

**CONTRACT AGREEMENT FOR NON-URBANIZED AREA  
5311 RURAL TRANSPORTATION ASSISTANCE PROGRAM  
PUBLIC TRANSPORTATION**

**CONTRACT NO.** \_\_\_\_\_  
**DUNS NO.** \_\_\_\_\_  
**CFDA NO.** \_\_\_\_\_  
**FAIN NO.** \_\_\_\_\_

This Contract Agreement is made by and between the Mississippi Transportation Commission acting by and through the Mississippi Department of Transportation (hereinafter referred to as the DEPARTMENT), an Agency of the State of Mississippi, and \_\_\_\_\_, (hereinafter referred to as the CONTRACTOR).

**WHEREAS**, Chapter 53, (49 U.S.C. Section 5311) as amended formerly referred to as Section 18 of the Federal Transit Act, provides federal capital, administrative and operating assistance for public transportation in rural and small urban areas by way of a formula grant program to be administered by the State; and

**WHEREAS**, the goals of the Non-urbanized Public Transportation Program are to enhance access by people in non-urbanized areas to health care, shopping, education, recreation, public services, and employment by encouraging the maintenance, development, improvement, and use of coordinated passenger transportation systems; and

**WHEREAS**, the CONTRACTOR has submitted to the DEPARTMENT an application for financial assistance to provide public transportation services to the residents of \_\_\_\_\_ Counties, Mississippi, hereinafter referred to as the "PROJECT" as described in the project application for financial assistance; and

**WHEREAS**, the Department is authorizing the Contractor to incur project costs beginning, \_\_\_\_\_.

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

**Section 1. Purpose of Contract Agreement.** The purpose of this Contract Agreement is to provide for the undertaking of the PROJECT by the CONTRACTOR as defined by Section 2 below and to state the terms, conditions and mutual understandings of the parties as to the manner in which the PROJECT will be undertaken and completed.

**Section 2. Scope of Project.** The CONTRACTOR shall undertake and complete the PROJECT as described in the Section 5311 Grant application submitted to the DEPARTMENT on behalf of \_\_\_\_\_ as approved by the DEPARTMENT (said application is herewith incorporated herein as "**Exhibit A**" to this Contract Agreement by reference and made a part hereof as if fully copied herein in words and figures and is officially on file at the office of the DEPARTMENT) to administer a Rural Transportation Project and provide public transportation service to the residents of \_\_\_\_\_ Counties, Mississippi, in accordance with the applicable policies contained in the approved State Management Plan, as well as the terms and conditions of this Contract Agreement.

**Section 3. Period of Performance.** The CONTRACTOR shall commence, carry on, and complete the PROJECT within the time periods set forth below.

- a. Non-operating Expenditures. The period of performance for all expenditures under the PROJECT shall be from \_\_\_\_\_ through \_\_\_\_\_.
- b. Operating Expenditures. The period of performance for all expenditures under the PROJECT shall be from \_\_\_\_\_ through \_\_\_\_\_.

**Section 4. Funding.**

a. Project Funding

(1) Funds to cover the federal share of this PROJECT'S cost are being provided through an appropriation authorized under Section 5311 of the Federal Transit Act of 1991, as amended, and it shall be the responsibility of the DEPARTMENT to obtain these funds from the Federal Transit Administration (hereinafter referred to as FTA). Failure of the DEPARTMENT to obtain these funds from the FTA shall result, upon notification by the DEPARTMENT to the CONTRACTOR, in termination of the contract. The CONTRACTOR'S share of the Project cost may range from 10% - 20% for capital, 20% administrative, and 50% operating deficit (minus revenue). **Any remaining CARES funds for capital, administrative, and operating costs (minus revenue) will be reimbursed at 100%.** The CONTRACTOR shall provide its share of the Project cost at or prior to the time that the DEPARTMENT determines that such funds are needed to meet Project costs.

(2) **The maximum amount of Section 5311 funds payable to the CONTRACTOR for the work described in Section 2 (Scope of Project) shall be \$ \_\_\_\_\_**

(3) **Availability of Funds**

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

a. **Suspend and/or Stop Work:** If at any time the funds anticipated for the fulfillment of this Contract or Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the DEPARTMENT for the performance of this Contract or Agreement, then this Contract or Agreement shall be suspended and/or a stop work order issued automatically without any notice to Consultant and/or

CONTRACTOR or any surety, for a period not to exceed ten (10) business days, effective immediately upon the date that said funds are not available, without damage, penalty, cost, or expenses to the DEPARTMENT of any kind whatsoever. CONTRACTOR and/or Consultant are responsible for monitoring the actions of the Mississippi Legislature in its enactment, or its failure to enact, any budget appropriation for the Mississippi Department of Transportation for the ensuing Fiscal Year, or, to monitor the Mississippi Department of Transportation website at, [www.gomdot.com](http://www.gomdot.com).

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

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

Or,

- b. TERMINATION:** If at any time the funds anticipated for the fulfillment of this Contract or Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the DEPARTMENT for the performance of this Contract or Agreement, the DEPARTMENT shall have the right, upon ten (10) days written notice to the Contractor and/or Consultant, to terminate this Contract and/or Agreement without damage, penalty, cost, or expenses to the DEPARTMENT of any kind whatsoever. The effective date of termination shall be as specified in the notice or at the end of any fiscal funding period wherein the funds are not available.

In addition to payment for services rendered prior to the date of the termination, the DEPARTMENT may be liable only for the costs, fees, and expenses, if any, for demobilization and close out of this Contract, based on actual time and expenses incurred by the CONTRACTOR

and/or Vendor. In no event shall the Commission be liable for lost profits or other consequential damages.

