

CONTRACT INCREASE FORM DEPARTMENT REQUEST

MAR - 6 2015

Original C.C. Res.* 3/3/15

To Council By:* _____

C.C. Res.* MAR 17 2015

- AGENCY SPECIFIC
 CITY WIDE

FRC APPROVAL

MAR 23 2015

Oracle Purchase Order No. 2901750

File No. _____

Description of Commodity: Transit coaches

Contract Period: FROM: 12/8/14

TO: 12/31/15

Original Department Estimate: \$ 4,614,609.70

Pre. Approved Dept. Increase(s): \$

Requested Dept. Increase: 4,364,609.70

Total Contract Estimated Expenditure to: \$ 8,979,219.40

Total Contract Estimate:* \$8,979,219.4

Total Expended on Contract:* \$ 0

Detailed Reason for Increase: _____

Increased number of coaches purchased on this contract from 10 to 20.

Vendor: New Flyer of America, Inc.

Vendor's Address: 711 KERNAGHAN AVE

City, State & Zip Code: WINNIPEG, MANITOBA, CANADA R2C3T4

User Agency: Transportation 5303-207112-000058-644500-13948-00000-DOT51

[Signature]
Authorized Department Signature/Title/Phone No. Alvin Moran Purchasing 217-833-7204 Date: 03/06/15

IF THE CONTRACT TOTAL EXCEEDS \$25,000.00, BUDGET DEPARTMENT APPROVAL MUST BE OBTAINED.

[Signature]
Budget Department Signature _____ Date: _____

[Signature]
Purchasing Approval: Benjamin Jackson Date: 3/27/15

CONTRACT INCREASE FORM DEPARTMENT REQUEST

Original C.C. Res.* 3/3/15

To Council By:* _____

C.C. Res.* _____

- AGENCY SPECIFIC
 CITY WIDE

Oracle Purchase Order No. 2901750

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Pre. Approved Dept. Increase(s): \$

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Total Contract Estimate:* _____
\$8,979,219.4

Total Expended on Contract:* \$ 0 _____

Detailed Reason for Increase: _____

Increased number of coaches purchased on this contract from 10 to 20. DDOT is utilizing the RGRTA contract to procure coaches funded through the ladders of opportunity grant. We were given permission to procure 10 coaches initially, and received an additional allocation of 10 coaches a few months afterward. This contract increase is for the second set of 10.

Vendor: New Flyer of America, Inc.

Vendor's Address: 711 KERNAGHAN AVE

City, State & Zip Code: WINNIPEG, MANITOBA, CANADA R2C3T4

User Agency: Transportation 5303-207112-000058-644500-13948-00000-DOT51

Authorized Department Signature/Title/Phone No.

Date:

IF THE CONTRACT TOTAL EXCEEDS \$25,000.00, BUDGET DEPARTMENT APPROVAL MUST BE OBTAINED.

Budget Department Signature

Date:

Purchasing Approval:

Date:

City Council Contract Agenda Items Review Checklist

____ New ____ Renewal Contract Increase ____ Contract Extension ____ Contract Amendment

Reviewer: **S. Elmer** Date Received:

Date: March 17, 2014 Department: Transportation Division:

Dept Head/Contact Person: Samuel Elmer Phone No.: 313.833.7715

Description: Purchase of 10 Transit Coaches Contract No.: 2901750 PO Type: BPO Est. Value: \$4,364,609.70

Contract Term (if applicable): April 1, 2015 to December 31, 2015

Funding: City 0% State 20% Federal 80% Other: _____ %

(Documentation must be furnished by the Dept. if anything other than City funding)

Recommended Supplier: New Flyer Required Date: 04/1/15

1. Is the product or service ESSENTIAL to department operations? Yes No

If "Yes" please explain why: New coaches are essential to the stability of the fleet.

Consequence of not buying: DDOT Fleet will continue to have maintenance issues.

2. Was the product or service competitively bid? Yes No
(Request copies of bid tabulation/evaluation score sheets as needed)

If the answer to #2 is "NO" explain why there was no competition:

This item was competitively bid in Rochester New York and is made available to the City of Detroit via Assignment Agreement.

3. Was a Co-Operative Agreement Considered? Yes No Co-Operative Name: _____
If answer to #3 is "No" explain why a Co-Op was not considered: _____

4. Were savings achieved?
 Yes Amount \$ _____ No
Were additional savings requested? (10%) Yes No

5. Does the supplier currently provide other goods and services to the City? Yes No
If yes please list: _____

6. The business being awarded is INCREASE OF CONTRACT
If #6 is a renewal provide justification for renewal: _____
If #6 is a increase/decrease does this represent:

Variance in unit price only (Current unit price \$ _____ Suggest Unit Price \$ _____)

Change in amount/volume of the good or service to be used (no change in unit price)

7. Is this good/service used by other departments? Yes No

If "yes" can this req/par be combined other department requirements.? Yes No

8. Is this a service that can be performed by City employees? Yes No

Is this a service that City employees can be trained to do? Yes No

NOTES: DDOT is piggybacking a RGRTA contract.

PLACE ON CITY COUNCIL AGENDA

REJECT AND NOTIFY DEPARTMENT DIRECTOR:

SIGNED: _____

3/6/15
DATE: 12/8/14

INFORMATION PROVIDED BY: Samuel Elmer

TITLE: Purchasing Manager

PHONE NO. 313.833.7715



REQUEST FOR INCOME TAX CLEARANCE

REQUESTING DEPARTMENT/DIVISION: Transportation

E-MAIL ADDRESS: arnitac@detroitmi.gov

CONTACT NAME: Arnita Clark PHONE: (313) 833-7711 FAX: (313) 833-7890

Type of Clearance: New Renewal (Please submit 30 days prior to submitting bid or expiration date)

To:
A. City of Detroit
Income Tax Division
Coleman A. Young Municipal Center
2 Woodward Avenue, Ste. 512
Detroit, MI 48226

Phone: (313) 224-3328 or 224-3329
Fax: (313) 224-4588

For:
Individual or
Company Name New Flyer Industries
Address 711 Kernaghan Ave

City Winnipeg, Manitoba
State MB Zip Code _____
Telephone (800) 665-2637 Fax # (800) 745-5368
E-mail Address jeffrey_west@newflyer.com

B. Name of Chief Financial Officer/Authorized Contact Person
(include address if different from above)

Telephone # _____
Fax # _____

Employer Identification or Social Security Number
98-0453252 / 98-0647911

Spouse Social Security Number _____

Nature of Contract Parts, COACH OEM

BID CONTRACT AMOUNT (if known):
Labor: \$ _____ Materials: \$ _____

Contract # (if known) _____

C. ALL QUESTIONS MUST BE ANSWERED TO EXPEDITE APPROVAL PROCESS. ANY QUESTION NOT ANSWERED MAY RESULT IN A DENIAL OF INCOME TAX CLEARANCE.

Check One: Individual Corporation Partnership Estate & Trust

INDIVIDUALS ANSWER QUESTIONS 1,2,3,4

- 1. Have you filed joint returns with spouse during the last seven (7) years? (If yes, include spouse SSN above) Yes No
- 2. Are you a student, and/or claimed as a dependent on someone else's tax return? Yes No
- 3. Were you employed during the last seven (7) years? Yes No
- 4. Were you a resident of Detroit during the last seven (7) years? Yes No

CORPORATIONS AND PARTNERSHIPS ANSWER QUESTIONS 5,6,7

- 5. Is the company a new business in Detroit? If yes, attach Employer Registration (Form DSS-4). Yes No
- 6. Will the company have employees working in Detroit? Yes No
- 7. Will the company use sub-contractors or independent contractors in Detroit? Yes No

D. FOR INCOME TAX USE ONLY

Has the contractor complied with the provisions of the City of Detroit Income Tax Ordinance?

Yes No Signature LOCHETA JENNINGS Date MAR 13 2014 Expires MAR 13 2015

Yes No Signature _____ Date _____ Expires _____

Yes No Signature _____ Date _____ Expires _____

VISIT OUR WEBSITE FOR INFORMATION AND TAX FORMS AT: www.detroitmi.gov

NOTE: An approved Income Tax Certificate may be used in multiple city wide departments that require a bid. Please e-mail your completed request form (preferably in pdf format) to IncomeTaxClearance@detroitmi.gov.

CITY OF DETROIT

ACCOUNTS RECEIVABLE CLEARANCE APPLICATION
2 WOODWARD AVENUE, SUITE 105, COLEMAN A YOUNG MUNICIPAL CENTER
REVENUE COLLECTIONS UNIT (313) 224-4087 / FAX: 224-4238 / RevenueCollections@DetroitMI.gov

SECTION A BUSINESS LICENSE BUDGET CITY COUNCIL DDOT DPW FINANCE FIRE HEALTH
HUMAN RIGHTS LAW MAYOR OMBUDSMAN PLANNING & DEVELOPMENT POLICE PURCHASING
RECREATION WATER & SEWAGE OTHER

ADDRESS OF DEPARTMENT 1301 E. Warren Ave

DATE SENT _____ CONTACT PERSON Sam Elmer

PHONE NUMBER 313 333 7715 FAX NUMBER _____ EMAIL Sam.Elmer@detroitmi.gov

CONTRACT AMOUNT \$ 4,614,609.70

SECTION B: CORPORATION LICENSE TYPE Corporation

CORPORATION NAME New Flyer Industries

ADDRESS Bernaghan Ave CITY/STATE/ZIP Warren, MI 48093 OWN LEASE

CITY PERSONAL PROPERTY NUMBER _____ FID / EIN NUMBER 98-0107052

OTHER CITY-OWNED PROPERTY PARCELS _____

CONTACT PERSON Connie Kolosky PHONE NUMBER 800-655-2637 EMAIL ADDRESS _____

SECTION C: PARTNERSHIP LICENSE TYPE _____

BUSINESS NAME _____

BUSINESS ADDRESS _____ CITY/STATE/ZIP _____ OWN LEASE

CITY PERSONAL PROPERTY NUMBER _____ FID / EIN NUMBER _____

A: PARTNER'S NAME _____ PHONE NUMBER _____

HOME ADDRESS _____ CITY/STATE/ZIP _____ OWN LEASE

DRIVER'S LICENSE # _____ OTHER CITY-OWNED PROPERTY PARCELS _____

B. PARTNER'S NAME _____ PHONE NUMBER _____

HOME ADDRESS _____ CITY/STATE/ZIP _____ OWN LEASE

DRIVER'S LICENSE # _____ OTHER CITY-OWNED PROPERTY PARCELS _____

CONTACT PERSON _____ PHONE NUMBER _____ EMAIL ADDRESS _____

SECTION D: SOLE PROPRIETORSHIP LICENSE TYPE _____

BUSINESS NAME _____

BUSINESS ADDRESS _____ CITY/STATE/ZIP _____ OWN LEASE

CITY PERSONAL PROPERTY NUMBER _____ FID / EIN NUMBER _____

OWNER'S NAME _____ DRIVER'S LICENSE # _____ PHONE NUMBER _____

HOME ADDRESS _____ CITY/STATE/ZIP _____ OWN LEASE

OTHER CITY-OWNED PROPERTY PARCELS _____

EMAIL ADDRESS _____

SECTION E: PERSONAL SERVICES

NAME _____ ADDRESS _____ OWN LEASE

CITY/STATE/ZIP _____

PHONE NUMBER _____ DRIVER LICENSE # _____

OTHER PROPERTY ADDRESSES OWNED IN WITHIN DETROIT _____

SOCIAL SECURITY NUMBER _____ EMAIL ADDRESS _____

REVENUE COLLECTIONS
APPROVED
CONTRACT CLEARANCES

FOR TREASURY COLLECTION USE ONLY:

APPROVED [Signature] DENIED

FEB 13 2015
DATE

DENIED WITH ATTACHMENTS

AUG 30 2015
CLEARANCE VALID UNTIL

COVENANT OF EQUAL OPPORTUNITY
(Application for Clearance - Terms Enforced After Contract is Awarded)

I, being duly authorized representative of the New Flyer Industries Canada ULC (hereinafter "Contractor"), do hereby enter into a Covenant of Equal Opportunity (hereinafter "Covenant") with the City of Detroit, ("hereinafter" City); obligating the Contractor and all sub-contractors not to discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of the contract, with respect to his or her hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, religious beliefs, public benefit status, national origin, age, marital status, disability, sex, sexual orientation, or gender identity or expression.

