Contractor or otherwise create any agreement or obligation to indemnify, the Service Contractor.

(e) Disclaimer of Liability -- The RTC will not hold harmless or indemnify the Contractor for any liability whatsoever. This subsection does not preclude the Contractor from pursuing resolution of a dispute with the RTC arising under this Agreement in accordance with Section 228.

## **SEC. 221     INSURANCE**

(a) Obligations of the Contractor – Except as otherwise provided in this Section, the Contractor shall procure and maintain in effect until the completion of all Work and services under this Agreement the insurance coverages in the amounts prescribed in this Section. All insurance required hereunder shall be procured from insurance or indemnity companies

authorized or approved to do business in the State of Nevada with an A-, Class VI or better rating level, unless otherwise approved in writing by the RTC. The Contractor shall furnish the RTC, within ten (10) Days after this Agreement is executed by the RTC and the Contractor, certificates of insurance evidencing that the required insurance has been obtained.

(b) Types of Insurance Required -- The Contractor shall procure and maintain at its own cost and expense the following types of insurance:

(1) Worker's Compensation and Employers' Liability -- A policy (or approved self-insurance plan) complying with all statutes applicable to work performed in the United States in connection with this Agreement, including those of Nevada, and any other State or Federal jurisdiction. Employers' liability coverage shall be at least \$1 million per occurrence. The Contractor waives all rights against the RTC and its agents, officers, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella liability insurance obtained by the Contractor pursuant to this Agreement. The Contractor shall obtain an endorsement equivalent to WC 00 03 13 or equivalent to affect this waiver.

(2) Commercial General Liability Insurance -- Commercial General Liability (CGL) coverage, and if necessary, commercial umbrella insurance, including products and completed operations coverage, covering the liability of the Contractor (and the RTC and its consultants) with a limit of not less than \$5 million for each occurrence for all Work, and operations under or in connection with this Agreement and all obligations assumed by the Contractor under this Agreement. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Agreement. CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract.) The coverage under such policy shall provide at least the following limits:

- (A) Bodily Injury or Property Damage Liability -- \$5 million combined limit per occurrence.
- (B) Contractual Liability -- \$5 million combined limit per occurrence.
- (C) Products/Completed Operations Liability -- \$5 million combined limit per occurrence/aggregate for a period of five (5) years after the acceptance of the last Vehicle under this Agreement.

(3) Automobile Liability Insurance -- An insurance policy covering the use of all owned, non-owned, hired, leased, or rented vehicles used in connection with this Agreement. The coverage under such policy shall provide at least \$5 million combined limit per occurrence in bodily injury and property damage liability.

(c) Endorsement -- The insurance coverages required under subsection (b) (other than worker's compensation and employer's liability) shall contain an endorsement naming the RTC and its officers, employees and agents as additional insureds, without exclusions. The RTC and its officers, employees and agents shall be included as an additional insured under the Commercial General Liability coverage, for both Contractor's premises and operations liability before delivery of the Vehicles, and products and completed operations liability after delivery of the Vehicles, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the RTC. There shall be no endorsement or modification of the Commercial General Liability to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro-rata, the policy shall be endorsed to be primary with respect to the additional insured. The endorsement shall contain a provision that the RTC shall be notified by the insurer(s), in writing, thirty (30) Days prior to any cancellation, non-renewal, or material change adversely affecting the interest of the RTC.

(d) Contractor's Failure to Procure -- The Contractor's failure to procure or maintain the insurance required by this Section during the entire term of the Agreement shall constitute a material breach of contract. In the event of such a breach, the RTC may exercise all available rights and remedies hereunder, including the right to immediately suspend or terminate this Agreement, or, at its discretion, to procure or renew such insurance to protect the RTC and pay the premiums in connection therewith, and withhold or recover from the Contractor all monies so paid.

(e) Deductibles -- The Contractor shall be solely responsible for all deductibles and self-assured retentions relating to all insurance required under this Section.

(f) Waiver of Subrogation -- The Contractor hereby waives all rights of recovery under subrogation because of deductible clauses, inadequacy of limits of any policy, limitations or exclusions of coverage, or any other reason against the RTC and its officers, employees, and agents.

(g) Primary and Non-Contributing -- The insurance coverage required under this Section shall be primary insurance for claims covered, and any other insurance maintained by any additional insured or its officers, employees, or agents shall not contribute.

(h) Delivery of Policies -- The RTC may, in its discretion, require the Contractor to provide actual copies of the policy of any insurance that is required under this Section. The Contractor shall supply any policy required by the RTC within ten (10) Days after the RTC's request, unless the Contractor demonstrates that actual copies of such policy are unavailable.

## **SEC. 222      MANUALS**

(a) Manuals and Materials --

(1) General Requirements -- The Contractor shall electronically transmit to the RTC, in accordance with the Critical Path Schedule and at least thirty (30) Days prior to the arrival of the First Vehicle under this Agreement, operator manuals, maintenance manuals, parts manuals, and any other technical support manuals and materials required by the Technical Specifications. These manuals and other technical support materials shall be used in training under this Section as well as for ongoing operation and maintenance of the Vehicles.

(2) Operator Manuals -- The operator manuals shall be written in English, shall describe in detail the operating features and characteristics of the Vehicles; and provide sufficient information to assure safe and effective operation of the Vehicles.

(3) Maintenance Manuals -- The maintenance manuals shall be written in English and shall provide details of the Contractor's maintenance program, electrical schematics and information regarding the recommended procedures and standards for maintenance and repair of the Vehicle including all scheduled and preventative maintenance requirements and recommendations and estimated hours of maintenance required.

(4) Electronic Access -- The Contractor shall provide the RTC unlimited electronic access to each manual and any other technical materials provided under this paragraph, as well as electronic updates to such manuals and materials as such updates are made. The Contractor shall also provide the RTC and its Service Contractor unlimited Level 2 electronic access on diagnostic tools.

## **SEC. 223      PARTS AVAILABILITY GUARANTEES**

(a) Obligations of Contractor -- The Contractor shall provide the spare parts, software, and all equipment necessary to maintain and repair the Vehicles purchased under this Agreement for the twelve (12) year useful life of the Vehicles. Parts shall be interchangeable

with the original equipment and be manufactured in accordance with the quality assurance provisions of this Agreement.

(b) Delivery Requirements --

(1) General Requirement -- The Contractor shall maintain, for the useful life of the Vehicles, the capability of delivering spare parts to the RTC within five (5) working Days, or according to a mutually agreed schedule, after placement of an order. The Contractor shall maintain a spare parts outlet or contract with a customs broker to expedite the customs clearance of any parts.

(2) Coach Down Requirement -- In "coach-down" situations, availability of normal wear items such as filters, v-belts, hydraulic lines, and hoses shall not exceed twenty-four (24) hours for items available from United States suppliers and forty-eight (48) hours for items available from foreign suppliers.

(c) Survival of Obligation -- The Contractor's parts availability obligations under this Section shall survive the discharge of other obligations under this Agreement, and the RTC may use any available remedy to enforce such obligations.

(d) Out of Stock Items -- If the Contractor is out of stock on any major component replacement part ordered by the RTC, the Contractor will be responsible for all freight and premium charges associated with special ordering the item to meet the maximum delivery time specified. If delivery of the item will exceed the maximum guaranteed delivery time specified, the RTC must be notified for approval at the time of order placement. If the RTC requests delivery of times in less than the maximum allowable time, the RTC will be responsible for all freight and premium charges associated with special ordering the items.