- b. Allowable Cost. Expenditures made by the CONTRACTOR shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. The expenditures must be:
- (1) Made in conformance with the Project description and the approved Project budget herewith incorporated by reference and set forth as **Exhibit B** and all other provisions of this Contract Agreement;
  - (2) Necessary in order to accomplish the PROJECT;
  - (3) Reasonable in amount for the goods or services purchased;
  - (4) Actual net costs to the CONTRACTOR (net cost means the price paid minus any refunds, rebates, or other items of value received by the CONTRACTOR which have the effect of reducing the cost actually incurred);
  - (5) Incurred and be for work performed after the date of this Contract Agreement;
  - (6) In conformance with the standards for allowable costs and other requirements as set forth in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly referred to as the “Super Circular”) and all amendments thereto, incorporated herein by reference insofar as applicable hereto;
  - (7) To the satisfaction of the DEPARTMENT;
  - (8) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the DEPARTMENT; and
  - (9) All purchases must be made consistent with State Laws and Purchasing Procedures.
  - (10) Allowable costs shall be reduced by **all** income, including, but not limited to, farebox revenue and contract revenue (excluding revenues derived from human service agency contracts), received by the CONTRACTOR for services provided under this program or for any other use of equipment purchased through this program. Allowable costs may include eligible costs that are paid by the CONTRACTOR using local contributions that are not required as a part of the match for this project. Local contributions may be added to funds committed to the project budget to further the purposes of the project.
- c. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the CONTRACTOR or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges. Only those expenses

which have already been paid by the CONTRACTOR shall be submitted for reimbursement.

- d. Certification Regarding Application and Budget. The CONTRACTOR acknowledges that the DEPARTMENT has relied upon the CONTRACTOR'S application and budget in making this grant award and executing this Agreement. The CONTRACTOR certifies that its application and budget are truthful, accurate and complete and that **all** revenues and expenses related to this project, irrespective of the source, are properly reflected on the CONTRACTOR'S application and the approved budget. The CONTRACTOR further acknowledges and agrees that any misstatement in the application or budget constitutes grounds for immediate termination and/or cancellation of this Agreement.
- e. Establishment and Maintenance of Accounting Records. The CONTRACTOR shall establish and maintain separate accounts for the PROJECT, either independently or within the existing accounting system, to be known as the Project Accounts. The accounts shall be capable of segregating, identifying and accumulating the allowable project costs.
- f. Payment. The DEPARTMENT will provide payments to the CONTRACTOR for allowable costs that have been paid by the CONTRACTOR when such costs are supported by a properly executed request for payment and related invoices. Payments, at the discretion of the DEPARTMENT, may be made in accordance with the advance payment request procedures as outlined in 49 CFR, Part 18.21 or the guidance provided by FTA Circular 5010.1D, Grant Management Guidelines and any amendments thereto. The CONTRACTOR shall invoice the DEPARTMENT at least monthly but not more often than two (2) times in any one month for payment of costs incurred and deemed allowable as defined by Section 4(b). Reimbursement requests must be submitted in accordance with schedules that allow for payments to be approved by the Transportation Commission during regular meetings which are held routinely on the second and fourth Tuesday of each month.

The itemized request for payment, including invoices, shall be reviewed and approved by the MDOT staff. A retainage of at least five (5%) percent of the approved payment will be withheld until the PROJECT is completed, and the annual Statement of Revenues and Expenditures or, if applicable, an audit in accordance with OMB Circular A-133 as amended, has been accepted, unless otherwise advised in writing by the Executive Director. Any costs deemed ineligible for reimbursement by the DEPARTMENT in accordance with the terms and conditions of this Contract Agreement shall be deducted from the retainage before final payment is made or the DEPARTMENT may issue a formal written request for repayment. Any rejected or unaccepted costs shall be borne by the CONTRACTOR.

The CONTRACTOR agrees that reimbursement of any cost, in accordance with the indicated payment methods, does not constitute a final decision by the DEPARTMENT about the allowability of that cost and does not constitute a waiver of any violation by the CONTRACTOR of the terms of this agreement. The CONTRACTOR understands that a final determination concerning allowability will not be made until an audit of the project has been completed. If the DEPARTMENT determines that the contractor is not entitled to receive any part of

the federal funds requested, the CONTRACTOR will be notified in writing. Close-out of this project will not alter the CONTRACTOR'S obligation to return any funds due to the DEPARTMENT as a result of later refunds, corrections or other transactions. Project close-out will not affect the DEPARTMENT'S right to disallow costs and recover funds on the basis of a later review or audit.

The CONTRACTOR agrees that if it receives Federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different Federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, it will provide written notification to FTA, and reimburse FTA for any Federal share that duplicates funding provided by FEMA, another Federal agency, or an insurance company.

- g. E-Invoice and E-Payment PayMode This DEPARTMENT requires that all CONTRACTORS submit invoices electronically throughout the term of this agreement and/or contract. CONTRACTOR invoices shall be submitted to the DEPARTMENT using the processes and procedures identified by the DEPARTMENT, which are known and/or available to the CONTRACTOR. Procedures for new CONTRACTORS may be found in the MAAPP Manual in the Vendor File Maintenance sections 11.20.10, 17.20.05 and 17.10.10, and in the related section on requirements for requesting an exemption from electronic payment found in section 17.10.20. CONTRACTOR understands that CONTRACTOR must be enrolled in PayMode e-payment module prior to being enrolled for e-invoicing, and agrees to same, unless CONTRACTOR has applied for and been granted, an exemption. CONTRACTOR may request assistance enrolling by contacting [www.mmrs.state.ms.us](http://www.mmrs.state.ms.us) or by calling the MMRS Call Center at (601) 359-1343. Payments by State Agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited in the bank account of the CONTRACTOR'S choice. CONTRACTOR understands that the DEPARTMENT is exempt from the payment of taxes. All payments shall be in United States Currency.

Payments pursuant to this award will be made for eligible costs documented by invoices for the equipment, work or services incurred in accomplishing project. Final payment will be made after review and approval by the DEPARTMENT of documentation of the completion of the PROJECT and/or any audit documents as may be applicable.

The DEPARTMENT reserves the right to amend or withdraw this award at any time prior to its acceptance by the CONTRACTOR.