I understand that it is my responsibility to ensure that all potential sub-contractors are reported to the City of Detroit Human Rights Department and have a current Contract Specific Clearance on file prior to working on any City of Detroit contract. I further understand that the City of Detroit reserves the rights to require additional information prior to, during, and at any time after the Clearance is issued.

Furthermore, I understand that this covenant is valid for the life of the contract and that a breach of this covenant shall be deemed a material breach of the contract and subject to damages in accordance with the City of Detroit Code, Ordinance No. 27-3-2, Section (e).

RPQ/PO No. _____

Printed Name of Contractor: New Flyer Industries Canada ULC
(Type or Print Legibly)

Contractor Address: Winnipeg, Manitoba, R2C 5G2
(City) (State) (Zip)

Contractor Phone/E-mail: (204) 982-8400 / _____
(Phone) (E-mail)

Printed Name & Title of Authorized Representative: Glen Asham, Chief Financial Officer

Signature of Authorized Representative: _____

Date: March 17, 2014

*** This document MUST be notarized ***

Signature of Notary: _____

Colin Pewarchuk
Barrister/Solicitor/Notary Public
711 Kernaghan Ave
Winnipeg, MB R2C 3T4

Printed Name of Seal of Notary: _____

My Commission Expires: My Commission DOES NOT EXPIRE

For Office Use Only:	
Cor. Rec'd: <u>3/24/14</u>	Department Name: <u>Human Rights</u>
Accepted by: <u>[Signature]</u>	Rejected by: _____
Please email or fax Covenant and SOC to Director of Human Rights Department 1240 CAYMC 44 HUMAN RIGHTS ACT, 1982 (R.S.O. 1990, c. 124) or fax (313) 224-3434	

Ref. No. 320007082132

CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc.
20 Bay Street
Toronto ON M5J 2N9
tel 416-868-5500 fax 416-868-5580

Re: Option #2014-026 - SR-1895, (31) XD40s

Detroit Department of Transportation
1301 E. Warren Avenue
Detroit, MI 48207
USA

Insurance as described herein has been arranged on behalf of the Insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

Insured

New Flyer of America Inc.
214 5th Avenue SW
Crookston, MN 56716
USA

Coverage

Coverage	Insurer	Zurich Insurance Company Ltd	
Commercial General Liability			
Policy #	GLO 8249883-04		
Effective	01-Oct-2014	Expiry	01-Oct-2015
Limits of Liability	Bodily Injury & Property Damage, Each Occurrence USD1,000,000 Policy may be subject to a general aggregate and other aggregates where applicable		
U.S. Automobile			
Policy #	BAP 9259162 08		
Effective	01-Oct-2014	Expiry	01-Oct-2015
Limits of Liability	Liability USD1,000,000		
US Workers Comp/Employers Liability			
Policy #	WC 9303185-13		
Effective	01-Oct-2014	Expiry	01-Oct-2015
Limits of Liability	Bodily Injury - by Accident USD1,000,000 Bodily Injury - by Disease, policy limit USD1,000,000 Bodily Injury - by Disease, each employee USD1,000,000 Workers Compensation As per applicable Law		

**THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE
OR, IN THE CASE OF AUTOMOBILE INSURANCE,
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE**



Ref. No. 320007081639

CERTIFICATE OF INSURANCE

Additional Insured

Only with respect to the above and arising out of the Named Insured's operations are the following name(s) added to the policy as Additional Insured(s). The policy limits are not increased by the addition of such Additional Insured(s) and remain as stated in this Certificate.

City of Detroit where required by written contract or written agreement with respect to Commercial General Liability
City of Detroit where required by written contract or written agreement with respect to Umbrella Liability

Terms and / or Additional Coverage

Commercial General Liability Includes: Personal Injury & Property Damage, Products and Completed Operations, Advertising Liability, Employee Benefits, Tenant's Legal Liability, Non-Owned Automobiles Liability, Legal Liability for Damage to Hired Automobiles, Employers Liability, Broad Form Property Damage, Broad Form Completed Operations, Cross Liability, Blanket Contractual Liability

Automobile Liability Policy includes, Bodily Injury and Physical Damage Combined Collision/ Comprehensive coverage, Hired and Non-Owned Autos

With respect to the General Liability and Umbrella Liability policies only where the premium or portion thereof for this policy is payable in U.S. currency then such limits of insurance, liability, deductibles and other amounts are in U.S. currency in respect of losses occurring in the United States of America its territories or possessions.

Cancellation / Termination

The Insurer will endeavour to provide THIRTY (30) days written notice of cancellation/termination to the addressee except that statutory or policy conditions (whichever prevails) will apply for non-payment of premium.

THIS CERTIFICATE CONSTITUTES A STATEMENT OF THE FACTS AS OF THE DATE OF ISSUANCE AND ARE SO REPRESENTED AND WARRANTED ONLY TO Detroit Department of Transportation. OTHER PERSONS RELYING ON THIS CERTIFICATE DO SO AT THEIR OWN RISK.

Aon Reed Stenhouse Inc.



Dated : 01-October-2014
Issued By : MacKenzie,Roddy
Tel : 416-868-5814

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OR, IN THE CASE OF AUTOMOBILE INSURANCE,
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE**



Ref. No. 320007082132

CERTIFICATE OF INSURANCE

Additional Insured

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Detroit Department of Transportation where required by written contract or written agreement with respect to Commercial General Liability

Only with respect to licensed leased vehicles when the lease agreement requires insurance to be provided by the lessee, is the following name(s) added to the policy as Additional Insured(s). The policy limits are not increased by the addition of such Additional Insured(s) and remain as stated in this Certificate.

Detroit Department of Transportation where required by written contract or written agreement with respect to U.S. Automobile

Terms and / or Additional Coverage

Commercial General Liability includes: Products and Completed Operations, Contractual Liability and Broad Form Property Damage

Cancellation / Termination

The Insurer will endeavour to provide THIRTY (30) days written notice of cancellation/termination to the addressee except that statutory or policy conditions (whichever prevails) will apply for non-payment of premium.

THIS CERTIFICATE CONSTITUTES A STATEMENT OF THE FACTS AS OF THE DATE OF ISSUANCE AND ARE SO REPRESENTED AND WARRANTED ONLY TO Detroit Department of Transportation. OTHER PERSONS RELYING ON THIS CERTIFICATE DO SO AT THEIR OWN RISK.

Aon Reed Stenhouse Inc.



Dated : 01-October-2014
Issued By : MacKenzie, Roddy
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OR, IN THE CASE OF AUTOMOBILE INSURANCE,
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE



Ref. No. 320007081639

CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc.
20 Bay Street
Toronto ON M5J 2N9
tel 416-868-5500 fax 416-868-5580

Re: Contractual Agreement

Detroit Department of Transportation
1301 E. Warren Avenue
Detroit, MI 48207
USA

Insurance as described herein has been arranged on behalf of the Insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

Insured

New Flyer of America Inc.
711 Kernaghan Avenue
Winnipeg, MB R2C 3T4

Coverage

Commercial General Liability	Insurer	Zurich Insurance Company Ltd	
Policy #	GLO 8249883-04		
Effective	01-Oct-2014	Expiry	01-Oct-2015
Limits of Liability	Bodily Injury & Property Damage, Each Occurrence USD5,000,000 Policy may be subject to a general aggregate and other aggregates where applicable		
Umbrella Liability	Insurer	Allianz Global Risks US Insurance Company	
Policy #	ULA 722 5938		
Effective	01-Oct-2014	Expiry	01-Oct-2015
Limits of Liability	Each Occurrence CAD1,000,000 Policy may be subject to a general aggregate and other aggregates where applicable		
U.S. Automobile	Insurer	Zurich Insurance Company Ltd	
Policy #	BAP 9259162.08		
Effective	01-Oct-2014	Expiry	01-Oct-2015
Limits of Liability	Limit of Liability USD1,000,000		
US Workers Comp/Employers Liability	Insurer	Zurich Insurance Company Ltd	
Policy #	WC 9303185-13		
Effective	01-Oct-2014	Expiry	01-Oct-2015
Limits of Liability	Bodily Injury - by Accident USD1,000,000 Bodily Injury - by Disease, policy limit USD1,000,000 Bodily Injury - by Disease, each employee USD1,000,000 Workers Compensation As per applicable Law		

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Hiring Policy Compliance Affidavit

Janire Harper, being duly sworn, state that I am the Vice President
Human Resources of New Flyer Industries Canada LLC
Title Name of Bidder Corporation or Other Business Entity

and that I have reviewed the hiring policies of this employer. I affirm that these policies are in compliance with the requirements of Article V, Division 6 of the Detroit City Code of 1984, being Sections 18-5-81 through 18-5-86 thereof. I further affirm that this employer will not inquire or consider the criminal convictions of applicants for employment needed to fulfill the terms of any City contract that may result from the competitive procedure in connection with which this affidavit is submitted, until such time as the employer interviews the applicant or determines that the applicant is qualified.

In support of this affidavit, I attach a copy of the application form that will be used to hire employees needed to fulfill the terms of any City contract that may result from the competitive procedure in connection with which this affidavit is submitted.