## **SEC. 224 LOCAL REPRESENTATION**

(a) General Duty -- The Contractor shall have competent technical personnel available to assist in any problem which the RTC might have regarding the Vehicles during the performance of the post delivery inspection and completion of all Acceptance work at no additional cost to the RTC.

(b) On Site Technical Assistance --

(1) General Requirement -- Contractor shall have a technical service engineer available for a period commencing on the delivery of the Vehicles until Acceptance of all the Vehicles.

(2) Duties -- The Contractor's representatives shall --

- (A) assist in post-shipment inspection of Vehicles ;
- (B) provide technical support to RTC maintenance personnel;
- (C) provide on-site assistance during Vehicle Acceptance testing and
- (D) provide warranty support to the RTC.

(3) Acceptance Testing -- During all Vehicle Acceptance testing at the RTC under Section 215, the Contractor shall provide field service technical support and parts, as well as expedited provisioning for any other spares required to support the Acceptance tests.

(4) Safety Defects and Fleet Defects -- In the event of safety defects or Fleet Defects, as described in Section 219(c) and (d), the Contractor shall provide technical support at the Project Site for the period needed to address the safety defect or Fleet Defect, as applicable, in a satisfactory manner.

(c) Availability During Warranty Periods -- After Acceptance of the Vehicles, competent technical personnel shall also be available during the applicable warranty period for items covered by each of the respective warranties under Section 218 (i.e., for the basic warranty, for one (1) year, for the corrosion/fatigue warranty for the structural elements, for three (3) years or 500,000 miles). Such personnel shall be available to perform inspections and RTC corrective and warranty work in accordance with the requirements of section 219, at no additional cost to the RTC. If defects or problems arise during inspection or operations, these technical personnel shall closely monitor the work until the Vehicles are repaired or corrected and returned to service.

(d) Continuous Availability -- When availability of Contractor personnel is required under this Section, the Contractor shall assure that such personnel are physically present at the Project Site or other RTC facilities when needed.

**SEC. 225     RESERVED**

**SEC. 226     ACCESS TO RECORDS**

(a) General -- The Contractor agrees to maintain all records relating to the performance of the Work for the period specified in subsection (b), and further agrees that the RTC, the Secretary of Transportation, and the Comptroller General of the United States (or any of their authorized representatives) shall have access, at any reasonable time, to inspect and copy the records and documents of the Contractor and its Subcontractors and suppliers, relating to any labor, materials, payrolls, plant, and equipment relating to the performance of this Agreement.

(b) Duration -- Access to records in accordance with this Section shall be given or obtained both during the performance of the Work and for the later of: (1) the three (3) year period beginning on the date of Acceptance for the last Vehicle under Section 215 of this Agreement; or (2) the final resolution of any litigation or claims arising out of this Agreement.

## **SEC. 227 LIQUIDATED DAMAGES**

(a) Late Performance -- The Parties mutually understand and agree that time is of the essence with respect to the completion of the Work and that in case of any failure on the part of the Contractor to complete the Work within the time specified in the contract schedule in Section 205 of this Agreement, or to meet its other time obligations under this Agreement (except for any extensions of time as provided in Section 211 or 212 of this Agreement), the RTC will be damaged thereby.

(b) Amount of Liquidated Damages -- The Contractor agrees to pay the following liquidated damages:

(1) For delay in the delivery of all Vehicles, in the amount of five hundred dollars (\$500) per Vehicle for each Day of delay, based on the delivery date for all Vehicles specified in Section 205(c) of this Agreement.

(2) For failure by the Contractor to provide parts in accordance with Section 224, in the amount of five hundred dollars (\$500) per part per Day of delay in the supply of parts.

(c) Acknowledgement by Contractor and Payment -- The Contractor agrees that (1) actual damages that would be incurred as a result of the action or inaction of the Contractor covered by this Section would be uncertain and difficult to ascertain; (2) the amounts of liquidated damages stated are reasonable in light of the anticipated or actual harm caused, the difficulties of proof of loss and the inconvenience or infeasibility of otherwise obtaining an adequate remedy; and (3) such amounts are in the nature of liquidated damages and do not constitute a penalty. The parties have established these amounts in order to fix the Contractor's potential costs and to avoid disputes regarding the amount of damages owed as a result of the Contractor's action or inaction. These amounts may be deducted from any monies due, or which may thereafter become due, to the Contractor under this Agreement or any other contract, or may be separately recovered by the RTC. If the monies due the Contractor are insufficient or no monies are due to the Contractor, the Contractor shall pay the RTC the difference or the entire amount, as the case may be, within twenty (20) Days after receipt of a written demand by the RTC.

(d) Coverage of Payments -- If the RTC assesses and collects liquidated damages from the Contractor for a failure to fulfill a specific obligation under this Agreement covered by this Section, the RTC will not seek to recover damages from the Contractor for the same failure.

(e) Reservation of Rights -- Except as provided in subsection (d), the imposition of liquidated damages under this Section shall not affect the rights of the RTC to terminate this Agreement in accordance with the termination provisions of this Agreement or to seek recovery from the Contractor for losses or damages suffered by the RTC that are not related to violations of the obligations that are the basis for liquidated damages under this Agreement.

(f) Limitations -- Liquidated damages shall be limited to a maximum of ten percent (10%) of the total Contract Price.

(g) Force Majeure -- The Contractor may be excused from liquidated damages and may be entitled to a reasonable extension of time from the RTC for delay directly caused by a Force Majeure event, if the RTC determines that the Contractor has met the conditions set forth in Section 212(a). Any delay other than one caused by a Force Majeure event, or by a Change Order initiated by the RTC which authorizes an extension of time, shall constitute a breach of contract, and the RTC may recover liquidated damages for the breach.

## **SEC. 228     DISPUTES**

(a) General Requirement -- Any dispute arising under or related to this Agreement which is not disposed of by agreement between the RTC and the Contractor shall be decided in accordance with the provisions of this Section, provided that by mutual agreement the matter may be taken immediately to any higher step in the dispute resolution process or to litigation.

(b) Notice of Dispute -- All disputes shall be initiated through a written dispute notice submitted by either party to the other party within ten (10) Days after the date the dispute first arises. Within fifteen (15) Days after delivery of the dispute notice, the receiving party shall submit a written response to the other party. The dispute notice and written response shall include: (1) a statement of the party's position and a summary of the arguments supporting that position; (2) any evidence supporting the party's position; and (3) the name of the person who will represent that party and any other person who will participate in negotiations and/or dispute resolution.

(c) Negotiation -- Following a dispute notice and response under subsection (b), the parties shall first attempt in good faith to promptly resolve the dispute by discussion and negotiation between persons who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this

Agreement. The parties shall meet at a mutually acceptable time and place within fifteen (15) Days after delivery of the dispute response, and thereafter as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information by one party to the other shall be honored.

(d) Second Level Review -- If the dispute is not resolved within forty (40) Days after delivery of the dispute notice, either party may submit the dispute (together with the dispute notice, the response, and any minutes from the subsection (c) process) to a two person panel consisting of the RTC Executive Director and an individual in a comparable executive position with the Contractor. These two individuals shall meet within twenty (20) Days after the date of the submittal and shall attempt to reach a fair and equitable resolution of the dispute. If the two person panel resolves the dispute, they shall issue a written decision that shall be administratively final and conclusive. If the panel is unable to resolve the dispute, either party may proceed to arbitration under subsection (e).

(e) Mediation/Arbitration -- Any dispute which is not resolved by the parties through the operation of the preceding provisions of this Section may be submitted by either party to mediation and/or, if agreed to by both parties, to arbitration in accordance with the commercial rules and procedures of the American Arbitration Association (AAA). The neutral mediator/arbitrator shall be selected in accordance with AAA procedures, and the mediation/arbitration hearing shall be held in the Reno, Nevada area. The result of any arbitration shall be final and binding upon both parties, subject to judicial enforcement or review in a court in the State of Nevada of competent jurisdiction and venue.