- h. Disallowed Costs. In determining the amount of Federal assistance the DEPARTMENT will provide, the DEPARTMENT will exclude all PROJECT costs incurred by the CONTRACTOR prior to the date authorized by this Contract Agreement, and any costs attributable to goods or services received under a contract

or other arrangement which has not been concurred in or approved in writing by the DEPARTMENT.

i. Prohibition Against Use of Federal Funds for Lobbying.

- (1) The CONTRACTOR or any sub-recipient shall not use Federal assistance funds and funds provided by way of this contract for publicity or propaganda purposes designed to support or defeat legislation pending before Congress.
- (2) The CONTRACTOR agrees that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

j. Interest/Excess Payments. The following requirements apply to the CONTRACTOR:

Upon notice by the DEPARTMENT to the CONTRACTOR of specific amounts due, the CONTRACTOR shall promptly remit any excess payment of amounts or disallowed costs to the DEPARTMENT. Interest may be assessed from the time of notice and charged for any amounts due to the DEPARTMENT that are not paid as set forth in the State Management Plan.

k. Deobligation of Funds. The DEPARTMENT reserves the right to deobligate unspent funds prior to project close-out.

**Section 5. Reports and Records.**

- a. The CONTRACTOR shall advise the DEPARTMENT in writing regarding the progress of the PROJECT at such time and in such format as the DEPARTMENT may require, including but not limited to meetings and interim reports. The CONTRACTOR shall collect and submit to the DEPARTMENT at such time as the DEPARTMENT may require, such financial statements, data, records, contracts, and other documents related to the PROJECT as may be deemed necessary.
- b. The CONTRACTOR and subcontractors shall retain all records pertaining to this PROJECT for a period of three (3) years from the date of final payment by the DEPARTMENT to the CONTRACTOR. However, if any litigation or legal action, by or on behalf of the state and federal government has begun that is not completed at the end of the (3) year period, or of audit finding, litigation or legal action has not been resolved at the end of the (3) year period, the records shall be retained until resolution.

**Section 6. Review / Audit, Inspection and Close-out.**

- a. Contractors must prepare an annual Statement of Revenues and Expenditures for the current year ending September 30. The Statement of Revenues and Expenditures, along with a computation of Section 5311 funds due the contractor must be submitted to the Department within one hundred and twenty (120) days of the end of the period of performance listed in Section 3. Failure to submit the Statement of Revenues and Expenditures and the supporting documentation may result in the forfeiture of the retainage withheld by the Department.
- b. To the extent required, the CONTRACTOR shall cause an audit to be performed in accordance with 2 CFR Part 200 as amended and guidance provided by the DEPARTMENT. The audit report, if required, shall be submitted to the DEPARTMENT and the Federal Audit Clearinghouse within the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the period of performance listed in Section 3. Failure to acquire and submit an audit to the DEPARTMENT, if and as required, will result in a finding of non-compliance and subsequently result in suspension of payments to the CONTRACTOR, forfeiture of retainage withheld by the DEPARTMENT, and will limit the ability of the DEPARTMENT to enter into subsequent contracts with the CONTRACTOR or sponsoring organization. At the discretion of the DEPARTMENT, any such retainage may be used to pay the cost of an audit or assessment of the project. Any retainage that subsequently remains may be released to the project upon approval by the DEPARTMENT.
- c. The CONTRACTOR shall permit and shall require third party contractors to permit the DEPARTMENT, the Comptroller General of the United States and the Secretary of the United States Department of Transportation or their authorized representatives to inspect all vehicles, facilities, equipment, materials, and supplies purchased by the CONTRACTOR as part of this project, all transportation services rendered by the CONTRACTOR by the use of such vehicles, facilities and equipment, and all relevant payrolls, project data and records. The CONTRACTOR shall also permit the above named representatives to audit the books, records and accounts of the CONTRACTOR pertaining to the Project.
- d. The CONTRACTOR agrees that any amounts to be refunded to the DEPARTMENT shall be repaid within 30 days of written notification by the DEPARTMENT. Failure to do so may result in delays or suspension of subsequent invoice payments. At a minimum, the following circumstances may result in requests for repayments/refunds:
  - (1) excess program generated income;
  - (2) excess contributed income;
  - (3) other excess income.
- e. Project close-out occurs when the DEPARTMENT notifies the CONTRACTOR in writing and forwards the final federal assistance payment or when the CONTRACTOR'S remittance of the proper refund or repayment has been acknowledged in writing by the DEPARTMENT.



**Section 7. Contracts Under This Contract Agreement.** Unless otherwise authorized in writing by the DEPARTMENT, the CONTRACTOR shall not assign any portion of the work to be performed under this contract agreement, or execute any contract amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this contract agreement without the prior written concurrence of the DEPARTMENT.

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

**Section 8. Purchase of Project Vehicles, Facilities and Equipment.** The purchase of all Project vehicles and/or equipment financed in whole or in part pursuant to this Contract Agreement shall be in accordance with the applicable state and federal laws and procurement regulations, including state competitive bidding procedures and laws and specifications approved by the DEPARTMENT, the DEPARTMENT'S State Management Plan and will be consistent where applicable with the Common Grant Rule and/or or 2 CFR Part 200 (As Amended), and Circular 4220.1F and any revisions thereof as applicable. The undersigned CONTRACTOR certifies its Procurement Compliance by the executed "Procurement Compliance" Certificate attached hereto and made a part of Exhibit A incorporated herein by reference.