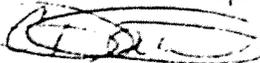
SIGNED,



Title: J.P. Humar Date: Mar 12 4 / 2014
RESOURCES

STATE OF WISCONSIN
COUNTY OF CANADA) SS

The foregoing Affidavit was acknowledged before me the 12th day of March 2014,
by Janire Harper


Christy L. Davidson
A Notary Public for the Province of Manitoba
My Commission Expires: May 19, 2015
711 Kernaghan Avenue
Winnipeg, Manitoba R2C 3T4

Notary Public, County of _____
State of _____
My commission expires: _____



NEW FLYER

APPLICATION FOR EMPLOYMENT

(Application must be completed in full)

Headquarters/Winnipeg Facility
711 Kemaghan Ave.
R2C 3T4 Canada

Applicant Name		Date	
OTHER NAME under which records (employment, academic, etc) may be kept			
Present Address (Street, City, Province, Postal Code)		Home Telephone Number ()	Number for Messages ()
Mailing Address (Street, City, Province, Postal Code) if different from above			
Are you able to travel within the US? <input type="checkbox"/> Yes <input type="checkbox"/> No		Have you ever worked for New Flyer? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, where?	
Are you legally entitled to work in Canada? <input type="checkbox"/> Yes <input type="checkbox"/> No		Last Position Held at New Flyer	
Names of relatives or friends working for New Flyer.		Dates Worked	
Position Applying For		Reason for Leaving	
		Date Available to Start	

EDUCATION

Please list any education, training, or specialized experience you feel relates to the position applied for that would help you perform the work, such as high school, colleges, degrees, licenses, vocational or technical programs.

School Name/Address 12 11 10 9	Dates		Graduated		Specialization
	From	To	Month	Year	
College/University					
Other					

Degrees, licenses, certificates, memberships, special achievements, experience or training (please provide copies of all certificates, diplomas, licenses and transcripts)

WORK HISTORY

Name of PRESENT or LAST Employer				Address	
STARTING DATE		LEAVING DATE		Reason for Leaving	
Month	Year	Month	Year		
Job Title (Present or Last)				Name of Supervisor	
Description of Work and Responsibilities				May we contact? <input type="checkbox"/> Yes <input type="checkbox"/> No	
				Phone:	
Resume Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No					

WORK HISTORY CONT.

Name of PRESENT or LAST Employer				Address			
STARTING DATE		LEAVING DATE		Reason for Leaving			
Month	Year	Month	Year				
Job Title (Present or Last)				Name of Supervisor		May we contact? <input type="checkbox"/> Yes <input type="checkbox"/> No Phone:	
Description of Work and Responsibilities							
Name of PRESENT or LAST Employer				Address			
STARTING DATE		LEAVING DATE		Reason for Leaving			
Month	Year	Month	Year				
Job Title (Present or Last)				Name of Supervisor		May we contact? <input type="checkbox"/> Yes <input type="checkbox"/> No Phone:	
Description of Work and Responsibilities							
Name of PRESENT or LAST Employer				Address			
STARTING DATE		LEAVING DATE		Reason for Leaving			
Month	Year	Month	Year				
Job Title (Present or Last)				Name of Supervisor		May we contact? <input type="checkbox"/> Yes <input type="checkbox"/> No Phone:	
Description of Work and Responsibilities							

REFERENCES – List 3 work related references with at least one direct reporting relationship

Name/Address	Phone#	Position	Years Known

EMPLOYMENT UNDERSTANDING

AUTHORIZATION AND RELEASE:

I authorize New Flyer Industries to conduct an investigation of my qualifications for employment. I realize that the investigation may include contacting my prior employers and references unless I have indicated otherwise on this form. I release any and all persons and parties connected with the investigation from any and all claims or damage arising from the furnishing of information as part of that investigation. I declare that the information on this form is correct and I understand that, if employed, incorrect or misleading/incomplete information may result in dismissal.

PLEASE HAVE YOUR SIGNATURE WITNESSED:

Date: _____

Applicant's Signature: _____

Date: _____

Witness Signature: _____

CITY OF DETROIT
SLAVERY ERA RECORDS AND INSURANCE DISCLOSURE AFFIDAVIT

1. Name of Contractor: New Flyer Industries Canada ULC ("New Flyer Parts")
2. Address of Contractor: 630 Kernaghan Avenue, Door 76
Winnipeg, Manitoba, R2C 5G1, Canada
3. Name of Predecessor Entities (if any): New Flyer Industries Limited

4. Prior Affidavit submission? No Yes, on: _____
(Date of prior submission)

If "No", complete Items 5 and 6.

If "Yes", list date of prior submission above, go to Item 6 and execute this Affidavit.

5. Contractor was established in 1930 (year) and did not exist during the slavery era in the United States, is not a successor in interest to any entity that existed during such time, and therefore has no relevant records to search, or any pertinent information to disclose.

____ Contractor has searched their records and those of any predecessor entity, and has found no records that they or any predecessor(s) made any investments in, or derived profits from the slave industry or from slave holder insurance policies.

____ Contractor has found records that they or their predecessor(s) made investments in, or derived profits from, the slave industry or slave holder insurance policies. The nature of the investment, profits, or insurance policies, including the names of any slaves or slave holders, is disclosed in the attached document(s).

6. I declare that the representations made in this Affidavit are accurate to the best of my knowledge and are based upon a diligent search of records in the Contractor's possession or knowledge. All documentation attached to this Affidavit reflects full disclosure of all records that are required to be disclosed to the City of Detroit. I also acknowledge that any failure to conduct a diligent search, or to make a full and complete disclosure, shall render this contract voidable by the City of Detroit.

Glenn Asham (Printed Name) CEO (Title)

[Signature] (Signature) March 17, 2014 (Date)

Subscribed and sworn to before me
this 17th day of MARCH, 2014

Notary Public [Signature] ~~County, Michigan~~ PROVINCE OF MANITOBA
My Commission Expires DOES NOT EXPIRE

Colin Pwarchuk
Barrister/Solicitor/Notary Public
711 Kernaghan Ave
Winnipeg, MB R2C 3T4

SLAVERY ERA RECORDS AND INSURANCE DISCLOSURE ORDINANCE

Sec. 18-5-92. Affidavit of disclosure required.

- (a) As part of its contract package, each contractor with which the City enters into a contract shall submit to the Finance Department Purchasing Division prior to the submission to City Council or approval of such contract, an affidavit that discloses the information indicated in Subsection (b) and (c) of this section. The affidavit shall be on a form provided by the Finance Department Purchasing Division.
- (b) The affidavit shall verify that the contractor has searched all records of the entity which proposes to enter into a contract with the City, as well as all records of any predecessor entity, that are within the possession or knowledge of the contractor regarding records of investments or profits from the slave industry, including records of any insurance policies issued to slave holders which provided coverage for injury, death, or other loss related to slaves who were held during the slavery era in the United States.
- (c) The affidavit shall disclose any information discovered during the search regarding investments or profits from slavery or slave holder insurance policies which accrued to the current entity or to any predecessor entity, including the names of any slaves or slave holders that are described in such records or are otherwise within the knowledge of the contractor.

Sec 18-5-93. Voidability of contract.

- (a) Failure to comply with this division shall render the contract voidable by the City.
- (b) A determination to void the contract for failure to comply with this division shall be made by the Director of the Finance Department at any time after reviewing, or becomes aware of, information which indicates that a contractor has failed to comply with this division.

Sec 18-5-94—18-5-100. Reserved.

Section 2. All ordinances, or parts of ordinances, that conflict with this ordinance are repealed.

Section 3. This ordinance is declared necessary for the preservation of the public peace, health, safety, and welfare of the People of the City of Detroit.

Section 4. In the event that this ordinance is passed by a two-thirds majority of City Council Members serving, it shall be given immediate effect and shall become effective upon publication in accordance with Section 4-116 of the 1997 Detroit City Charter. Where this ordinance is passed by less than a two-thirds (2/3) majority of City Council Members serving, it shall become effective no later than thirty (30) days after enactment, or on the first business day thereafter in accordance with Section 4-115 of the 1997 Detroit City Charter.

(J.C.C.p.)	May 5, 2004
Passed:	June 23, 2004
Published:	July 19, 2004
Effective:	July 19, 2004

JACKIE L. CURRIE
City Clerk

SLAVERY ERA RECORDS AND INSURANCE DISCLOSURE ORDINANCE

NOTICE OF ENACTMENT OF ORDINANCE
TO: THE PEOPLE OF DETROIT, MICHIGAN
(On June 23, 2004, the City of Detroit adopted the following Ordinance)

ORDINANCE NO. 20-04 CHAPTER 18 ARTICLE V

AN ORDINANCE TO AMEND CHAPTER 18, ARTICLE V, OF THE 1984 DETROIT CITY CODE, TITLED "PURCHASES AND SUPPLIES," BY ADDING DIVISION 7, TITLED "SLAVERY ERA RECORDS AND INSURANCE DISCLOSURE," WHICH SHALL CONSIST OF SECTIONS 18-5-91 THROUGH 18-5-93, TO REQUIRE, AS PART OF THE CONTRACTING PROCESS, THAT EACH CONTRACTOR WITH WHICH THE CITY ENTERS INTO A CONTRACT SEARCH ITS RECORDS AND THOSE OF ANY PREDECESSOR ENTITY, AND SUBMIT AN AFFIDAVIT DISCLOSING ANY RECORDS WITHIN ITS POSSESSION OR KNOWLEDGE RELATING TO INVESTMENTS OR PROFITS FROM THE SLAVE INDUSTRY, INCLUDING INSURANCE POLICIES ISSUED TO SLAVE HOLDERS THAT PROVIDED COVERAGE FOR INJURY, DEATH OR OTHER LOSS RELATED TO SLAVES WHO WERE HELD DURING THE SLAVERY ERA IN THE UNITED STATES.

AN ORDINANCE to amend Chapter 18, Article V, of the 1984 Detroit City Code, titled "Purchases and Supplies," by adding Division 7, titled "Slavery Era Records and Insurance Disclosure," which shall consist of Sections 18-5-91 through 18-5-93, to require, as part of the contracting process, that each contractor with which the City enters into a contract search its records and those of any predecessor entity, and submit an affidavit disclosing any records within its possession or knowledge relation to investments or profits from the slave industry, including insurance policies issued to slave holders that provided coverage for injury, death or other loss related slaves who were held during the slavery era in the United States.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

Section 1. Chapter 18, Article V, of the 1984 Detroit City Code, titled "Purchases and Supplies," by adding Division 7, titled "Slavery Era Records and Insurance Disclosure," which shall consist of Sections 18-5-91 through 18-5-93, to read as follows:

DIVISION 7. SLAVERY ERA RECORDS AND INSURANCE DISCLOSURE.

Sec. 18-5-91. Scope.

- (a) This division shall apply to each contractor for goods or services with which the City enters into a contract, whether or not the contract is subject to competitive bid.
- (b) Each contractor shall be responsible for searching and disclosing records of the entity which proposes to enter into a contract with the City as well as all records of any predecessor entity that are within the possession or knowledge of the contractor regarding records of investments or profits from the slave industry, including records of any insurance policies issued to slave holders which provided coverage for injury, death, or other loss related to slaves who were held during the slavery era in the United States.