(f) Litigation -- If a dispute is not resolved by the parties through the operation of subsection (a) – (d) and is not submitted to arbitration under subsection (e), either party may bring a civil action on the matter in dispute in a court in the State of Nevada of competent jurisdiction and venue.

(g) Actions During Dispute Resolution -- Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with the performance of its obligations under the Agreement (including those matters giving rise to the dispute) in accordance with the direction of the RTC; provided that the action of the Contractor in proceeding with such performance shall not prejudice its position in the dispute resolution process.

(h) Alternative Dispute Resolution -- If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process which may include structured negotiations different from that specified in this Section, mediation, or fact finding.

## **SEC. 229 ASSIGNMENT; CHANGE IN OWNERSHIP OR CONTROL**

(a) Assignment -- The Contractor may not assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without advance prior written notice to the RTC, and no such assignment or transfer shall have the effect of reducing or modifying the obligations owed to the RTC under this Agreement.

(b) Change in Ownership or Control -- The Contractor agrees that in the event of the sale of substantially all of the assets or stock of the Contractor, or in the event of a change in control of the beneficial ownership of the Contractor, the Contractor will require, as a binding precondition on such sale or change in control, that the acquiring entity assume full responsibility for performance of all duties and obligations under this Agreement, without reduction or modification, including delivery of the Vehicles by the dates specified herein and in accordance with all requirements of the Contract Documents.

## **SEC. 230 SUBCONTRACTING**

(a) Responsibility for Performance -- The Contractor shall be solely responsible for the performance of all Subcontractors and the fulfillment of all requirements of this Agreement and the other Contract Documents. The RTC has privity of contract with, and will recognize, only the Contractor.

(b) Required Provisions -- The Contractor shall assure that each of its Subcontractors performs its work under the subcontract in accordance with the applicable provisions of the Technical Specifications and other Contract Documents.

(c) Contractor's Duties -- The Contractor agrees that this Section does not operate to relieve the Contractor of any duty or liability under this Agreement, nor does it create any duty or liability on the part of the RTC to any Subcontractor. The Contractor shall have sole responsibility for promptly settling any disputes between Subcontractors and between the Contractor and any Subcontractor. Upon request of the RTC, the Contractor shall provide the RTC with information regarding the status of any disputes involving any of its Subcontractors.

(d) Payment to Subcontractors -- The Contractor shall pay its Subcontractors on a timely basis, for and on account of work performed by such Subcontractors, in accordance with the terms of the respective subcontracts and in accordance with applicable State and Federal law. Upon request of the RTC, the Contractor shall provide the RTC with information regarding the current status of payments to Subcontractors, including the reasons for any non-payment.

## **SEC. 231 GOVERNING LAW AND CONSENT TO JURISDICTION**

(a) State Law -- This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nevada. The Contractor shall also comply with all applicable State laws and regulations and all applicable local ordinances.

(b) Federal Law -- The Contractor agrees to comply with the applicable Federal laws and regulations set forth in Appendix E to this Agreement.

(c) Contractor Affirmations and Responsibility -- The Contractor affirms that it has familiarized itself with the requirements of any and all applicable Federal, State, County, and City laws, codes, rules, and regulations, including the conditions of any required licenses and permits, prior to entering into this Agreement. The Contractor shall be responsible for complying with any and all of such requirements at its sole cost and expense and without any increase in the price or timeframes specified in this Agreement due to such compliance, regardless of whether such compliance would require additional labor, equipment, and/or materials not expressly provided for in the Agreement or in the specified price.

(d) Jurisdiction -- The Contractor, by entering into the Agreement, consents and submits to the jurisdiction of the courts of the State of Nevada and of the United States, over any action at law, suit in equity, or other proceeding that may arise under or in connection with this Agreement or in the performance of the Contractor's obligations hereunder.

## **SEC. 232 TERMINATION FOR CONVENIENCE**

(a) In General -- The performance of the Work under this Agreement may be terminated by the RTC in accordance with this Section in whole, or from time to time in part, whenever the RTC determines that such termination is in the best interest of the RTC. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination, provided not less than thirty (30) Days prior to the termination date, specifying the extent to which performance of the Work under the Agreement is terminated and the date upon which such termination becomes effective.

(b) Actions Following Notice -- Upon receipt of a notice of termination, and except as otherwise directed by the RTC, the Contractor shall: (1) stop Work under the Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice

of termination; (4) assign to the RTC in the manner, at the times, and to the extent directed by the RTC Executive Director, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the RTC shall have the right, in its discretion, to directly settle or pay any or all claims arising out of the termination of such orders and subcontracts in accordance with the provisions in 48 CFR Part 49; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the RTC, to the extent the RTC may require, which approval or ratification shall be final for purposes of this Section; (6) transfer title to the RTC and deliver in the manner, at the times, and to the extent directed by the RTC, the fabricated or unfabricated parts, Work in process or completed Work, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work terminated, and the completed or partially completed plans, information, and other property which, if the Agreement had been completed, would have been required to be furnished to the RTC; (7) complete any such part of the Work that has not been terminated by the notice of termination; (8) use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the RTC, any property of the types referred to above; provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the RTC, and provided further that the proceeds of any such transfer or disposition shall be applied in the reduction of any payments to be made by the RTC to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the Work covered by such contract or paid in such other manner as the RTC may direct; and (9) take such action as may be necessary, or as the RTC may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor and in which the RTC has or may acquire an interest.

(c) Applicability of FAR Principles -- Settlement of claims by the Contractor, obligations of the RTC with respect to the settlement of terminated subcontracts, and recoveries by the RTC under this Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

### **SEC. 233      TERMINATION BY MUTUAL AGREEMENT**

This Agreement may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Section 232 or Section 234, respectively.

## **SEC. 234    TERMINATION FOR DEFAULT**

(a)    In General -- The RTC may, subject to the provisions of subsection (b) of this Section, by thirty (30) Day advance written Notice of Termination for default to the Contractor, terminate the whole or any part of this Agreement in any one of the following circumstances:

(1)    If the Contractor fails to perform any of the provisions of this Agreement in accordance with its terms and the RTC is harmed (in its judgment) by such failure.

(2)    If the Contractor fails to make progress in the prosecution of the Work so as to endanger the performance of this Agreement in accordance with its terms.

(3)    If the Contractor fails to make delivery of the Vehicles within the time specified in this Agreement (including any extension thereof).

(b)    Opportunity to Cure -- The Contractor will be given the opportunity to cure any default within a period of thirty (30) Days after notice of such default under subsection (a) (or such longer period as the RTC may authorize in writing); provided that if the Contractor cannot reasonably cure such default within such thirty (30) Day cure period, the Contractor shall, prior to the expiration of such period, notify the RTC in writing, setting forth a plan for curing such default and a schedule and time certain by which such cure will be achieved. Upon receipt of such a notice and consultation with the Contractor, the RTC may (1) authorize the Contractor to proceed with the cure in accordance with its proposed plan and schedule; (2) direct the Contractor to make modifications in its proposed plan and/or schedule; or (3) reject such plan and terminate the Agreement for default if the RTC determines, in its discretion, that the Contractor will not be able to cure such default.

(c)    Re-procurement -- If this Agreement is terminated in whole or in part for default, the RTC may procure, upon such terms and in such manner as the RTC deems appropriate, vehicles, equipment or other Work similar (in terms of capacity and/or function) to that terminated. The Contractor shall be liable to the RTC for any excess costs for such similar procurement (the RTC undertaking all reasonable efforts to mitigate such excess costs), and shall continue the performance of this Agreement to the extent not terminated under this Section.