- a. Vehicle Purchases. The DEPARTMENT or CONTRACTOR may purchase vehicles for the Project, using vehicle specifications approved by the DEPARTMENT for the purchase of new vehicles. These vehicles are to include buses, mini-buses, vans and other small vehicles in accordance with the CONTRACTOR'S approved application. All purchases are subject to prior approval of the DEPARTMENT, and must be in accordance with State purchasing laws and approved by the State Bureau of Purchasing. Vehicles purchased by the CONTRACTOR must be approved in writing in advance by the Executive Director of the DEPARTMENT.
- b. Other Equipment, Materials, Goods and Services. Other equipment, materials, goods, and services included in the approved application to be financed in whole or in part pursuant to this Contract Agreement may be procured by the CONTRACTOR in accordance with the above procedures and the following requirements:
  - (1) Specifications and Bid Advertisements. Equipment specifications shall be written so as not to unduly restrict competitive bidding. Equipment specification and advertisement for bid packages shall be approved by the DEPARTMENT prior to submission to prospective bidders.
  - (2) Award of Bids. The DEPARTMENT must concur in the award of bid to procure equipment for the Project made by the CONTRACTOR prior to the execution of an agreement between the CONTRACTOR and any bidder.

- (3) All purchases must be made consistent with State laws and purchasing procedures and revised 2 CFR Part 200 as amended where appropriate.
- c. Real Property. In general the acquisition of real property shall be in accordance with procedures contained in the Departments State Management Plan and any subsequent specific procedures and requirements provided by the Department. The MDOT may confer with FTA concerning the specific requirements governing the acquisition, use or disposition of real property purchased with federal funds.

**Section 9. Title to Project Equipment and Real Property.** Title to Project equipment, land and facilities shall be in the CONTRACTOR'S name subject to the restrictions of use and disposition of the Project as set forth herein and in accordance with Section 10, 11 and 14 of this Contract Agreement. The DEPARTMENT shall be listed as first lienholder on and maintain all original titles to project equipment and one set of keys. If this Contract Agreement is terminated, title to Project vehicles shall become vested in the DEPARTMENT as first lien holder and the DEPARTMENT shall have the right to repossess the same.

a. The CONTRACTOR shall grant to the DEPARTMENT a security interest in the Project equipment through the execution of a security agreement in a form acceptable to the DEPARTMENT and by the filing of financing statements necessary to perfect that security interest, and in regard to vehicles purchased by the CONTRACTOR, under the terms of this Contract Agreement. The DEPARTMENT shall be listed as first lienholder on, and maintain all, original titles to vehicles purchased by the CONTRACTOR, under the terms of this Contract Agreement. A copy of the Security Agreement form, acceptable to the DEPARTMENT, is attached hereto as **Exhibit C.**

b. When real property is acquired and/or developed under the terms of this Contract Agreement, CONTRACTOR grants to the DEPARTMENT a security interest in the real property to secure CONTRACTOR'S performance of the terms of this Contract Agreement and shall perfect that security interest by executing a deed of trust and a notice of federal interest in a form acceptable to the DEPARTMENT and by filing that deed of trust in the land records of the county where the real property is located. At least ten days prior to the transfer of funds under the terms of this Contract Agreement for the acquisition and/or development of real property, the CONTRACTOR shall provide to the DEPARTMENT a title certificate from a licensed attorney to be selected by the DEPARTMENT showing that there are no encumbrances on the real property to be acquired and/or developed, and the CONTRACTOR shall have the title certificate updated immediately prior to the transfer of funds for the acquisition and/or development of the subject property. **(A copy of the Deed of Trust form, acceptable to the DEPARTMENT, is attached hereto as Exhibit D.) (A copy of the Notice of Federal Interest Form acceptable to the DEPARTMENT is attached hereto as Exhibit E.)**

c. In addition, when real property is acquired and/or development under the terms of this Contract Agreement, CONTRACTOR shall convey to the DEPARTMENT the CONTRACTOR'S executory power to transfer any interest in the real property until the CONTRACTOR has fulfilled it's obligations under the terms of this Contract Agreement. The conveyance of the CONTRACTOR'S executory power shall be in a form acceptable to the DEPARTMENT. **(A copy of the Conveyance of Executory Power form, acceptable to the DEPARTMENT, is attached hereto as Exhibit F) which shall be duly recorded in the land records of the county.**

d. If the CONTRACTOR is a governmental entity, in lieu of b. and c. above, it agrees to execute a notice of federal/state interest. **(a copy of an acceptable form is attached hereto as Exhibit E.)**

**Section 10. Use of Project Equipment and Real Property.**

- a. The CONTRACTOR agrees that the Project equipment, land and facilities shall be used for the provision of transportation service within the area described in the Project description, or some other subsequently authorized area approved by the DEPARTMENT in accordance with Section 14 of this Contract Agreement for the duration of the Project. If, during the duration of the Project, any equipment or real property is not used in this manner or is withdrawn from transportation service for more than thirty (30) days, the CONTRACTOR shall notify the DEPARTMENT in writing and shall dispose of such equipment or real property in accordance with guidance by the DEPARTMENT and Section 14 of this Contract Agreement. The DEPARTMENT shall have the right to conduct periodic inspections for the purpose of confirming maintenance pursuant to this section.
- b. Sanctions for Non-Compliance. In the event of the CONTRACTOR'S non-compliance with the provisions of this section, the DEPARTMENT shall impose such sanctions as it may determine to be appropriate, including but not limited to:
  - (1) Withholding or discontinuing further reimbursements or funding, and/or;
  - (2) Cancellation, termination or suspension of the Contract Agreement in whole or in part.
- c. The CONTRACTOR shall keep satisfactory records with regard to the use of the PROJECT equipment and shall submit to the DEPARTMENT upon request such information as is required to assure compliance with Title 23 of the CFR.
- d. In accordance with 49 CFR, Part 605, as amended, the CONTRACTOR may use project equipment for the provision of school bus transportation, as long as such use is a modification of regular service to the general public and such use is not for exclusive school bus transportation to the exclusion of general public riders or represents unfair competition with private operators. The CONTRACTOR agrees to comply with the Charter rules described in 49 CFR, Part 604, as amended.
- e. The CONTRACTOR shall neither use nor permit the vehicles, property and equipment provided hereunder to be used for any illegal or unlawful purpose or otherwise subject the vehicles and equipment to confiscation. The CONTRACTOR agrees to reimburse the DEPARTMENT for the fair, retail market value in the event the vehicle and equipment are confiscated while in the possession or control of the CONTRACTOR, together with other such expenses or losses that the DEPARTMENT may incur as a result thereof. The CONTRACTOR further agrees not to permit the vehicles, property and equipment provided hereunder to be used in violation of any Federal, State or municipal/local statute, law, ordinance, rule or regulation applicable to the operation of the vehicles, property and equipment and will indemnify and hold the DEPARTMENT harmless from any and all fines, forfeitures and penalties assessed against such vehicles and equipment.