[View assistance for Search Results](#)

Search Results

Current Search Terms: New* Flyer*

Your search for "New* Flyer*" returned the following results...

Notice: This printed document represents only the first page of your SAM search results. More results may be available. To print your complete search results, you can download the PDF and print it.

Entity	NEW FLYER OF AMERICA INC.	Status: Active
DUNS: 621887959	CAGE Code: 3MCK9	View Details
Has Active Exclusion?: No	DoDAAC:	
Expiration Date: 06/12/2015	Delinquent Federal Debt? No	
Purpose of Registration: All Awards		

Glossary

[Search](#)

[Results](#)

[Entity](#)

[Exclusion](#)

[Search](#)

[Filters](#)

[By Record Status](#)

[By Functional Area - Entity Management](#)

[By Functional Area - Performance Information](#)

SAM | System for Award Management 1.0

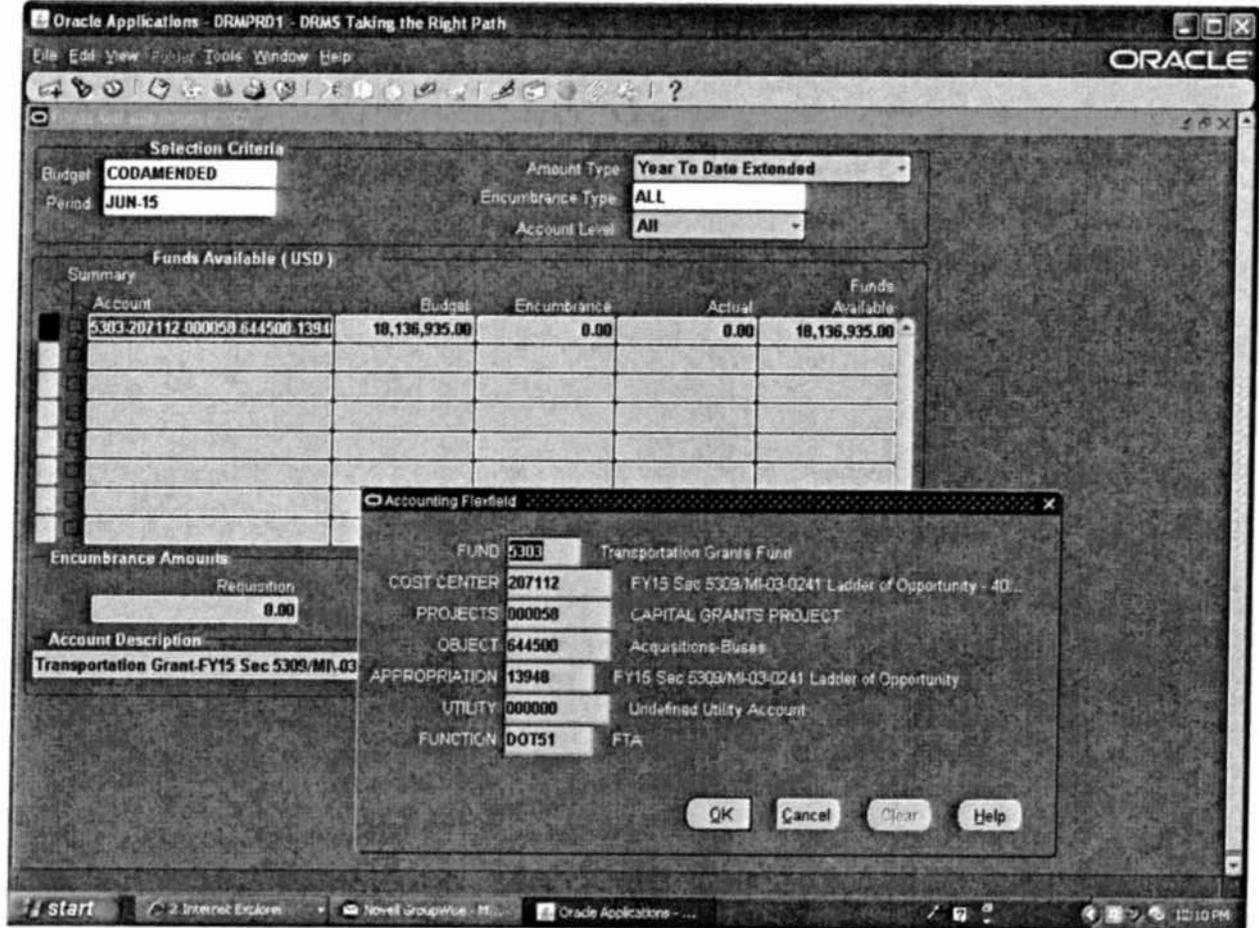
IBM v1.P.24.20150116-1831

Note to all Users: This is a Federal Government computer system. Use of this system constitutes consent to monitoring at all times.



DDOT
 Increase contract PO#2901750
 New Flyer \$4,364,609.70
 Purchase 10 Transit Coaches

Funds are available \$13,806,120.30



5303-207112-000058-644500-13948-000000-DOT51
 FY15 Sec 5309/MI-03-0241 Ladder of Opportunity – Acquisitions-Buses



PRICE CHANGE SUMMARY

Property: DETROIT DEPARTMENT OF TRANSPORTATION

Sales Release No.: SR-1926

Quantity: 10

Price Change No./Revision: 1926-1

Date: 06-JAN-2015

Cust. Contract No./Ref. No.: TBA

All funds shown in US Dollars.

	Base Bus	Spare	Total	Extended Total	Spare (Separately priced items)	Extended (Separately priced items)	Grand Totals
Original Contract	\$436,460.97	\$0.00	\$436,460.97	\$4,364,609.70	\$0.00	\$0.00	\$4,364,609.70
Previously Approved Price Changes							
Current Approved Contract Values	\$436,460.97	\$0.00	\$436,460.97	\$4,364,609.70	\$0.00	\$0.00	\$4,364,609.70
Previously submitted price changes (not yet approved)							
Pending Price Changes	1926-1						
	-\$2,096.77	\$0.00	-\$2,096.77	-\$20,967.70	\$0.00	\$0.00	-\$20,967.70
Pending Contract Value	\$434,364.20	\$0.00	\$434,364.20	\$4,343,642.00	\$0.00	\$0.00	\$4,343,642.00



PRICE CHANGE DETAIL

Property: DETROIT DEPARTMENT OF TRANSPORTATION

Sales Release No.: SR-1926

Quantity: 10

Price Change No./Revision: 1926-1

Date: 06-JAN-2015

Cust. Contract No./Ref. No.: TBA

All funds shown in US Dollars.

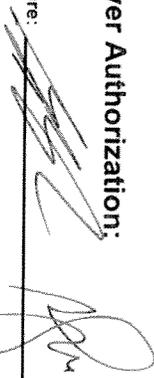
Price Change Type	PC No.	Option No./Group	SRCR No.	Description	Total
Base Bus Build	1926-1	526 - Seating & Stanchions	141374	Change to 4One/USSC Aries passenger seats	-\$1,877.81
Base Bus Build	1926-1	260 - Battery Components & Power Distribution Panels	141375	Add Whitaker jumpstart connector	\$182.25
Base Bus Build	1926-1	246 - Air System	141376	Change to a Gemini MDX air dryer	-\$401.21
Grand Total					-\$2,096.77



Property: DETROIT DEPARTMENT OF TRANSPORTATION
 Sales Release No.: SR-1926
 Quantity: 10
 Price Change No./Revision: 1926-1
 Date: 06-JAN-2015
 Cust. Contract No./Ref. No.: TBA

Authorized Signatures:

New Flyer Authorization:

Signature: 
 Name: Glen Asham Pam Smith
 Title: Chief Financial Officer Executive Vice President
 Date: January 13, 2015 Sales and Marketing

Property Authorization:

Signature: 
 Name: Samuel Elmer
 Title: Purchasing Manager
 Date: 1/13/15

**CONTRACT USE AGREEMENT
FOR
CITY OF DETROIT, MICHIGAN**

This Contract Use Agreement, made this 17 day of February 2015 by and among the Rochester- Genesee Regional Transportation Authority of Rochester, New York ("RGRTA"), New Flyer of America, Inc., located at 214 5th Avenue SW, Crookston, Minnesota ("New Flyer"), and The Department of Transportation of the City of Detroit, Michigan, located at 1301 East Warren Avenue, Detroit, Michigan 48207 ("DDOT").

Whereas, by a request for proposals dated October 14, 2011, RGRTA initiated a governmentally-supervised procurement process for the supply and delivery of Diesel-Powered, Heavy Duty, Low Floor Transit Buses (the "Buses") with availability for "piggyback use" by other governmental agencies within these United States; and

Whereas, New Flyer of America, Inc. submitted a proposal to supply said buses; and

Whereas, RGRTA accepted New Flyer's proposal and awarded a contract to New Flyer on October 11th, 2012 (the "Contract").

Now, therefore, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the parties agree as follows:

1. RGRTA and New Flyer give DDOT permission to purchase ten (10) of the Buses on the terms and conditions, including without limitation the pricing terms and conditions, contained in the Contract, all of which terms and conditions are hereby deemed incorporated into this Agreement.
2. New Flyer represents to DDOT that New Flyer has the requisite specialized expertise and experience, and can and will provide the Buses and any other equipment, supplies, or other goods available under the Contract with respect to the Buses, under the terms of the Contract.
3. New Flyer agrees to perform for the benefit of DDOT all its obligations under the Contract with respect to the ten (10) Buses being purchased by DDOT.
4. DDOT assumes all rights and obligations of RGRTA under the Contract to the extent those rights and obligations pertain to the ten (10) Buses which are the subject of this Contract Use Agreement; and DDOT represents and warrants to RGRTA and New Flyer that DDOT shall perform all of such obligations in accordance with the terms of the Contract.
5. New Flyer releases RGRTA from any responsibility or obligation under the Contract with respect to the ten (10) Buses that will be purchased by DDOT. RGRTA is a party to this Agreement for the sole purpose of confirming that DDOT is permitted to use the Contract as contemplated by this Agreement; and RGRTA assumes no additional obligations or responsibility through its execution of this Agreement.

6. In the event that New Flyer and DDOT fail to enter into an agreement for the purchase of ten (10) buses or any portion thereof, then this agreement shall be null and void and have no further effect.
7. For purposes of the Assignments, New Flyer and DDOT agree that all references in the original contract to RGRTA, and/or its officers, directors, employees and agents, shall now refer to DDOT and/or its officers, directors, employees and agents.
8. For purposes of the Assignments, New Flyer and DDOT agree that all references in the original contract related to the State of New York shall now refer to the State of Michigan, and, where applicable, the City of Detroit, which is a municipal corporation of the State of Michigan.
9. All other terms and conditions of the original contract remain the same and are incorporated herein.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS CONTRACT USE AGREEMENT AS OF THE FIRST DATE ABOVE WRITTEN.