(d)    Applicability of FAR Principles -- Except as otherwise provided, settlement of claims under this Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

(e)    Conversion to Termination for Convenience -- If after notice of termination of this Agreement under this Section, it is determined for any reason that the Contractor was not in

default under this Section or that the default was excusable under this Section, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience under Section 232, unless the parties otherwise agree.

**SEC. 235 WAIVER OF TERMS AND CONDITIONS**

The failure of the RTC or the Contractor to enforce one or more of the terms of this Agreement or to exercise any of its rights or privileges hereunder, or the waiver by the RTC of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

**SEC. 236 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on the successors and assigns of the RTC and the Contractor.

**SEC. 237 CONTRACT AMENDMENTS**

This Agreement and the Appendices hereto may only be amended or modified by written agreement duly executed by the RTC and the Contractor.

**SEC. 238 NOTICES UNDER AGREEMENT**

(a) Written Notice -- All notices and communications required pursuant to the terms of this Agreement shall be in writing, unless an emergency situation dictates otherwise.

(b) Addresses -- Communications should be addressed as follows:

If to the RTC:

Bill Thomas, AICP  
Executive Director  
Regional Transportation Commission  
of Washoe County  
1105 Terminal Way  
Reno, NV 89502  
Fax: (775) 348-3218  
Email: [bthomas@rtcwashoe.com](mailto:bthomas@rtcwashoe.com)

If to the Contractor:  
Jennifer McNeill  
Vice President, Sales and Marketing  
New Flyer of America, Inc.  
711 Kernaghan Avenue  
Winnipeg, MB  
R2C 3T4

Fax: 204-224-4214

Email: [Jennifer\\_McNeill@newflyer.com](mailto:Jennifer_McNeill@newflyer.com)

(c) Receipt of Notice -- Communications and notices in connection with the performance of this Agreement shall be considered received at the time actually received by the addressee or designated agent. Any notices required by this Agreement shall be deemed received on: (1) the day of delivery if delivered by hand (including overnight courier service) or personal service during the receiving Party's regular business hours; (2) by facsimile with confirmation of transmission before or during the receiving Party's regular business hours; or (3) sent by United States mail, via certified mail return receipt requested to the addresses set forth above, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provisions of this Section. An original signed copy, via United States mail, shall follow fax transmissions. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

(d) Copy -- A copy of all notices and communications required by the terms of this Agreement shall be provided to the RTC's Project Director delivered in the manner specified in subsection (c).

(e) Required Notices -- In addition to notices required by the terms of this Agreement, notice is required for all matters involving possible termination actions, litigation, indemnification and disputes. Routine correspondence shall be directed to the Contractor's Project Manager and the RTC's Project Director.

## **SEC. 239 CONFLICT OF INTEREST**

(a) In General -- An official of the RTC, who is authorized in such capacity and on behalf of the RTC to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Agreement, payments under this Agreement, or Work under this Agreement shall not be directly or indirectly interested personally in this Agreement or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the RTC, who is authorized in such capacity and on behalf of the RTC to exercise any legislative,

executive, supervisory, or other similar functions in connection with this Agreement, shall become directly or indirectly interested personally in this Agreement or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Agreement. No member, officer, or employee of the RTC shall, during his or her tenure and for one (1) year thereafter, have any interest in this Agreement or the proceeds hereof.

(b) Prohibited Interests -- Each Party represents that it is unaware of any financial or economic interest of any public officer or employee of the RTC relating to this Agreement. Notwithstanding any other provision of this Agreement, if such interest becomes known, the RTC may immediately terminate this Agreement for default or convenience.

(c) Prohibited Commissions -- The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide permanent employees. For breach or violation of this warranty the RTC shall have the right to terminate this Agreement without liability or in its discretion to deduct from the Contract Price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

(d) Termination -- In the event this Agreement is terminated as provided for in this Section, the RTC shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Agreement by the Contractor.

(e) Reservation of Rights -- The rights and remedies of the RTC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under any other provision of this Agreement.

#### **SEC. 240 TAXES**

The RTC is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 90-0036752. The Contractor shall pay all taxes, levies, duties and assessments of every nature and kind, which may be applicable to Work under this Agreement. The Contractor shall make any and all payroll deductions required by law. The Contractor agrees to indemnify and hold the RTC harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

## **SEC. 241     DISCRIMINATION**

The Contractor acknowledges that the RTC has an obligation to ensure that public funds are not used to subsidize private discrimination. The Contractor recognizes that if the Contractor or its subcontractors are found guilty by an appropriate authority of refusing to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the RTC may declare the Contractor in breach of this Agreement, terminate the Agreement, and designate the Contractor as non-responsible.

## **SEC. 242     PUBLIC RECORDS**

The RTC is a public agency as defined by Nevada State law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). All of the RTC's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Agreement and all supporting documents are deemed to be public records.

## **SEC. 243     CONFIDENTIALITY**

(a)     By Contractor -- All information, including but not limited to, oral statements, computer files, databases, and other material or data supplied to the Contractor is confidential and privileged. The Contractor shall not disclose this information, or allow it to be disclosed to any person or entity without the express prior written consent of the RTC. The Contractor shall have the right to use any such confidential information only for providing the services under this Agreement, unless the express prior, written consent to RTC is obtained. Upon request by the RTC, the Contractor shall promptly return to the RTC all confidential information supplied by the RTC, together with all copies and extracts.

(b)     By RTC -- The RTC agrees to comply with the terms of any Confidentiality Agreement entered into by and between the RTC and the Contractor for this project.

(c)     Exclusion -- The confidentiality requirements of this section shall not apply where: (1) the information is, at the time of disclosure by the RTC, in the public domain; (2) the information is known to the Contractor prior to obtaining it from the RTC; (3) the information is obtained by the Contractor from a third party who did not receive the information directly or indirectly from the RTC; or (4) the information is subpoenaed by court order of other legal

process; provided that in such event, the Contractor shall promptly notify the RTC. The RTC, in its sole discretion, may seek to quash such demand.

(d) Survival -- The obligations of confidentiality shall survive the termination of this Agreement.

#### **SEC. 244     MARKETING RESTRICTIONS**

The Contractor may not publish or sell any information from or about this Agreement without the prior written consent of the RTC. This restriction does not apply to the use of the RTC's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Contractor or its services.

#### **SEC. 245     RESERVED**

#### **SEC. 246     RESERVED**

#### **SEC. 247     INTELLECTUAL PROPERTY**

(a) Contractor Ownership -- The Contractor shall retain ownership of (1) any patents; (2) inventions, discoveries (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (3) copyrights, copyright registrations, mask works, mask work registrations, and applications therefor in the United States, and anywhere in the world, and all other rights corresponding thereto throughout the world; and (4) any other proprietary rights (collectively, the "Intellectual Property") in or to the technology associated with the Vehicles supplied to the RTC under this Agreement.

(b) License to RTC -- The Contractor hereby grants to the RTC a royalty-free, paid-up, non-exclusive, non-transferable license to use the Intellectual Property for purposes of operations and maintenance of the Vehicles supplied under this Agreement and for related governmental purposes, including carrying out its obligations under its grant from FTA for the Project. The RTC agrees that it will not use the Intellectual Property for any commercial or manufacturing purpose.