**Section 11. Encumbrance of Project Equipment or Real Property.** Except as provided in Section 9 of this Contract Agreement, the CONTRACTOR shall not execute any lease, pledge, mortgage, lien, or other contract (including a grant anticipation note or "Safe Harbor Lease" under Section 168(g)(8) of the Internal Revenue Code of 1954) touching or affecting the Federal interest in any Project facilities or equipment, nor shall it obligate itself in any other manner, with any third party with respect to Project facilities for equipment, unless such lease, pledge, mortgage, lien, contract or other obligation is expressly authorized in writing by the DEPARTMENT; nor shall the CONTRACTOR, by any act or omission of any kind, adversely affect the Federal interest or impair its continuing control over the use of Project facilities or equipment.

**Section 12. Records and Maintenance of Project Real Property and Equipment.** For the duration of the PROJECT, the CONTRACTOR shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. The DEPARTMENT shall have the right to conduct periodic inspections for the purpose of confirming proper use and maintenance pursuant to this Section, and the approved program maintenance procedure. The CONTRACTOR must maintain a project equipment inventory and a formal maintenance program. Property records must include a description of the equipment, vehicle identification number, source, cost, acquisition date, percentage of federal participation, detailed maintenance records and any disposition data.

**Section 13. Insurance.** The CONTRACTOR shall obtain insurance adequate to protect the Project's property and equipment, as well as public liability insurance. The DEPARTMENT shall be named as loss payee for property and equipment purchased with Section 5311 funds. The CONTRACTOR shall submit evidence of such insurance coverage including documentation of the solicitation process annually to the DEPARTMENT or prior to beginning vehicle operations, and said coverage shall remain in effect at all times during the duration of the PROJECT.

The CONTRACTOR shall obtain and maintain at all times during the duration of the Project insurance coverages adequate to meet the appropriate requirement of the Mississippi Transportation Commission **or any successor agency**. In the absence of **these** requirements the following insurance coverages in the amounts apply:

Comprehensive general liability insurance in an amount not less than one million dollars (\$1,000,000.00), including coverage for blanket contractual liability, broad form property damage, personal injury and bodily injury (including illness, disease and death), and products/completed operations; and

Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000.00), covering bodily injury and death and property damage; and

Blanket employee fidelity bond insurance in an amount not less than fifty thousand dollars (\$50,000.00); and

Workers' compensation insurance in the amount required pursuant to the laws of the State of Mississippi.

All insurance policies required herein shall be issued by a reputable and substantial insurance company or companies licensed to do business in the State of Mississippi, and shall include an endorsement providing substantially as follows:

Insurer may not cancel this policy, modify or amend its terms or reduce coverage for a period of sixty (60) days after the Mississippi Department of Transportation has been notified by certified mail, return receipt requested, of the Insurer's intention to cancel, modify, amend or reduce the coverage.

The CONTRACTOR shall immediately notify the DEPARTMENT in writing of any notices from insurer concerning cancellation or reduction in insurance coverages.

The DEPARTMENT shall be named as loss payee for property and equipment purchased with Section 5311 funds. On or before the inception of the Period of Performance of this Contract Agreement, the CONTRACTOR shall deliver to the DEPARTMENT a Certificate or Certificates of Insurance, certifying the types and amounts of coverages required herein, the loss payee and the required endorsement.

**Section 14. Disposition of Equipment and Real Property.** The CONTRACTOR agrees that the Project equipment and property shall be used as described in Section 10 of this Contract Agreement and the approved State Management Plan. If, at any time during the duration of this Project, any real property or equipment with remaining useful life is not used as described above, the CONTRACTOR shall notify the DEPARTMENT in writing and after concurrence by the DEPARTMENT shall dispose of such real property or equipment in accordance with applicable laws and regulations and with the following procedures:

- a. Disposal of real property or equipment with remaining useful life requires written approval from the DEPARTMENT.
  - (1) If the equipment is transferred to another Section 5311 CONTRACTOR, the receiving CONTRACTOR shall be responsible for reimbursing the transferring CONTRACTOR its pro rata share of the current fair market value, based on the twenty percent (20%) local match ratio. The twenty percent (20%) local match shall be based on at least two (2) independent appraisals of the current fair market value. In the absence of independent appraisals value of the equipment shall be based on standard depreciation calculations.
  - (2) If the equipment or real property is approved to be retained by the CONTRACTOR, and the equipment or property has a fair market value of at least \$5,000.00, the CONTRACTOR shall reimburse the DEPARTMENT, in an amount based on the federal pro rata share of the original cost, equal to the current fair market value of the equipment or property. The fair market value must be based upon two (2) independent objective appraisals. These appraisals must be approved by the DEPARTMENT.
  - (3) If the equipment or real property is approved to be sold, it shall be advertised and sold at the highest price obtainable at public sale or via sealed bids. All sales of property or equipment must be consistent with State laws. The DEPARTMENT may authorize the expenses of the sale to be deducted from the proceeds. The proceeds derived from the sale of real property or equipment may be retained by the CONTRACTOR as long as such proceeds are used to support the transportation project approved by the DEPARTMENT. Otherwise the CONTRACTOR shall reimburse the

DEPARTMENT its pro rata share of the net proceeds, based on the pro rata share of the original cost.

- b. To request disposal of real property or equipment that has reached its end of useful life, the CONTRACTOR must make a written request of a declaration of end of useful life to the DEPARTMENT. Requests for end of useful life must be made in such a manner and format as required by the DEPARTMENT in the approved program procedures manual or policy statements.
- c. The CONTRACTOR shall be responsible to the DEPARTMENT for full compliance with all provisions of State laws, 2 CFR Part 200 as amended and the "Common Grant Rule" for property disposition, and all other applicable laws, rules and regulations.