NEW FLYER OF AMERICA, INC.

By:  _____

**ROCHESTER-GENESEE REGIONAL
TRANSPORTATION AUTHORITY**

By:  _____ 2-17-15
 William Carpenter (Date)
 Chief Executive Officer

**THE DEPARTMENT OF TRANSPORTATION OF THE
CITY OF DETROIT**

By:  _____ 2.2-2015
 Dan Dirks (Date)
 Director

MASTER AGREEMENT

THIS MASTER AGREEMENT is made as of the 11 day of ~~September~~^{October}, 2012, by and between the ROCHESTER-GENESEE REGIONAL TRANSPORTATION AUTHORITY, a New York public benefit corporation with its principal office located at 1372 East Main Street, Rochester, New York 14609 ("RGRTA"), and NEW FLYER OF AMERICA, INC., located at 214 5th Avenue SW, Crookston, Minnesota 56716 ("CONTRACTOR").

BACKGROUND:

This Master Agreement sets forth the terms under which RGRTA may buy and Contractor will sell up to one hundred twenty-nine (129) heavy-duty, 40-foot and under, low-floor, diesel transit buses. The terms and conditions of this Master Agreement shall be deemed incorporated into any Purchase Order Agreement that references this Master Agreement. In the event of a conflict between the terms of this Master Agreement and the terms of a Purchase Order Agreement, the terms of the Purchase Order Agreement shall control.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions herein contained, the parties hereto agree as follows:

1. Scope of Work: CONTRACTOR agrees to furnish heavy-duty, 40-foot, low-floor, diesel transit buses to RGRTA in compliance with all Contract Documents for this Project. RGRTA reserves the right to verify the progress of manufacture of each bus.

2. Documents Forming the Master Agreement: This Master Agreement shall consist of this document and the following Exhibits (the "Contract Documents").

- (a) Exhibit A - Price List
- (b) Exhibit "B" - RGRTA's Request for Proposals dated October 14, 2011 and all subsequent Addenda issued thereunder (incorporated by reference).
- (c) Exhibit "C" - CONTRACTOR's Proposal dated January 16, 2012 (incorporated by reference).
- (d) Exhibit "D" - Federal Transit Administration (FTA) Required Clauses.
- (e) Exhibit "E" - New York State Required Clauses
- (f) Exhibit "F" -- Insurance Requirements

3. Taxes, Royalties & Expenses: CONTRACTOR shall pay all taxes, royalties and expenses incurred in connection with the services performed and the goods delivered under this Agreement, except as otherwise provided herein.

4. CONTRACTOR's Compensation: RGRTA agrees to pay CONTRACTOR and CONTRACTOR agrees to accept, in full payment for the performance of this Agreement, the

maximum aggregate sum set forth in the Price List Attachment (called the "Purchase Price"); provided, however, that the price for each order may exceed the price paid by RGRTA on the immediately preceding order by not more than the lesser of the percentage change in the Producer Price Index #WPU 1413 (Truck and Bus Bodies) from the date of the previous order contract or 3%. In the event that changes to the bus specifications are mandated by legislation or regulations that become effective after the time the date of this Master Agreement, the parties shall negotiate in good faith as to whether a price increase is justified and, if so, what that adjustment will be. CONTRACTOR agrees that all services and materials to be provided as set forth in the Exhibits and as otherwise required under this Master Agreement and the applicable Purchase Order Agreement shall be provided for the foregoing compensation.

5. Payment Terms: Payment shall be made in accordance with the following schedule:

- (a) Eighty Percent (80%) of the Purchase Price attributable to each bus (the "Bus Purchase Price") within ten (10) days after the delivery of each bus and Twenty Percent (20%) within ten (10) days after final acceptance of such bus by RGRTA, as provided in Section 6 hereof.
- (b) One Hundred Percent (100%) of the Purchase Price attributable to manuals within thirty (30) days after final acceptance of such item(s) by RGRTA, as provided in Section 6 hereof.
- (c) For the remaining seventy-six (76) buses in the contract, Eighty Percent (80%) of the Purchase Price attributable to each bus within ten (10) days after the delivery of each bus and Twenty Percent (20%) within thirty (30) days after final acceptance of such bus by RGRTA, as provided in Section 6 hereof.

6. In the event that RGRTA does not accept or reject a bus within 15 business days after arrival of such bus on RGRTA's premises at 1372 E. Main Street, Rochester, New York or in the event that RGRTA places the bus into revenue service, RGRTA shall be deemed to have accepted such bus.

7. Invoice Contents: Each invoice from CONTRACTOR shall maintain a listing of the serial number of each bus being manufactured under this Agreement and a listing of all major components and component serial numbers, which shall be the same as those in the Final Bus Record.

8. Title: Good and marketable title to each bus identified on any invoice and the related spare components shall pass to RGRTA free of any and all encumbrances upon payment of the invoice for that bus.

9. Inspections & Audit: CONTRACTOR shall permit RGRTA, the Federal Transit Administration and the State of New York to inspect all work, materials, payrolls, invoices and other data and records relating to any Purchase Order Agreement and to periodically audit the books, records and accounts of CONTRACTOR relating to services and goods provided under this Master Agreement. The timing of such inspections shall be at the discretion of RGRTA, provided that a good faith attempt shall be made by RGRTA to avoid interference with

CONTRACTOR's work relating to the Project. The obligations of this Section 9 shall survive the termination of this Agreement. RGRTA and its representatives and agents agree to enter into with CONTRACTOR a confidentiality agreement mutually acceptable to the parties prior to commencing an audit or review in order to protect and maintain the CONTRACTOR's confidential information.

10. Change in Bus Specifications; Additional Work: Either RGRTA or CONTRACTOR may request changes in the bus specifications set forth in the Exhibits or additional work not specified therein to be performed by CONTRACTOR hereunder ("Extra Work"). If RGRTA and CONTRACTOR mutually agree that such specification changes will be made and/or that the Extra Work will be performed, the parties will mutually and in good faith negotiate the terms of such specification changes and/or Extra Work and the resulting increase or decrease in compensation, if any. Any such change in the bus specifications or any such Extra Work, as well as any increase or decrease in the amount of compensation to be received by CONTRACTOR therefore shall be authorized only by the execution of a written amendment to this Agreement or to the applicable Purchase Order Agreement by CONTRACTOR and RGRTA. Change in bus specifications and/or commencement of Extra Work shall occur only after such written approvals have been obtained from RGRTA.

11. Assignments & Subcontracts: CONTRACTOR shall not assign any part of its obligations under or its interest in this Agreement or subcontract any services to be performed hereunder without the prior written consent of RGRTA. Any such assignments or subcontracting without the consent set forth shall be void.

12. Interchange of Data: All records and other materials relating to the procurement that are in the possession of either RGRTA or CONTRACTOR shall be made available upon request to the other party without expense to such party upon reasonable request.

13. Meetings & Documentation: CONTRACTOR shall attend all meetings referenced in the Exhibits and all such additional meetings as RGRTA and CONTRACTOR mutually agree are necessary for the Project's successful completion. No request to attend additional meetings shall be unreasonably refused. CONTRACTOR shall provide RGRTA with written reports and documents as specified in the Exhibits.

14. Independent Contractor Status:

- (a) Neither CONTRACTOR, in accordance with its status as an independent CONTRACTOR, nor any of its employees shall be construed to be employees or agents of RGRTA for any purpose whatsoever. CONTRACTOR and its employees agree not to hold themselves out as employees or agents of RGRTA by reason of their participation under this Agreement.
- (b) CONTRACTOR shall not engage, either on a full-time or a part-time basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of RGRTA except regularly retired employees, without the written consent of RGRTA.

15. Insurance: CONTRACTOR agrees to procure and maintain, at its own expense, insurance of the kinds and in the amounts required under Exhibit "F" from insurance companies authorized to do business in the State of Minnesota covering all operations under this Agreement, whether performed by CONTRACTOR or by subcontractors. General Liability policies shall designate RGRTA as an additional named insured. The policies maintained hereunder shall provide that they will not expire, be changed or be cancelled until thirty (30) days written notice has been given to RGRTA. In addition, the CONTRACTOR shall maintain insurance on each bus and all components identified to this Agreement of such kinds and in such amounts as shall be approved by RGRTA in writing through and including the date on which RGRTA has accepted the completed bus. CONTRACTOR shall furnish to RGRTA a certificate or certificates showing that it has complied with this Section 15.

16. Indemnification Clause: In addition to the insurance required to be procured and maintained pursuant to Section 15, to the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify and hold harmless RGRTA, its subsidiaries, the New York State Department of Transportation and the Federal Transportation Administration, their agents, commissioners, and employees, from and against any and all claims, lawsuits, damages, losses and expenses (including but not limited to court costs and attorney's fees) arising out of or related to performance of the work, the manufacture of buses or other goods or services provided by the CONTRACTOR hereunder, to the extent the same was directly or indirectly caused in whole or in part by acts, actions, omissions, negligence, fault or breach of or by the CONTRACTOR, a subcontractor, or anyone employed by them or anyone for whose act they may be liable.

17. Code of Ethics: CONTRACTOR agrees that this Agreement may be terminated if any work under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officers' Law, which establishes a Code of Ethics for New York State officers and employees.

18. Retention of Records: CONTRACTOR shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred, the services rendered and the materials/goods provided hereunder and make such materials available at its office at all reasonable times during the term of this Agreement and for six (6) years from the date of final payment under the last Purchase Order Agreement issued under this Master Agreement, for inspection by authorized representatives of RGRTA and copies thereof shall be furnished if requested at RGRTA's expense.

19. Delays: Anything to the contrary notwithstanding, neither party shall be liable for failure to perform or any delay in performance of the party's obligations if such failure or delay is as a result of force majeure (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor shortages, disputes, strikes, lockouts or interruptions, or loss of transportation or other factor outside of the party's reasonable control. If CONTRACTOR asserts "force majeure", the time for completion of the work and/or the delivery dates shall be extended by RGRTA by a reasonable period of time after such force majeure has ended in order that CONTRACTOR may

complete the work or deliver the buses. If a party asserts "force majeure" as an excuse for failure to perform or delay in performing such party's obligation, then such party asserting "force majeure" must show that it took commercially reasonable steps to minimize delay or damages caused by the force majeure, that such party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of the event constituting the force majeure.