(c) Use of Information -- The RTC may disclose information relating to or generated by the Intellectual Property as follows: (1) to the Service Contractor, but only to the extent necessary to allow such party to operate and/or maintain the Vehicles , and subject to such party's execution of a nondisclosure agreement and its agreement to comply with the provisions of this Section; (2) to the professional consultants with whom the RTC contracts to carry out

activities under the Project, but only to the extent necessary to allow such parties to carry out their contractual obligations to the RTC and subject to such party's execution of a nondisclosure agreement and its agreement to comply with the provisions of this Section; and (3) to the FTA, to the extent necessary to carry out the FTA grant agreement and the Project. The RTC further agrees that it will not allow any third party to reverse engineer the Vehicle.

(d) Warranty – The Contractor warrants that it is the owner of the Intellectual Property, that it has the right to convey and grant the license described in subsection (b), and that the RTC's use thereof as contemplated in this Section, will not infringe upon any third party's proprietary rights. The Contractor further agrees to defend and indemnify the RTC against all costs and damages arising from claims by a third party that the RTC's use of the Intellectual Property infringes upon or violates such party's rights.

(e) Developed Data and Technology – Information and data developed or collected during the Project regarding Vehicle energy consumption, emissions reduction, operating cost and performance, and related matters shall be owned by the Contractor provided that Contractor hereby grants to the RTC a royalty-free, paid-up, non-exclusive, nontransferable license to use such information and data, subject to any rights of FTA under the grant agreement or Federal law or regulations. Any modifications or alterations to the Contractor's Intellectual Property made by the Contractor in the performance of this Agreement shall be owned by the Contractor.

## **SEC. 248 ENTIRE AGREEMENT**

This Agreement constitutes and contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to such subject matter.

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## **ARTICLE III -- PAYMENT TERMS AND CONDITIONS**

### **SEC. 301 CONTRACT PAY ITEMS AND PRICES**

(a) Vehicle Price -- The RTC shall pay the Contractor a total Contract Price not to exceed \$2,449,600.08 which is composed of the following pay item at the following price:

<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Vehicles	two (2)	\$1,224,800.04	\$2,449,600.08
<b>CONTRACT PRICE</b>			<b>\$2,449,600.08</b>

(b) Full Compensation – Payment for the pay item listed in this Section shall constitute full compensation to complete the Work in conformity with this Agreement and shall constitute full compensation for all transportation costs (including delivery and unloading costs, insurance costs, import duties, taxes, and fees), sales taxes, title fees, insurance and indemnification obligations, and other associated costs incurred or assumed by the Contractor in providing the Vehicles, and otherwise carrying out the Work in accordance with this Agreement and the other Contract Documents. In addition, the payment of the Contract Price includes the operations and maintenance manuals the Contractor is obligated to provide under Section 222 hereof.

(c) No Additional Compensation –The Contractor shall not be entitled to any additional compensation for restoring loss or repairing damage arising during the completion of the Work, for correcting deficiencies or defects in the Work, for the consequences of unforeseen events, or for the cost of warranty repairs, except as otherwise specifically provided in a Change Order issued by the RTC.

**SEC. 302 PAYMENTS**

(a) Schedule -- The RTC shall make payments to the Contractor for the Vehicles identified in Section 301(a) in accordance with the following schedule: (1) fifty percent (50%) of the Vehicle Unit Price will be paid upon delivery of each Vehicle; and (2) a final payment of the remaining fifty percent (50%) of the Vehicle Unit Price will be paid upon Acceptance of each Vehicle. Payments will be subject to retainage under subsection (b) and any applicable deductions under subsection (d).

(b) Retainage and Payment Conditions -- The RTC will deduct and retain two and one-half percent (2.5%) from the payment on delivery under subsection (a)(1) and will deduct and retain two and one-half percent (2.5%) from the final payment on Acceptance of all Vehicles under subsection (a)(2). The two and one-half percent (2.5%) retainage shall be held through the standard one-year warranty period, as described in Section 304(c) hereof. The RTC has the discretion, if in its sole judgment circumstances so warrant, to release a portion of the two and one-half percent (2.5%) retention being held during the one (1) year warranty period.

(c) Audits --

(1) Authority to Audit -- The RTC (or its authorized representative) may perform audits so as not to interfere with timely processing of payment applications and invoices. If an audit indicates the Contractor has been overpaid, that overpayment will be credited against the next Payment due, or remitted in full by the Contractor.

(2) Change Orders -- Payment for work under Change Orders negotiated on a cost reimbursable basis shall be subject to RTC review and audit of the Contractor's records supporting the invoice.

(3) Maintenance of Records -- The Contractor shall maintain all records relating to performance of the Work, and shall make those records available for audit, inspection, and copying, in accordance with Section 226 of this Agreement.

(d) Deductions from Payments -- In addition to the deductions provided for under subsection (b), the RTC shall deduct from each Payment the following:

(1) any liquidated damages which have accrued as of the date of the application for payment, subject to the overall limitation on liquidated damages set forth in Section 227(f);

(2) any sums expended by the RTC in performing any of the Contractor's obligations under this Agreement which the Contractor has failed to perform; and

(3) any other sums which the RTC is entitled to recover from the Contractor under the terms of this Agreement.

The failure by the RTC to deduct any of these sums from a Payment shall not constitute a waiver of the RTC's right to deduct or otherwise collect such sums.

### **SEC. 303 INVOICING**

(a) Form and Content -- The Contractor shall submit invoices to the RTC in accordance with this Section. Each invoice shall be in the form and contain the contents set forth in Appendix F. Invoices based on delivery of the Vehicles shall be submitted within ten (10) Days after delivery, and invoices based on Acceptance shall be submitted within fifteen (15) Days after Acceptance. Invoices shall be submitted to:

Regional Transportation Commission  
Attn: Accounts Payable  
1105 Terminal Way, Suite 300  
Reno, NV 89502  
or [accountspayable@rtcwashoe.com](mailto:accountspayable@rtcwashoe.com)

A copy of the original invoice shall be provided by the Contractor to the RTC's Project Director.

(b) Payment -- Within thirty (30) Days after receipt of an invoice from the Contractor, that includes the required documentation, the RTC shall pay the invoiced amount to the Contractor, less the retainage described in Section 302(b) and any deductions under Section 302(d), and subject to any withholding in accordance with subsection (c) of this Section. All payments due under this Contract in excess of Twenty-Five Thousand Dollars (\$25,000.00) shall be made by wire or EFT, unless otherwise mutually agreed in writing, to New Flyer of America, Inc. pursuant to the following wiring instructions: Account Information: Account name - New Flyer of America, Inc.; Account number – 4753618701; Routing number – 121000248; SWIFT code – NFBIUS6S; Bank information – Wells Fargo Bank, 420 Montgomery Street, San Francisco, CA 94104-1207.

(c) Withholding -- If the RTC objects to the payment of an invoice (or any portion thereof) or questions the sufficiency of the vouchers or documentation submitted, the RTC may withhold payment of the portion of the invoiced amount to which it objects and pay the balance. The RTC shall promptly notify the Contractor of this withholding, and the reasons therefore, and provide the Contractor with an opportunity to correct or resolve the issue presented. Any payment that is determined, pursuant to the dispute resolution process under Section 228, to have been unreasonably withheld or denied by the RTC will bear an interest at the Prime Rate from the due date of payment.

(d) Spare Parts – The Contractor shall provide the RTC with a list and price schedule of recommended spare parts. If the RTC acquires spare parts or other equipment from the Contractor, the RTC will make payments for such spare parts and/or equipment at the unit prices itemized in the price schedule provided to the RTC, unless the parties agree to a different price. Such payment will be made within fifteen (15) Days after the delivery and acceptance of spare parts and/or equipment and receipt of a proper invoice.