**Section 15. Contract Changes.** Modifications, changes or amendments to this Contract may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of this Contract must be in writing and signed by both parties hereto.

**Section 16. Compliance with Applicable Laws, Regulations and Certifications.** The CONTRACTOR shall, in providing these services, comply with all federal and state laws, licensing standards and other regulations applicable to the provision of these services.

**Section 17. Responsibility for Claims and Liabilities.** The CONTRACTOR shall indemnify, defend and hold harmless the DEPARTMENT and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense (including, but not limited to, any type of environmental claim, loss, damage cost charge or expense) arising out of any negligent act, actions, neglect or omission by the CONTRACTOR, its agents, employees, or subcontractors during the performance of this CONTRACT, whether direct or indirect, and whether to any person or property for which DEPARTMENT or said parties may be subject.

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

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

The DEPARTMENT shall have no liability for any claim or claims or any threatened claim or threatened claims of any nature, including without limiting the generality of the foregoing provisions, consequential, special, or other damages.

**Section 18. Disputes.** Any dispute concerning a question of fact in connection with the PROJECT which is not disposed of by agreement shall be arbitrated by the Executive Director of the Department or such person as the Executive Director may designate on behalf of the Transportation Commission. The decision of the Executive Director or his/her designee shall be final and conclusive, unless within 15 days from the date of receipt of the decision, the CONTRACTOR submits a written request for review of the decision. In that event, the CONTRACTOR shall be provided an opportunity to be heard on the review and offer evidence in support of the CONTRACTOR'S position regarding the decision. The decision of the Executive Director on the review shall be final and conclusive unless determined by a court of competent jurisdiction to be unlawful for the reason it was not supported by any substantial evidence, was fraudulent or capricious. Until a final determination is made, the CONTRACTOR shall proceed forthwith with the performance of the CONTRACTOR'S duties under the contract pursuant to the Executive Director's decision.

**Section 19. Termination of Contract Agreement.** This Contract Agreement may be terminated at any time by mutual consent of both parties. The CONTRACTOR may terminate its participation in the PROJECT by notifying in writing and receiving the concurrence of the DEPARTMENT forty-five (45) days in advance of the termination. The DEPARTMENT may terminate the Contract Agreement by giving the CONTRACTOR fifteen (15) days advance written notice in the event of determination by the DEPARTMENT of nonperformance or any breach of any terms of the contract agreement by the CONTRACTOR. The DEPARTMENT, before issuing written notice of Contract Agreement termination, may allow the CONTRACTOR forty-five (45) days to correct the problems identified. If the DEPARTMENT makes the determination that this Contract Agreement should be terminated due to (a) insufficient performance, (b) a violation of Section 4 of this contract, or any other provision, or (c) a misuse of the funds or equipment provided under this Contract Agreement, then it is agreed that this Contract Agreement shall be terminated upon fifteen (15) day notice in writing from the DEPARTMENT to the CONTRACTOR. The CONTRACTOR shall be entitled to receive compensation for eligible expenses approved by the DEPARTMENT, prior to receiving the termination notice.

CONTRACTOR'S termination of any services heretofore approved through this Contract Agreement requires prior written notification to the DEPARTMENT and DEPARTMENT concurrence and that, at a minimum, CONTRACTOR shall provide thirty (30) days written notice of termination of services published in a newspaper having local circulation, and shall post on all Project vehicles and mail to subcontractors and provide to all passengers such written notice of termination of services.

The DEPARTMENT shall have the absolute right to terminate the project contract at any time, for any reason, and in such event the DEPARTMENT'S obligations and liability hereunder shall be limited solely to payment of any compensation due CONTRACTOR as stated in this Section.

**Section 20. Interest of Members of or Delegates to Congress.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract Agreement or to any benefit arising therefrom.

**Section 21. Prohibited Interest.** No member, officer, or employee of the DEPARTMENT or of the CONTRACTOR shall have any interest, direct or indirect, in this Contract Agreement or the proceeds therefrom.

**Section 22. Identification of Documents.** All published reports and other documents completed as a part of this Contract Agreement, other than documents exclusively for internal use by the parties hereto, must contain the following disclosure on the inside front cover:

**“This document is disseminated under the sponsorship of the U.S. Department of Transportation in the interest of information exchange. The United States Government nor the Mississippi Department of Transportation assumes no liability for the contents or use thereof”.**

**Section 23. Public Notice Process for Fare/Service Changes.** The CONTRACTOR agrees to develop and implement a process to inform the public prior to raising fares, restructuring or terminating transit services. Such a process must include at least the following:

- a. A thirty (30) day written prior notice must be published in at least one newspaper of general circulation, once each week for three consecutive weeks.
- b. Written notice posted daily for at least fifteen (15) days in locations visible to passengers on each vehicle that services the route.
- c. Notification of service change in media or formats that are accessible to ADA eligible riders that are certified by the Project’s certification procedures. Notification must be made at least once each week for thirty (30) days.
- d. The DEPARTMENT must be advised in writing and provide written concurrence of any discontinuation of route or service type. Such notice should be provided forty-five (45) days in advance, but must be given at least thirty (30) days prior to the termination of service.
- e. Written notice of at least thirty (30) days must be given to all sub-contractors that have entered into a purchase of service agreement with the contractor.
- f. Service area expansions may be subject to notification and approval requirements of the Mississippi Public Service Commission.