20. Termination:

- (a) Upon written notice to CONTRACTOR, RGRTA shall have the right to terminate this Master Agreement and any or all Purchase Order Agreements issued hereunder at any time during the term hereof, with or without cause. In the event of a termination hereunder by RGRTA without cause, RGRTA shall compensate CONTRACTOR on an equitable basis, as mutually agreed by RGRTA and CONTRACTOR, for all services performed by CONTRACTOR prior to the date of such termination including CONTRACTOR's close-out costs and profit on work performed at the time of such termination; provided, however, that such compensation shall in no event exceed the amount specified in Section 4. RGRTA shall consider the following factors:
- (i) The ratio of work performed by CONTRACTOR prior to the termination of this Agreement to the total amount of work contemplated hereunder, less any payments made prior to such termination.
 - (ii) The amount of the actual costs and expenses which CONTRACTOR incurred in performing the work prior to the termination of this Agreement in proportion to the total costs and expenses which total amount of work contemplated hereunder, less any payments made prior to such termination.
 - (iii) The actual costs incurred by CONTRACTOR, as verified by audit.
- (b) Upon fifteen (15) days written notice to RGRTA, CONTRACTOR shall have the right to terminate this Master Agreement and any or all Purchase Order Agreements issued hereunder for any material breach by RGRTA, which is not cured by RGRTA during such 15-day period.
- (c) In the event of a termination hereunder, CONTRACTOR shall immediately cancel all outstanding commitments hereunder, including without limitation, personal services and the procurement of materials, supplies and equipment. In addition, CONTRACTOR shall incur no new commitments of any nature whatsoever with respect to this Agreement.

21. Covenant Against Contingent Fees: CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working for CONTRACTOR, to solicit or secure this Master Agreement or any Purchase Order Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration,

contingent upon or resulting from the award or making of this Master Agreement or any Purchase Order Agreement. For breach or violation of this warranty, RGRTA shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the compensation to be paid CONTRACTOR hereunder, or otherwise recover the full amount of any such percentage, brokerage fee, gift or contingent fee.

22. Notices: Any notice or demand upon RGRTA or CONTRACTOR shall be deemed to be sufficient for all purposes hereunder if given personally or mailed to the other party hereto at such party's address as set forth above or to such other address as may be furnished in writing by such party. Any notice that is mailed shall be effective when deposited in the United States mail, duly addressed and with first class postage affixed.

23. Laws & Regulations: CONTRACTOR shall comply with all applicable federal, state and local laws and regulations including, without limitation, those relating to wages, hours, fair employment practices, equal opportunity, anti-discrimination, safety and working conditions. Each and every provision of law and clause required by applicable laws with reference to form and function of the buses shall, upon written acknowledgment of both parties hereto, be inserted herein, and if, through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon the application of either party, and upon written acknowledgment of both parties hereto, which shall not be unreasonably refused or delayed, this Agreement shall forthwith be physically amended to make such insertion.

24. Miscellaneous:

- (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- (b) The captions to the sections of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of this Agreement.
- (c) This Agreement and its attachments constitute the entire understanding between RGRTA and CONTRACTOR and supersede all prior agreements and understandings relating to the subject matter hereof.
- (d) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York and venue for all litigation, arbitration or mediation purposes exclusively in the County of Monroe, New York.
- (e) This Agreement may be executed in two or more counterparts, all of which together shall constitute one and the same instrument.
- (f) Both parties hereto warrant and represent that they have full right, power and authority to execute this Agreement.

25. Protection of Trade Secrets: RGRTA is a public benefit corporation of the State of New York and as such, many RGRTA records are subject to disclosure to the public following the filing with RGRTA of appropriate requests. Trade Secrets can be excepted from disclosure under the New York Freedom of Information Law, but will only be excepted by RGRTA if

CONTRACTOR identifies in writing the records or parts of records considered to be trade secrets when those records are submitted to RGRTA, giving the reasons for the need for the exception from disclosure, and specifically requesting that such information be held confidentially. CONTRACTOR shall stamp all such documents as "Confidential" and identify them as such in a transmittal letter. Without such identification and designation, such records may be subject to disclosure by RGRTA without liability to CONTRACTOR.

26. Persons or Organizations Employed to Influence This Procurement

- (a) CONTRACTOR warrants and represents that the CONTRACTOR has not retained, employed or designated any person or organization to influence the procurement under this Master Agreement or any Purchase Order Agreement.
- (b) CONTRACTOR further warrants and represents that CONTRACTOR has not been found non-responsible during the past five years in the connection with disclosure of information about persons or organizations attempting to influence procurements.
- (c) CONTRACTOR shall notify the RGRTA any time a person or organization is retained, employed or designated by CONTRACTOR to influence this procurement and shall provide the information reasonably requested by RGRTA for any such person or organization.
- (d) CONTRACTOR acknowledges that the RGRTA may terminate this Master Agreement or any Purchase Order Agreement if the RGRTA discovers that the CONTRACTOR intentionally failed to provide true and complete information with respect to persons employed, retained, or designated by the CONTRACTOR to influence this procurement.

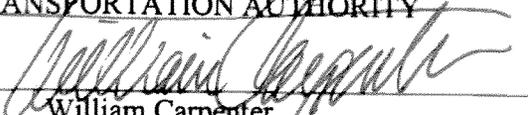
IN WITNESS WHEREOF, the respective parties have caused this Master Agreement to be executed by their duly authorized representatives and their seals, if any, to be affixed hereto the date first above written.

NEW FLYER OF AMERICA INC.

By: 

Title: CFO and V.P. Engineering

ROCHESTER-GENESEE REGIONAL
TRANSPORTATION AUTHORITY

By: 

William Carpenter
Chief Executive Officer

EXHIBIT A

**Pricing for Procurement of 40' Heavy-Duty Low-Floor Diesel Buses
From
New Flyer of America, Inc.
September __, 2012**

Item	Price Per Bus
40' Transit Bus (33)	\$407,000
Delivery Charge (33)	\$2,805
Subtotal – 40' Transit Buses	\$409,805
Warranties	
Complete Bus	\$2,100
Transmission	\$2,160
Brake System	\$500
Air Compressor	\$56
SubTotal - Warranties	\$4,816
Alternates/Upgrades	
Rear Skid Plate	\$76.94
Upgrade Driver's Side Window to Quick Change	\$56.25
Upgrade Side Windows to Quick Change	\$217.13
Upgrade Side Window Glazing to Polycarbonate	\$2,354.59
Upgrade Wheelchair Restraint to Q-Pod	\$4,500.00
Dent Resistant Plastic Bus Skin	\$1,523.89
Upgrade 3 Cameras to IP Addressable	-\$2,480.00
Upgrade DVR to 2 TB	\$0
Delete Teleflex Adjustable Pedal Assembly	-\$710.00
Addition of Vapor CLASS System to Exit Door	\$1,936.00
Add EMP Cooling System	\$6,311.00
Total Alternates/Upgrades	\$13,785.80
Total Cost per Bus	\$428,406.80
Additional Items	
Manuals – per order	\$19,545
Training – per order	\$25,560

**U. S. DEPARTMENT OF TRANSPORTATION
REQUIRED CLAUSES**

1. Buy America Requirements - The contractor agrees to comply with 49 USC 5323(j) and 49 CFR 661, which state 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. General waivers are listed in 49 CFR 661.7, and include final assembly in the US for 15 passenger vans and 15 passenger wagons produced by Chrysler Corp., software, microcomputer equipment and small purchases (currently less than \$100,000). Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content.

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

2. Cargo Preference - Use of US-Flag Vessels - The contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% 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 US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to RGRTA (through the contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

3. Seismic Safety – Section Deleted.

4. Energy Conservation - The contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

5. Clean Water - The contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The contractor shall report each violation to RGRTA and understands and agrees that RGRTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. The contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

6. Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 [to be codified at 2 USC 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal 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 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made

lobbying contacts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR 20-CERTIFICATION REGARDING LOBBYING - Certification for Contracts, Grants, Loans, and Cooperative Agreements *(To be submitted with each bid or offer exceeding \$100,000)*

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

(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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award 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 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 FR 1413 (1/19/96). (PL 104-65, to be codified at 2 USC 1601, *et seq.*)]

(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. Submittal of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352 (as amended by Lobbying Disclosure Act of 1995). Any person failing to file the required certification shall be subject to a civil penalty of no less than \$10,000 and no more than \$100,000 for each such failure. [Note: Pursuant to 31 USC 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.]

7. Access to Records - The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State, but a local government, and is the FTA recipient or subgrantee of the FTA recipient in accordance with 49 CFR 18.36(i), the contractor shall provide purchaser, FTA Administrator, the US Comptroller General or their authorized representatives access to any contractor's books, documents, papers and records which are directly pertinent to the contract for the purpose of making audits, examinations, excerpts and transcriptions. The contractor shall also, pursuant to 49 CFR 633.17, provide FTA Administrator or his authorized representative including any PMO contractor access to contractor's records and construction sites pertaining to any major capital project, defined at 49 USC 5302(a)1, which is receiving federal assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is FTA recipient or subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is FTA recipient or subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, FTA Administrator, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where purchaser is FTA recipient or subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, the contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The contractor shall maintain all books, records, accounts and reports required under the contract for no 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 this contract, in which case contractor agrees to maintain same until the purchaser, FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

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

9. Bonding Requirements

Bid Security Requirements – A Bid Security shall be issued by a qualified surety company acceptable to RGRTA and listed as a company currently authorized under 31 CFR 223 as possessing a Certificate of Authority as described hereunder. In submitting a proposal, the proposer agrees and understands that RGRTA reserves the right to reject any and all proposals, or part of any proposal, and it is agreed that the proposal may not be withdrawn for a period designated by RGRTA subsequent to the due date, without RGRTA's written consent. Should the proposer withdraw the proposal without RGRTA's consent, or refuse or be unable to enter into a contract, or refuse or be unable to furnish adequate and acceptable Performance Bonds or Labor & Material Payment Bonds or insurance, it shall forfeit the bid security to the extent of RGRTA's damages occasioned by such withdrawal or refusal or inability to enter into an agreement or provide adequate security therefore. To the extent the defaulting proposer's surety shall prove inadequate to fully recompense RGRTA for the damages occasioned by default, the proposer shall indemnify RGRTA and pay to RGRTA the difference between the bid security and RGRTA's total damages.

Performance & Payment Bonding Requirements (Construction) - Section Deleted

Performance & Payment Bonding Requirements (Non-Construction) - The contractor is required to obtain performance and payment bonds when necessary to protect RGRTA's interest.

(a) The following situations may warrant a performance bond:

1. RGRTA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and RGRTA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the contractor shall be required to obtain performance bonds as follows: The penal amount of performance bonds shall be 100% of the original contract price unless RGRTA determines that a lesser amount is adequate for RGRTA's protection. RGRTA shall require additional protection if the contract price is increased. The increase in protection shall equal 100% of the contract price increase.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in RGRTA's interest.

(d) When it is determined that a payment bond is required, the contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) 50% of the contract price if the contract price is not more than \$1 million;
 - (ii) 40% of the contract price if the contract price exceeds \$1 million but is not more than \$5 million; or
 - (iii) \$2.5 million if the contract price is increased beyond \$5 million.

Advance Payment Bonding Requirements - The contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. RGRTA shall determine the amount of the advance payment bond necessary to protect RGRTA.