(e) Special Tools – The Contractor shall provide the RTC with a list and price schedule of recommended special tools or equipment. If the RTC acquires special tools or other equipment from the Contractor, the RTC will make payments for such special tools and/or equipment at the unit prices itemized in the price schedule provided to the RTC, unless the parties agree to a different price. Such payment will be made within fifteen (15) Days after the delivery and acceptance of special tools and/or equipment and receipt of a proper invoice.

## **SEC. 304 FINAL PAYMENT**

(a) Payment and Release -- In the invoice for final payment under Section 302, the Contractor shall include a written release from any and all claims arising from the Work under and in connection with this Agreement. The release shall be accompanied by a certification by the Contractor that:

(1) any claims made by Subcontractors or other parties against the Contractor relating to the Work have either (A) been resolved; or (B) if not resolved (such as claims subject to pending litigation), remain fully covered by the Contractor's indemnification of the RTC under Section 220;

(2) it has no reason to believe that any party has a valid claim against the Contractor which has not been communicated in writing by the Contractor to the RTC as of the date of the certification; and

(3) all warranties and guarantees are in full force and effect. The release and certification shall survive final payment. Final payment made in accordance with this subsection will be conclusive and binding against both parties to this Agreement on all questions relating to the amount of Work done and the compensation paid therefore, except as otherwise provided in subsection (b).

(b) No Estoppel --

(1) In General -- The RTC shall not be precluded or estopped by any final payment to the Contractor:

(A) from showing at any time (either before or after the final completion and acceptance of the Work and payment therefore) the true and correct amount and character of the Work done or materials furnished by the Contractor or any person under this Agreement; or

(B) from showing at any time that any such final application of payment is untrue and incorrect, or improperly made, or that the Work and equipment and materials (or any part thereof) do not, in fact, conform to the Contract Documents.

(2) Damages -- The RTC shall not be precluded or estopped, notwithstanding any final payment to the Contractor, from demanding and recovering from the Contractor such damages as it may sustain by reason of the Contractor's failure to comply this Agreement or the other Contract Documents.

(c) Retainage -- Subject to the exercise of the RTC's discretionary right to release a portion of the retainage under Section 302(b), the two and one-half percent (2.5%) retainage shall be held by the RTC through the standard one-year warranty period set forth in Section 218. Upon expiration of such standard warranty period, the retainage will be returned to the Contractor, unless a safety defect or Fleet Defect has been declared by the RTC pursuant to Section 219. In such event, the RTC may continue to hold all or a portion of such retainage, in its discretion, until the safety defect or Fleet Defect is resolved to the RTC's satisfaction.

### **SEC. 305 COST OR PRICE ANALYSIS**

(a) In General -- The RTC has conducted a cost or price analysis in accordance with Federal Transit Administration and/or Federal Acquisition Regulation principles to review the Contractor's cost data and evaluate the specific elements of cost, labor, and profit, in order to verify that the prices proposed by the Contractor are fair and reasonable for the equipment and services to be provided under this Agreement. The cost or price analysis shall remain on file at the RTC for the three (3) year-period beginning on the date of expiration of this Agreement. The Contractor agrees to provide cost and pricing information (including labor, materials, indirect costs, and profit) to the RTC and to otherwise cooperate fully with the RTC its performance of the cost or price analysis and in any future audit or review thereof.

(b) Additional Reviews and Audits -- The RTC may, during Vehicle production, and at such other times as it deems appropriate, conduct an additional cost review/audit for purposes of comparing the Contractor's estimates relating to direct materials, labor, and indirect costs to the actual cost incurred for those items.

### **SEC. 306 LACK OF FUNDS CLAUSE**

The entering into and implementation of this Agreement by the RTC is subject to its receipt of funds adequate to carry out the provisions of this Agreement in full. The RTC Executive Director may cancel or reduce the Work if he or she determines that there will be a lack of adequate funding available for the Work. In such event, the Executive Director shall notify the Contractor in writing thirty (30) Days in advance of the date that such cancellation or reduction is to be effective. If the Executive Director cancels the Work under this Section, such cancellation shall be treated as a termination for convenience under Section 232 of this Agreement.

**Signature Page Follows**

IN WITNESS WHEREOF, the RTC and the Contractor have executed this Agreement on \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
BILL THOMAS, AICP  
Executive Director  
Regional Transportation Commission  
of Washoe County, Nevada

By: \_\_\_\_\_  
Jennifer McNeill  
Vice President Sales and Marketing  
New Flyer of North America

By: \_\_\_\_\_  
Chris Stoddart  
President, Transit Bus Business  
New Flyer of North America

**APPENDIX A**  
**TECHNICAL SPECIFICATIONS FOR VEHICLES**

**APPENDIX B**  
**CRITICAL PATH SCHEDULE**

## **APPENDIX C**

### **TESTING PROCEDURES AND PROTOCOLS, INCLUDING ACCEPTANCE TESTING**

**APPENDIX D**  
**CHANGE ORDER REQUEST FORM**

**Date:** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Initiated By:** \_\_\_\_\_

**Description:**

**Technical Specification Affected:** \_\_\_\_\_

**Feasibility of Proposed Change:**

**Cost Impact:**

**Impact to Milestones and Critical Path Schedule:**

**CONCURRENCE**

**ACCEPTANCE**

\_\_\_\_\_  
**RTC Project Manager**

\_\_\_\_\_  
**Signature of Authorized  
Representative of Contractor**

\_\_\_\_\_  
**RTC Chief Financial Officer**

## **APPENDIX E**

### **APPLICABLE FEDERAL REQUIREMENTS**

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with applicable Federal requirements.

Activities performed under this Agreement, and any other prior or subsequent amendments thereto, may be financed in part, by a grant from the United States Department of Transportation (DOT), Federal Transit Administration (FTA) to the Regional Transportation Commission of Washoe County (RTC), and if so, would therefore be subject to the applicable grant terms, conditions, and regulations. Accordingly, the Contractor and its subcontractors performing activities under this Agreement must adhere to the Federal requirements stated herein as a condition of satisfactory performance.

All subcontracts and subcontractors employed as a result of this Agreement are subject to the same conditions and requirements as set forth herein unless specifically exempted. The Contractor shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal requirements. The Contractor will be held liable for compliance failures by its subcontractors. Failure to comply will render the Contractor responsible for damages and/or contract termination.

#### **1. BUY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. 5323(j) (Section 165 of the Surface Transportation Assistance Act of 1982, as amended) 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. The requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. In order for rolling stock to be in compliance with the Buy America requirements, the cost of components produced in the United States must be more than 70 percent of the cost of all components and final assembly of the rolling stock must take place in the United States.

The Contractor must submit to the RTC the attached appropriate Buy America certifications. This requirement does not apply to lower tier subcontractors.

#### **2. FLY AMERICA REQUIREMENT**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **3. CARGO PREFERENCE**

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 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 loading 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, D.C. 20590 and to the FTA recipient (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.

### **4. ENERGY CONSERVATION**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Nevada energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 49 U.S.C. § 6321, *et seq.*, 49 C.F.R. Part 18.

### **5. CLEAN WATER REQUIREMENTS**

(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 RTC, and understands and agrees that the RTC will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (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.

### **6. BUS TESTING**

The Contractor agrees to comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 C.F.R. Part 665 and shall comply with the following obligations:

(1) a manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the RTC at a point in the procurement process specified by the RTC which will be prior to the RTC's final acceptance of the first vehicle.

(2) a manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public;

(3) if the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the RTC prior to the RTC's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing; and

(4) if the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

(5) The manufacturer shall complete the attached certification.