**Section 24. Civil Rights.** During the performance of this Contract Agreement, the CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- a. **Compliance with Regulations:** The CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, the Regulations of the UNITED STATES DEPARTMENT of TRANSPORTATION (USDOT) relative to nondiscrimination in federally assisted programs (Title 49, Code of Federal Regulations, Part 21, 23 and 25-28, as amended, hereinafter referred to as the REGULATIONS), and Assurances pursuant thereto which are herein incorporated by reference and made a part of this contract.
- b. **Nondiscrimination:** The CONTRACTOR, with regard to the work performed during the contract, shall not discriminate on the grounds of sex, age, race, religion, color, disability or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Part



21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- c. Solicitations for Subcontract, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this Contract Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, or sex.
- d. Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the DEPARTMENT or FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the DEPARTMENT or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Non-compliance: In the event the CONTRACTOR'S non-compliance with the nondiscrimination provisions of this Contract Agreement, the DEPARTMENT shall impose such contract sanctions as provided by law and as it or FTA may determine to be appropriate, including, but not limited to:
  - (1) withholding or discontinuing further reimbursements, other funding and/or
  - (2) cancellation, termination or suspension of the Contract Agreement, in whole or in part.
- f. Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraph (a) through (e) of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the DEPARTMENT or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the DEPARTMENT, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.
- g. Disadvantaged Business Enterprise (DBE). It is the policy of the Mississippi Department of Transportation to comply with the requirements of 49 CFR, Part 26, to prohibit unlawful discrimination, to meet its goal for DBE participation, to meet that goal whenever possible by race-neutral means, to create a level playing field, and to achieve that amount of DBE participation that would be obtained in a non-discriminatory market place. To meet that objective in any United States Department of Transportation assisted contracts, the "Mississippi Department of Transportation's

Disadvantage Business Enterprise Programs for United States Department of Transportation Assisted Contracts”.

Neither the CONTRACTOR nor any sub-recipient or sub-contractor shall discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure of the CONTRACTOR to carry out those requirements is a material breach of the contract which may result in the termination of this contract or such other remedies as the Mississippi Department of Transportation deems appropriate. The following provisions are applicable:

(1) The CONTRACTOR shall be responsible for meeting the applicable regulations regarding participation by Disadvantaged Business Enterprises (DBE) in the Department of Transportation programs set forth in 49 CFR, Part 26, or any revision of supplement thereto. Pursuant to the requirements of 49 CFR, Part 26, the following statements regarding disadvantage business enterprises are included in, and made a part of this Contract Agreement:

(a) Policy. It is the policy of the United States Department of Transportation (USDOT) and the DEPARTMENT that disadvantaged business enterprises as defined in 49 CFR, Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Contract Agreement. Consequently the DBE requirements of 49 CFR, Part 26 apply to this Contract Agreement.

(b) DBE Obligation. The DEPARTMENT and the CONTRACTOR agree to ensure that disadvantaged business enterprises as defined in 49 CFR, Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this contract agreement.

In this regard the DEPARTMENT and the CONTRACTOR shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts that relate to this Contract Agreement. The DEPARTMENT and CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts using Section 5311 funds.

(2) As a condition of assistance, the DEPARTMENT has submitted and received approval of a Disadvantaged Business Enterprise Program (DBE), that was developed consistent with guidance contained in the Federal Register 49 CFR, Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs; Final Rule”, dated February 2, 1999 (herewith incorporated by reference and set forth as **Exhibit G**). This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance contract agreement. Upon notification to the CONTRACTOR of

its failure to carry out the approved program, the DEPARTMENT shall impose such sanctions as noted in 49 CFR, Part 26, which sanctions may include termination of the agreement or contract by the CONTRACTOR or such remedy as the CONTRACTOR deems appropriate.

- (3) The CONTRACTOR shall advise each recipient, contractor, and subcontractor that failure to carry out the requirements set forth in 49 CFR, Part 26 shall constitute a breach of contract and, after the notification to the DEPARTMENT, may result in termination of the agreement or contract by the CONTRACTOR or such remedy as the CONTRACTOR deems appropriate.
- (4) The CONTRACTOR shall take action concerning DBEs as follows:
  - (a) The CONTRACTOR shall not exclude DBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-DBEs for operation of major transportation-related activities, for the provision of goods and services to the facility or to the public on the facility.
  - (b) A CONTRACTOR that is required to submit affirmative action programs under 49 CFR, Part 26 that has business opportunities for leases shall submit to the DEPARTMENT for approval their programs' overall goals for the participation as lessees of firms owned and controlled by disadvantaged persons. These goals shall be for a specified period of time and shall be based on the factors listed in 49 CFR, Part 26. The CONTRACTOR shall review these goals at least annually, and whenever the goals expire. The review shall analyze projected versus actual DBE participation during the period covered by the review and any changes in factual circumstances affecting the selection of goals. Following each review, the CONTRACTOR shall submit new overall goals to the DEPARTMENT for approval. A CONTRACTOR that fails to meet its goals for DBE lessees shall demonstrate to the DEPARTMENT in writing that it made reasonable efforts to meet the goals.
  - (c) Except as provided in this section, the CONTRACTOR is required to include lessees in affirmative action programs. Lessees themselves are not subject to the requirements of the Part 26, except for the objective of 49 CFR, Part 26 to avoid discrimination against DBEs.

**Section 25. Equal Employment Opportunity.** In connection with the execution of this Contract Agreement, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex age, disability, or national origin. The CONTRACTOR shall comply with Executive Order 11246 as amended by Executive Order 11375, and as supplemented by DOL regulations (41 CFR, Part 60) and shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex age, disability, or national origin. Such actions 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.

**Section 26. Section 504 and ADA Requirements.** The CONTRACTOR shall comply with all the requirements imposed by Section 504 of the Rehabilitation Act of 1973 (P.L. 93.112, 29 U.S.C. 794 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336, 42 U.S.C 12101 -12213), the Regulations of the United States Department of Transportation issued thereunder (49 CFR, Part 27), the Americans with Disabilities Act of 1990 (ADA) (49 CFR, Parts 27, 37 and 38) and the Assurance by the CONTRACTOR pursuant thereto including any amendments.