Patent Infringement Bonding Requirements (Patent Indemnity) – Section Deleted

Warranty of the Work and Maintenance Bonds – Section Deleted

10. Clean Air -

(1) The contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 *et seq.* The contractor shall report each violation to RGRTA and understands and agrees that RGRTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. The contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

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

11 Recovered Materials - The contractor shall comply with all requirements of Sec. 6002 of the Resource Conservation & Recovery Act, as amended (42 USC 6962, including the regulatory provisions of 40 CFR 247, and Executive Order 12873, as applied to the procurement of items designated in 40 CFR 247(b).

12. Davis-Bacon and Copeland Anti-Kickback Acts – Section Deleted

13. Contract Work Hours & Safety Standards Act

(1) **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 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the US 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 para. (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 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - RGRTA shall upon its own action or upon written request of an authorized representative of USDOL 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 para. (2) of this section.

(4) 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 clauses set forth in this section.

(Sec. 102 nonconstruction contracts should also have the following provision:)

(5) Payrolls and basic records - (i) 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 US 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 Sec. 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever USDOL has found under 29 CFR 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 Sec. 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.

Sec. 107 (OSHA): (This section is applicable to construction contracts only)

Contract Work Hours & Safety Standards Act - (i) Contractor shall comply with Sec. 107 of the Contract Work Hours & Safety Standards Act, 40 USC 333, and applicable USDOL regulations, "Safety and Health Regulations for Construction" 29 CFR 1926. Contractor shall not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii)**Subcontracts** - The contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

14. (Reserved)

15. No Obligation by the Federal Government -

(1) RGRTA and the 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 RGRTA, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The contractor shall include the above clause in each subcontract financed in whole or in part with FTA assistance. The clause shall not be modified, except to identify the subcontractor which is subject to its provisions.

16. Program Fraud and False or Fraudulent Statements or Related Acts -

(1) The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 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 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, submittal, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.

(2) If the contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

17 Termination

a. Termination for Convenience (General Provision) RGRTA may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the Government's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to grantee to be paid

the Contractor. If the contractor has any RGRTA property in its possession, the contractor will account for the same, and dispose of it in the manner RGRTA directs.

b. Termination for Default [Breach or Cause] (General Provision) If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, RGRTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by RGRTA that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, RGRTA, after setting up a new delivery of performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) RGRTA in its sole discretion may, in the case of a termination for breach or default, allow the contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to grantee's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by contractor or written notice from grantee setting forth the nature of said breach or default, grantee shall have the right to terminate the Contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude grantee from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that grantee elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by grantee shall not limit grantee's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) RGRTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, RGRTA may terminate this contract for default. RGRTA shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the recipient.

g. Termination for Default (Transportation Services) If the contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, RGRTA may terminate this contract for default. RGRTA shall terminate by delivering to the contractor a Notice of

Termination specifying the nature of default. The contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the contractor has possession of Recipient goods, the contractor shall, upon direction of RGRTA, protect and preserve the goods until surrendered to the Recipient or its agent. The contractor and grantee shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of RGRTA.

h. Termination for Default (Construction) If the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the contractor fails to comply with any other provisions of this contract, RGRTA may terminate this contract for default. RGRTA shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

The contractor's right to proceed shall not be terminated nor the contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies RGRTA in writing of the causes of delay. If in the judgment of RGRTA, the delay is excusable, the time for completing the work shall be extended. The judgment of RGRTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect & Engineering) RGRTA may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the contractor to fulfill the contract obligations. RGRTA shall terminate by delivering to the contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) RGRTA may terminate this contract, or any portion of it, by serving a notice of termination on the contractor. The notice shall state whether the termination is for convenience of RGRTA or for the default of the contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The contractor shall account for any property in its possession paid for from funds received from RGRTA, or property supplied to the contractor by RGRTA. If the termination is for default, RGRTA may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The contractor shall promptly submit its termination claim to RGRTA and the parties shall negotiate the termination settlement to be paid the contractor.

If the termination is for the convenience of RGRTA, the contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, RGRTA determines that the contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, RGRTA, after setting up a new work schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

18. Certification Regarding, Suspension, and Other Responsibility Matters Lower Tier Covered Transactions (Third Party Contracts over \$25,000).

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the signed certification as set out below.
2. The certification in this clause 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, grantee may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to grantee 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 CFR 29].
5. The prospective lower tier participant agrees by submitting this proposal 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 grantee.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -

Lower Tier Covered Transaction", 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 US General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of 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 Para. 5 of these instructions, 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, grantee may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submittal of this proposal, that neither it nor its "principals" [as defined at 49 CFR 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 to this proposal.

19. Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The contractor shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC 552a. Among other things, the contractor shall 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.

(2) The contractor shall also 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 FTA assistance.

20. Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (ADA) of 1990, 42 USC 12132, & 49 USC 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, the contractor shall comply with all applicable equal employment opportunity requirements of USDOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 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 USC 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 shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and 49 USC 5332, the contractor shall refrain from discrimination against present and prospective employees for reason of age. The contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, the contractor shall comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630, pertaining to employment of persons with disabilities. The contractor shall also comply with any implementing requirements FTA may issue.

(3) The contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

21. Disputes - Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by RGRTA's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to RGRTA's CEO. In connection with any such appeal, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of RGRTA's CEO shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by RGRTA, the contractor shall continue performance under this contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between RGRTA and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within New York State.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by RGRTA, its agents or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

22. Patent and Rights Data – Section Deleted

23. Transit Employee Protective Provisions. Section Deleted

24. Disadvantaged Business Enterprise (DBE) 49 CFR 26 -

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in USDOT Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. RGRTA's overall goal for DBE participation is 8%. A separate contract goal may be established for this procurement.

(b) The contractor, subgrantee or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of this contract. The contractor's failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as RGRTA deems appropriate. Each subcontract shall include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) Proposers shall document sufficient DBE participation to meet RGRTA's goals or, alternatively, shall document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

(d) The contractor shall pay all subcontractors performing work related to the contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from RGRTA. In addition, the contractor shall return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. If the contract involves incremental retainage payments, the contractor shall return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by RGRTA and contractor's receipt of the partial retainage payment related to the subcontractor's work..

(e) The contractor shall notify RGRTA within five (5) business days, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of RGRTA.

25. State & Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on State law, and that before the suggested clauses are used in the contractor's procurement documents, the contractor should consult its attorney.

26. Incorporation of FTA Terms - The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause RGRTA to be in violation of FTA terms and conditions.

27. Drug & Alcohol Testing - RGRTA shall establish and implement a drug and alcohol testing program complying with 49 CFR 653 & 654, produce any documentation necessary to establish its compliance with 49 CFR 653 & 654, and permit any authorized representative of USDOT or its operating administrations, or the State of New York, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR 653 and 654 and review the testing process. RGRTA further agrees to annually certify compliance with 49 CFR 653 and 654 and to submit the Management Information System (MIS) reports. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications & Assurances for FTA Grants & Cooperative Agreements," published annually in the Federal Register.

28. Prohibition Against Exclusionary or Discriminatory Specifications – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

29. Conformance with ITS National Architecture – The contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture in compliance with Sec. 5206(e) of TEA-21, 23 USC 502 note, and with FHWA/FTA's "Transportation Equity Act for the 21st Century; Interim Guidance on Conformity with the National Intelligent Transportation Systems (ITS) Architecture and Standards" 63 Federal Register 70443 *et seq.* Dec. 21, 1998, and other subsequent Federal directives that may be issued.

30. Access Requirements for Persons with Disabilities – The contractor shall comply with the requirements of 49 USC 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

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

32. Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

33. Equal Employment Opportunity (EEO) & Fair Employment Practices - During the performance of this contract, the contractor agrees as follows:

The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, marital status, disability, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, marital status, disability, sex, or national origin. Such action shall include, but not be limited to the following employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or training, including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The contractor shall comply with Executive Order 11246, and unless otherwise exempt under the rules, regulations, subject to EEO requirements as set forth in FPR 1-12.803.2, said clause being herewith incorporated into this contract by reference. In support of RGRTA's EEO Contract Compliance Requirements, all proposals shall be accompanied by the following executed documents.

- (1) Affidavit of Non-Discrimination
- (2) Employer Information Report (EEO-1)
- (3) Bidder/Proposer Policy Statement on Equal Employment
- (4) Affirmative Action Questionnaire

The contractor for itself, its assignees and successors in interest agrees as follows:

Compliance Requirements - The contractor shall comply with the Regulations relative to non-discrimination in Federally-assisted programs of USDOT, 49 CFR 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

Non-Discrimination - During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall, in all solicitations or advertisements for employees placed by, or on behalf of, the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, age, marital status, disability, sex, or national origin.
- (2) The contractor shall send to each labor union or representative or workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (3) The contractor shall furnish all information and reports required by Executive Order 11246, and by rules, regulations, and orders of the USDOL for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (4) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further federally-assisted contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by USDOL rule, regulations, or order, or as otherwise provided by law.
- (5) The contractor shall include the portion of the sentence immediately preceding para. (1) and the provisions of para. (1) through (6) in every subcontract or purchase order unless exempted by USDOL rules, regulations or orders issued pursuant to Sec. 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor.
- (6) The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event if a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the US Government to enter into such litigation to protect the interest of the United States.

Incorporation of Provisions - The contractor shall include the provisions of para. (1-8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by

regulation, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurements as RGRTA or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request RGRTA to enter into such litigation to protect the interests of RGRTA and, in addition, the contractor may request the US Government to enter into such litigation to protect the interests of the United States.

34. Affirmative Action/Equal Employment Opportunity Policy & Requirements It is the policy of RGRTA and the USDOT that disadvantaged business enterprises, as defined in 49 CFR 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR 26 apply to this agreement.

DBE Obligation RGRTA and its contractors shall ensure that DBEs as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, RGRTA and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that disadvantage business enterprises have the maximum opportunity to compete for and perform contracts. RGRTA shall not discriminate on the basis of race, color, religion, marital status, disability, age, national origin, or sex in the award and performance of USDOT-assisted contracts.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees as follows:

- a. **Compliance with Regulations**: The contractor shall comply with the regulations relative to non-discrimination in federally-assisted programs of the USDOT, 49 CFR 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment**: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to non-discrimination on the grounds of race, color, sex, marital status, disability, age, or national origin.

Equal Employment Opportunity In connection with the execution of this contract, the contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, marital status, age, disability, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, training, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay, or other forms of compensation and selection of training, including apprenticeship.

Disadvantaged Business Enterprise (DBE) In connection with the performance of this contract, the contractor will cooperate with RGRTA in meeting its commitments and goals with regard to the maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontracts under this contract.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as RGRTA deems appropriate.