## **7. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**

As a condition of satisfactory contract performance, the Contractor shall cooperate with the RTC in compliance with requirements of 49 U.S.C. Section 5323(l) and 49 C.F.R. Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases", promulgated by the Federal Transit Administration.

Accordingly, pre-award and post-delivery audits of the manufacturer of the vehicles described herein shall be performed.

I. A pre-award (prior to RTC entering into a formal contract with the successful proposer to this solicitation) audit shall be performed at RTC's expense to include the following three certifications:

(a) Buy America Certification verifying that either (A) the FTA has granted the proposer a waiver from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or, (B) the vehicles to be purchased meet the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having the RTC (or its agent) review documentation provided by the manufacturer which lists: (1) components and subcomponent parts of the Vehicles identified by the manufacturer of the parts, their country of origin, and costs, and the planned location of the final assembly point for the rolling stock including a description of the activities which will take place at the final assembly point; and (2) the expected cost of final assembly.

(b) Purchaser's Requirements Certification that (A) the vehicles RTC is contracting for are the same product described in this solicitation; and (B) the successful proposer is a responsible manufacturer with the capability to produce a vehicle that meets the specifications set forth in this solicitation.

(c) The manufacturer's Federal Motor Vehicle Safety Standard self-certification information of compliance with Federal motor vehicle safety standards; or, the Federal Motor Vehicle Safety Standard self-certification information that the Federal motor vehicle standards do not apply, as appropriate.

II. A post-delivery (prior to title to the vehicles being transferred to the RTC) audit shall be performed at RTC's expense to include the following three certifications:

(a) A post-delivery Buy America Certification verifying the either: (A) the FTA has granted a waiver to the vehicles received from the Buy America requirements under sections 165(b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or (B) the vehicles to be received by the RTC meet the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having the RTC (or its agent) review documentation provided by the manufacturer which lists: (1) components and subcomponent parts of the vehicles identified by the manufacturer of the parts, their country of origin, and costs, and the actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point; and (2) the cost of the final assembly.

(b) A post-delivery Purchaser's Requirements Certification which certifies that for procurements of 11 vehicles or more a resident inspector under contract with the RTC (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the vehicles, monitored and completed a report on the manufacture of the vehicles which: (1) provides accurate records of all vehicle construction activities; and (2) addresses how the construction and operation of the vehicles fulfills the contract specifications.

(c) The manufacturer's Federal Motor Vehicle Safety Standard self-certification information of compliance with Federal motor vehicle safety standards; or, the Federal Motor Vehicle Safety Standard self-certification information that the Federal motor vehicle standards do not apply, as appropriate.

## **8. LOBBYING**

The Contractor shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying", attached. 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 that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

## **9. ACCESS TO RECORDS AND REPORTS**

The following access to records requirements apply to this Contract:

(a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.30(i), as is the RTC, the Contractor agrees to provide the RTC, 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 contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. 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(3), which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(3)) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(c) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(d) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case the Contractor agrees to maintain same until the RTC, 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. See 2 C.F.R. 200.333.

(e) FTA does not require the inclusion of these requirements in subcontracts.

## **10. CHANGES TO FEDERAL REQUIREMENTS**

The Contractor shall at all times comply with all applicable Federal Transit Administration regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between the RTC and FTA (FTA Master Agreement dated October 2017), as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.

## **11. CLEAN AIR REQUIREMENTS**

(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 RTC and understands and agrees that the RTC 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.

## **12. RECYCLED PRODUCTS**

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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

### 13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(a) **Overtime Requirements.** -- 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.

(b) **Violation; liability for unpaid wages; liquidated damages.** -- In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this Section.

(c) **Withholding for unpaid wages and liquidated damages.** -- The RTC shall upon its own action, or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Section.

(d) **Subcontracts.** -- The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements set forth in this Section.

(e) **Payrolls and basic records.** -- Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing

apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

#### **14. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

(a) The RTC 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 RTC, Contractor, or any other party (whether or not a part to that contract) pertaining to any matter resulting from the underlying contract.

(b) 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.

#### **15. 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(n)(1) 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.

#### **16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

(a) **Applicability to Contracts.** -- Executive Order 12549, as implemented by 49 C.F.R. Part 29, prohibits FTA recipients and subrecipients from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. As part of their applications each year, recipients are required to submit a

certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred Contractors and that they will require their Contractors (and their subcontractors) to make the same certification to them.

(b) **Flow Down.** -- Contractors are required to pass this requirement on to subcontractors seeking subcontractors over \$100,000. Thus, the terms “lower tier covered participant” and “lower tier covered transaction” include both Contractors and subcontractors and contracts and subcontracts over \$100,000.

(c) **Certification.**

- (1) The prospective lower tier participant shall execute the certification attached, indicating compliance with the requirements of this section.
- (2) The certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the RTC may pursue available remedies, including suspension and/or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the RTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “persons”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 C.F.R. Part 29]. The Contractor may contact the RTC for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the RTC.
- (6) The prospective lower tier participant further agrees that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction”, set forth below in subsection (d), without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant

may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of this section, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the RTC may pursue available remedies including suspension and/or debarment.

(d) **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction.**

- (1) The prospective lower tier participant certifies, that neither it nor its "principals" [as defined as 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation.

## 17. **PRIVACY ACT**

(a) 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, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. 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 contract.

(b) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## 18. **CIVIL RIGHTS**

The following requirements apply to the underlying contract:

(a) **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.

(b) **Equal Employment Opportunity.** -- The following equal employment opportunity requirements will apply to the contract:

(1) 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 law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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.

(2) Age. -- In accordance with section 4 of the Age Discrimination in Employment Act of 1967, 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.

(3) Disabilities. -- In accordance with section 102 of the Americans with Disabilities Act, 42 U.S.C. § 12112, the Contractor agrees that it 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) 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.

## **19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (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, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of any conflict with other provisions in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RTC requests which would cause RTC to be in violation of the FTA terms and conditions.

## **20. DISADVANTAGED BUSINESS ENTERPRISE**

(a) Each transit vehicle manufacturer, as a condition of being authorized to enter into a contract for FTA assisted transit vehicles, must certify that it has complied with the requirements of 49 C.F.R. § 26.49 and complete the attached certification.

(b) A transit vehicle manufacturer must establish and submit for FTA's approval an annual overall percentage goal. In setting this overall goal, the manufacturer should be guided, to the extent applicable, by the principles underlying 49 C.F.R. § 26.45. The base from which the manufacturer calculates this goal is the amount of FTA financial assistance included in transit vehicle contracts the manufacturer will perform during the fiscal year in question. The manufacturer must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to the manufacturer as they do to recipients.

(c) A transit vehicle manufacturer may make the certification required by this section if the manufacturer has submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) The RTC may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

## **21. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; 49 U.S.C. Section 5301(d); and the following regulations and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance", 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;
4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;

5. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 26;
6. U.S. GSA regulations, "Accommodations for the Physically Handicapped", 41 C.F.R. Subpart 101-19;
7. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the hearing and Speech Disabled", 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

## **22. VEHICLE PRODUCTION MONITORING AND INSPECTION SERVICE**

As a condition of satisfactory contract performance, the Contractor shall cooperate with the RTC in compliance with the requirement found in 49 C.F.R. Part 663 ("Pre-Award and Post-Delivery Audits of Rolling Stock Purchases") that production monitoring and inspection of the vehicles take place during their production. The regulation requires that a resident inspector be at the site of the manufacture of the vehicles throughout their construction, and that corresponding reports be prepared by the inspector for the RTC.