RGRTA, in accordance with 49 CFR 26, Title VI of the Civil Rights Act of 1964 and 49 CFR 21, non-discrimination in Federally-assisted programs issued pursuant to such Act, and Sec. 105 (F) of the Surface Transportation Assistance Act of 1982 and Sec. 10g (c) of the Surface Transportation & Uniform Relocation Assistance Act (STURAA) of 1987, hereby notifies all bidders that it shall affirmatively insure that DBE's will be afforded full opportunity to submit bids and will not be discriminated against on the grounds of race, color, sex, national origin, marital status, religion, or age in consideration for an award.

Termination A prime contractor shall not terminate a DBE subcontractor for convenience and then perform the work with its own forces or its affiliate's.

Prompt Payment Contractor agrees to pay each subcontractor and supplier under this contract for satisfactory performance of its contract no later than thirty (30) calendar days from the date the contractor receives payment from RGRTA. Contractor further agrees to return retainage payments to each subcontractor within thirty (30) calendar days from the date of the satisfactory completion of the subcontractor's work. Any delay or postponement of payment may occur only for good cause following RGRTA's written approval. This clause applies to both DBE and non-DBE subcontractors.

The term "**Disadvantaged Business Enterprise (DBE)**" as used in this program means a small business concern (a) which is at least 51% owned and controlled by one or more of the presumptive group of socially and economically disadvantaged individuals, or in the case of any publicly-owned business, at least 51% of the stock of which is owned and controlled by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The term "**Small Business Concern**" as used in this program means a small business as defined pursuant to Sec. 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

The term "**Disadvantaged Person**" as used in this program means "socially and economically disadvantaged individuals, means those individuals who are citizens of the US (or lawfully admitted permanent residents) and who are women; Black American (includes persons having origins in Mexico, Puerto Rico, Cuba, Portugal, Central and South America, the Dominican Republic, or Iberian Peninsula; Native Americans (includes persons who are American Indian, Eskimo, Aleut, and native Hawaiian) Asian Pacific Americans (includes persons having origins in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, and US Trust Territories of the Pacific Islands and the Northern Marinas); Asian-Indian Americans (includes persons whose origins are from India, Pakistan and Bangladesh) and other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Sec. 8 (a) of the Small Business Act, as amended (15 USC 637 (a)).

The term "**Social Disadvantage**" as used in this program means a condition which is directly attributable to a person's color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control. It is a condition which is rooted in treatment the individual has experienced in American society (not in other countries) and which has negatively affected his or her entry into/advancement in the business world. This condition must be chronic, long-standing, and substantial and must have been personally suffered by the individual.

The term "**Economic Disadvantage**" as used in this program means a condition of socially-disadvantaged individuals which impedes their ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged.

The term "**Owned and Controlled**" as used in this program means a business that is (1) a sole proprietorship legitimately owned by an individual who is disadvantaged, a minority, or a woman; (2) a

partnership of joint venture controlled by above persons and in which at least 51% of the beneficial ownership interest is held by these persons; or (3) a corporation or other entity controlled by above persons and in which at least 51% of the beneficial ownership interests legitimately are held by these persons; and (4) a corporation or other entity in which the disadvantaged or women-participation extends to the management and daily business operations insuring ownership and control.

The term **“Joint Venture”** as used in this program means an agreement between two (2) entities engaged in a single specific business venture for joint profit. An association of two (2) or more businesses to carry out a single business enterprise for profit in which they combine their property, efforts, skills, and knowledge. This association is limited in scope and duration and not on a continuing or permanent basis for conducting business. A Joint Venture cannot be certified as a DBE regardless of the percentage of DBE participation. Only the partner firm that is owned and controlled by socially and economically disadvantaged individuals and meet the eligibility standards set forth in this section can be certified as a DBE (as appropriate). The DBE partner must be responsible for a clearly defined portion of work to be performed and shared in the ownership, control, management’s responsibilities, risks, and profits of the joint venture. Only the DBE’s partner’s participation will be credited toward the DBE goal. Contract awards to businesses that are joint ventures with DBE components shall be counted towards fulfilling RGRTA’s DBE goal on the basis of percentage ownership for the eligible DBE in the joint venture. Where DBE ownership is 51% or greater, 100% of the dollar value is counted. Each DBE partner in a joint venture shall complete and submit all necessary ownership documentation and information which may be requested in order to substantiate its eligibility as a bona fide DBE.

The term **“Certification”** used in this program means the process by which a business is determined to be a bona fide DBE.

35. Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General’s list of ineligible contractors for federally financed and assisted contracts shall not be eligible to act as a subcontractor for the contractor pursuant to this contract. If the contractor is on the Comptroller General’s list of ineligible contractors for federally financed or assisted construction, RGRTA shall cancel, terminate or suspend this contract.

36. Other Contract Requirements - To the extent consistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with RGRTA’s Procurement Guidelines, available upon request from RGRTA.

37. Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions:

All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1E, “Third Party Contracting Requirements,” dated June 19, 2003, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause RGRTA to be in violation of FTA terms and conditions.

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement (Form FTA MA(6) dated Oct. 1, 1999) between RGRTA and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

38. Real Property - Any contract entered into shall contain the following provision: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1B (Grant Management Guidelines)

Chapter I-7(b), and FTA Master Agreement, Sec. 19 as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

December, 2011

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are

required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually

agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict

with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992.

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has

retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

BID# MWD15016

BIDDER'S NAME _____

BIDDER'S SIGNATURE _____

Line	Part No	Description	Mfg #	Qty	Unit	Quoting on	Unit Price
1	14NF270010	ELBOW,90 DEG 3/4" DIA SILICONE		2	EACH		
2	24NF060206	PANEL,INSTRUMENT ASSEMBLY		1	EACH		
3	31NF300001	GASKET,POWER STEERING MOUNT		20	EACH		
4	41G300008	FILTER,AIR HEATER DRIVER'S		40	EACH		
5	41G390004	HUBODOMETER,539 REV/MIC/ISL		12	EACH		
6	41G240020	SENSOR,PRESSURE		4	EACH		

**BIDDER CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS – LOWER TIER COVERED TRANSACTIONS**

I, _____ (name of person), duly authorized to act on behalf
of _____ ("Bidder") acknowledge and certify, to the best of
my knowledge and belief, that:

1. This 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 Bidder knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, King County ("County") may pursue available remedies, including suspension and/or debarment.
2. The Bidder certifies, that neither it nor its "principals" (as defined at 49 C.F.R. § 29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. If the Bidder is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this certification.
4. The Bidder shall provide immediate written notice to the County if at any time the Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. 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 CFR Part 29]. You may contact the County for assistance in obtaining a copy of those regulations.
6. The Bidder agrees by submitting its proposal 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 County.
7. The Bidder further agrees by submitting its proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions with subcontractors and in all solicitations for lower tier covered transactions.
8. 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.
9. Nothing contained in the foregoing shall be construed to require establishment of 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.

PRE-AWARD COMPLIANCE CERTIFICATIONS

PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION

As required by 49 CFR Part 663-Subpart B, the _____ (the recipient) is satisfied that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The _____ (the recipient) has reviewed the documentation provided by the manufacturer, which lists (1) proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost as a percentage; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and cost of final assembly.

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by 49 CFR Part 663-Subpart B, the _____ (the recipient) certifies that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by 49 CFR Part 663-Subpart D, the _____ (the recipient) certifies that it received, at the pre-award stage, a copy of _____ (the manufacturer's) self-certification information stating that the buses, _____ (number and description of buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR Part 571.

Date: _____

Signature: _____

Title: _____

The Pre-Award Review Requirements

This section explains procedures that will help the recipient conduct the pre-award review in accordance with the Pre-Award and Post-Delivery Rule. It cites relevant portions of the Rule and describes the review process. Sample certifications that the recipient may use as models to demonstrate that the review has been conducted as required by the Rule are presented in Appendix A.

The Pre-Award Buy America Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the pre-award Buy America certification requirement.

Buses to be purchased by a recipient must fall into one of two categories under this requirement: (1) buses that meet the Buy America domestic content and assembly requirement and (2) buses for which a Buy America waiver is available. The procedures for each category are described below.

Buy America-Compliant Buses

Most buses must meet the 60 percent minimum domestic content and U.S. final assembly requirements set forth in the Buy America Rule. Therefore, the recipient must be satisfied that the buses will meet the requirements. In other words, the recipient must be satisfied that the manufacturer who is proposing to sell the buses can and will comply with the content and assembly requirements.

"The recipient is satisfied that the [buses meet] ... the requirements ... after having reviewed ... documentation ... [listing c]omponent and subcomponent parts; ... location, ... activities, ... [and] cost of final assembly." [1]

As a first step in the pre-award review process, the recipient, or a duly appointed analyst, must review the Buy America information that the proposed manufacturer must provide for the review.

The manufacturer's information must include:

- A listing of the bus components and subcomponents that will be used to calculate the percent domestic content (see Appendix B for a listing of typical bus components)

and

- The proposed final assembly location

and

- Activities that will take place during final assembly

If the manufacturer agrees, the recipient should, **but is not required to**, keep a copy of the manufacturer's Buy America information with the Buy America certification in the file.

Buy America-Exempt Buses

Although few buses are exempt from the Buy America domestic content and final assembly requirements, some manufacturers' buses may be eligible for an FTA waiver exempting the buses from the requirements. If a waiver does exist for the buses the recipient must:

"There is a letter from [FTA], which grants a waiver to the [buses] to be purchased ..." [2]

- Obtain a Buy America waiver letter from the FTA for the buses
- and**
- Complete a pre-award Buy America exemption certification (see sample in Appendix A, Exhibit A-2)
- and**
- Keep the Buy America certification on file for future FTA reviews.

The recipient should keep a copy of the FTA waiver letter with the Buy America certification in the files. Appendix C summarizes details of current Buy America waivers.

The Pre-Award Purchaser's Requirements Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the pre-award purchaser's requirements certification requirement.

This requirement is intended to eliminate those manufacturers that appear irresponsible and/or incapable of complying with the recipients' solicitation specifications.

To comply with the purchaser's requirements certification, the recipient, or a designated analyst, must check:

- That the manufacturer's bid specifications are in compliance with the recipient's solicitation specifications
- and**
- That the proposed manufacturer will be capable of meeting the specifications.

To ensure compliance, the analyst should review:

FMVSS-Exempt Buses

Although nearly all buses are subject to the FMVSS regulations, some buses may not be subject to the FMVSS regulations. Details of exemptions are explained in Title 49 of the Code of Federal Regulations Part 555, "Temporary Exemption From Motor Vehicle Safety Standards." If the buses are not subject to the FMVSS regulations, the recipient must:

- Obtain the manufacturer's certified statement indicating that the contracted buses will not be subject to the FMVSS regulations

and

- Complete a pre-award FMVSS exemption certification (see sample in Appendix A, Exhibit A-5)

and

- File the FMVSS certification for future FTA reviews.

The recipient should keep the manufacturer's pre-award FMVSS statement with the FMVSS certification in the file.

[1] Section 663.25(b), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

[2] Section 663.25(a), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.