The Contractor shall cooperate with the resident inspector hired by the RTC. Cooperation shall include, but not be limited to, allowing the inspector access to all production facilities during normal production days and hours, access to all production personnel, access to all records directly related to production of the vehicles, answering questions related to vehicle production from the inspector, supplying the inspector with copies of all production-related documents requested by the inspector, and in general cooperating with any production-related information requests made by the inspector.

In the event of unresolved disputes between the manufacturer and the inspector, the manufacturer shall contact the RTC seeking a resolution.

Failure by the inspector to complete his or her performance because of the manufacturer's failure to satisfactorily cooperate with the inspector shall be cause for failure of specific performance by the manufacturer.

## 23. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

Effective February 9, 2021, the Federal Transit Administration (FTA) amended its Master Agreement, FTA MA (28). The Master Agreement applies to projects financed with federal funds after the effective date of the Master Agreement, until the Master Agreement is modified or superseded. The FTA MA Amendment incorporates the requirements of the Centers for Disease Control and Prevention (CDC) Order of January 29, 2021 titled *Requirement for Persons to Wear Face Masks While on Conveyances and at Transportation Hubs* (CDC Mask Order). FTA MA (28) requires the Regional Transportation Commission (RTC) and any of its third party participants to comply with the CDC Mask Order. Third party participants is broadly defined in the Master Agreement to include contractors, subcontractors, lessees, subrecipients or similar participants in a project, whom must comply with the CDC Mask Order.

**Article IV -- Section 49, of FTA Master Agreement (28) states the following:**

### **Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.**

- a) *Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention ("CDC") Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs ("CDC Mask Order"), is within the meaning of "Federal Requirement" as that term is defined in this Master Agreement. One of the objectives of the CDC Mask Order is "[m]aintaining a safe and operating transportation system." The Recipient agrees that it will comply, and will require all Third-Party Participants to comply, with the CDC Mask Order.
- b) *Enforcement for non-compliance.* The Recipient agrees that FTA may take enforcement action for non-compliance with the CDC Mask Order, including:
  - (1) Enforcement actions authorized by 49 U.S.C. § 5329(g);
  - (2) Referring the Recipient to the CDC or other Federal authority for enforcement action;
  - (3) Enforcement actions authorized by 2 CFR §§ 200.339 – .340; and
  - (4) Any other enforcement action authorized by Federal law or regulation.

As noted, and understood, FTA may take enforcement action against a recipient or subrecipient that fails to comply with this Order, including, but not limited to, actions authorized by 49 U.S.C. § 5329(g) and 2 CFR §§ 200.339-.340 when a recipient does not comply with Federal law with respect to the safety of its public transportation system.

FTA states that "[t]he primary goal of the CDC Order is compliance, not enforcement." It further provides that "The CDC Order requires transit operators to use their **best efforts** to ensure that persons wear masks while boarding and alighting a transit vehicle, for the duration of a trip, and within a transit facility. Best efforts **should take into consideration the safety of transit employees** when identifying roles and responsibilities for implementing the CDC Order."

I, the undersigned representing \_\_\_\_\_  
(Insert Legal Name of Company) (Insert Name of Authorized Official)

do hereby certify to the Regional Transportation Commission

- that, This order is binding upon our company; and
- This company will comply with all facets of the CDC's Mask Order; and
- This company will require all subcontractors or similar participants in a project, to comply with the CDC Mask Order; and
- This company will require persons to wear masks whenever possible, particularly in any transit facility or location where persons are not alone; and
- This company understands that Transit employees must wear masks while on public transportation conveyances, and on the premises of a transportation hub unless they are the only person in the work area, such as in a private office; and
- This company understands that FTA may take enforcement action against our company for failing to comply with this Order, including, but not limited to, actions authorized by 49 U.S.C. § 5329(g) and 2 CFR §§ 200.339-.340 when a recipient does not comply with Federal law with respect to the safety of its public transportation system; and lastly,
- This company understands that the primary goal of the Order is compliance, not enforcement, and will use its **best efforts** to ensure that persons wear masks while boarding and alighting a transit vehicle, for the duration of a trip, and within a transit facility. Best efforts **should take into consideration the safety of transit employees** when identifying roles and responsibilities for implementing the CDC Mask Order.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

**BUS TESTING CERTIFICATION**

**CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned Contractor/Manufacturer certifies that the vehicle complies or will comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 C.F.R. Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 C.F.R. Part 31.

In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 C.F.R. Part 29.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**CERTIFICATION REGARDING FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

The Contractor certifies that it shall submit either: (1) manufacturer's FMVSS self-certification information that the Vehicle complies with relevant FMVSS standards or; (2) manufacturer's certified statement that the contracted Vehicles will not be subject to FMVSS regulations.

Signature of Contractor's Authorized Official:

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Name and Title of Contractor's Authorized Official:

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Date: 

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## CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements 49 C.F.R. Part 20

that: The undersigned Contractor certifies, to the best of his or her knowledge and belief,

(1) 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the 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).

(3) 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 subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352 (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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

**CERTIFICATION REGARDING SUSPENSION AND DEBARMENT**

This Contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Contractor is required to verify that neither the Contractor, its principals (as defined in 49 C.F.R. 29.995) nor its affiliates (as defined in 49 C.F.R. 29.905) are excluded or disqualified as defined in 49 C.F.R. 29.940 and 29.945.

The Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. Part 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the RTC. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the RTC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signed:

\_\_\_\_\_  
Signature of Contractor's Authorized Official

Date: \_\_\_\_\_

\_\_\_\_\_  
Name and Title of Authorized Official

**DBE STATEMENT AND CERTIFICATION**

As a condition of being authorized to participate in transit vehicle procurements in which Federal Transit Administration (FTA) funds are used, each transit vehicle manufacturer, including chassis manufacturers, and all subsequent manufacturers involved in the completion of transit vehicles must certify that it has submitted for the FTA Administrator's approval an annual percentage Disadvantaged Business Enterprise (DBE) goal in compliance with the requirements of 49 C.F.R. Part 26, Section 26.49(b) and (c).

The Federal Transit Administration, Office of Civil Rights, will act as a resource to verify the status of each manufacturer.

**CERTIFICATION**

Compliance with the requirements of 49 C.F.R. Part 26, Section 26.49(b) and (c) is hereby certified:

\_\_\_\_\_  
(Typed Name of Contractor)

\_\_\_\_\_  
(Typed Name of Firm)

\_\_\_\_\_  
(Typed Street Address)

\_\_\_\_\_  
(Signature of Contractor)

\_\_\_\_\_  
(Typed City, State & Zip Code)

\_\_\_\_\_  
(Telephone Number of Contractor)

\_\_\_\_\_  
(Date)

## BUY AMERICA CERTIFICATION

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

### **Certificate of Compliance with Buy America Requirements**

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations in 49 CFR part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

### **Certificate of Non-Compliance with Buy America Requirements**

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**APPENDIX F**  
**INVOICE FORM**

Regional Transportation Commission  
ATTN: Accounts Payable  
1105 Terminal Way, Suite 300  
Reno, Nevada 89502  
or [accounts payable@rtcwashoe.com](mailto:accounts payable@rtcwashoe.com)

Invoice Date: \_\_\_\_\_ Invoice Number: \_\_\_\_\_

Payment Number: \_\_\_\_\_

Description:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Invoice Amount: \_\_\_\_\_

Less Applicable Retention: \_\_\_\_\_

Total Due on This Invoice: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_

Change Orders: \_\_\_\_\_

Total Contract Amount: \_\_\_\_\_

Total Amount Invoiced to Date (including this invoice): \_\_\_\_\_

Balance Due on Total Contract Amount: \_\_\_\_\_