**Section 27. Immigration Reform and Control Act of 1986.** *CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CONTRACTOR agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. CONTRACTOR further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. CONTRACTOR understands and agrees that any breach of these warranties may subject CONTRACTOR to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to CONTRACTOR by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, CONTRACTOR would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit. As of July 1, 2008, the CONTRACTOR is required to provide to the Mississippi Department of Transportation ("MDOT") a Certification and Agreement (Exhibit H) prior to the execution of the contract. The CONTRACTOR is solely responsible for compliance with the requirements of the Mississippi Employment Protection Act.*

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

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

**Section 28. Section 13(c) Labor Standards.** In connection with the execution of this contract, the CONTRACTOR shall protect the interest of employees affected by federal assistance as part of the Project, as provided by Section 13(c) of the Federal Transit Act of 1991, and Section 49 U.S.C. 5333 (b) as amended, and the assurance by the CONTRACTOR pursuant thereto. The CONTRACTOR shall be financially responsible for the application of the conditions of Section 13(c).

**Section 29. Other Labor Provisions.** The CONTRACTOR shall be responsible for meeting the statutory and regulatory provisions of the "Contract Work Hours and Safety Standards Act", including, but not limited to meeting the statutory requirements of 40 U.S. C. 3701 et seq. and 40 U.S.C. 3141 et seq. as amended and regulations set forth at 29 CFR Parts 4, 5, 6 and 70 through

240, as amended for non-construction contracts of \$2,500 or more that involve the employment of mechanics or laborers. Pursuant to the requirements of 40 U.S.C. 3701 et seq., as amended 40 U.S.C. 3141 et seq. as amended and the regulations set forth at 29 CFR Parts 4, 5, 6 and 70 through 240, as amended, the following statements are made part of this Contract Agreement:

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

b. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5, the CONTRACTOR and any subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages which shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.

c. Withholding for Unpaid Wages and Liquidated Damages. USDOT or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any monies 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 sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR, Section 5.5.

d. Non-construction Grants. The CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of USDOT and the Department of Labor, and the CONTRACTOR or subcontractor will permit such representatives to interview employees during working hours on the job.

e. Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs a. through e. of this paragraph 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 subparagraphs a. through e. of this paragraph.

f. Furthermore, the CONTRACTOR is responsible for providing Worker's Compensation for its employees.

**Section 30 Environmental Regulation.** The CONTRACTOR agrees (on projects with cost in excess of \$100,000) to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency regulations (40 CFR) and any amendments thereto. All violations shall be reported to the DEPARTMENT and to the U.S.E.P.A. Assistant Administrator for enforcement (EN-329).

**Section 31. Energy Efficiency.** The CONTRACTOR agrees to recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94.165) and any amendments thereto.

**Section 32. Settlement of Third Party Contract Disputes or Breaches.** FTA has a vested interest in the settlement of disputes, defaults, or breaches involving Section 5311 federally assisted third party contracts. FTA retains a right to a proportionate share, based on the percentage of the federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the CONTRACTOR shall avail itself of all legal rights available under any third party contract. The CONTRACTOR shall notify the DEPARTMENT of any current or prospective litigation pertaining to any third party contract. The DEPARTMENT and FTA reserves the right to concur in any compromise or settlement of the CONTRACTOR'S claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless the DEPARTMENT and FTA permit otherwise.

**Section 33. Private Sector Participation.** The CONTRACTOR agrees to abide by the private sector participation guidance contained in the FTA's private sector policy of October 22, 1984 and any amendments thereto, and the DEPARTMENT'S State Management Plan to ensure that private for-profit, private non-profit and other public agencies are provided reasonable notice to present their views concerning local plans, program and projects.

- a. The CONTRACTOR shall provide information necessary for the DEPARTMENT to make the required assurance to the FTA; and
- b. The CONTRACTOR must develop and implement a local private sector participation procedure that includes defined complaint procedures and is consistent with the requirements of the DEPARTMENT'S State Management Plan.

**Section 34. Ethics.** The CONTRACTOR shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds. Such code or standards shall provide that no employee, officer, or agent of the CONTRACTOR shall participate in the selection, or in the award, or in the administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- a. the employee, officer, or agent;
- b. any member of his or her immediate family;

- c. his or her partner; or
- d. an organization that employs, or is to employ, any of the above.

The code or standards shall also provide that the CONTRACTOR'S officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from subcontractors, potential subcontractors, or parties to the subcontracts. The CONTRACTOR may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State, Federal or local law, policies, rules and regulations, such code or standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such code or standards by the CONTRACTOR'S officers, employees, or agents, or by subcontractors or their agents.

**Section 35. Effective Date.** The effective date of this Contract Agreement shall be the date identified in the period of performance as defined in Section 3 of this contract agreement.

**Section 36. Bonding.** Along with this contract, the applicant shall file with the DEPARTMENT a copy of its Fidelity Bond or a Certified Letter acknowledging that a Fidelity Bond is in effect covering the CONTRACTOR against the loss of money and securities or other properties in the amount of at least \$50,000, prior to the inception of this Contract Agreement.

**Section 37. Certification Regarding Suspension and Debarment.** The undersigned CONTRACTOR certifies herein and by Certification attached hereto as part of Exhibit A and incorporated herein by reference to the best of his or her knowledge and belief that its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

**Section 38. Certification Regarding Lobbying.**

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned CONTRACTOR, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any

Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant loan, or cooperative agreement.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned CONTRACTOR shall complete and submit Standard Form-LLL. "Disclosure Form to Report Lobbying", in accordance with its instructions.
- c. The undersigned CONTRACTOR shall require that the language of this certification be included in the contracts and/or agreements at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

**Section 39. Governing Law.** This Contract Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in a court of competent jurisdiction in Hinds County, State of Mississippi. CONTRACTOR expressly agrees that under no circumstances shall the DEPARTMENT be obligated to pay an attorney's fee for the cost of legal action to or on behalf of the CONTRACTOR.

**Section 40. Program Fraud and False or Fraudulent Statements or Related Acts.**

a. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of this Contract Agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to the contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

b. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the DEPARTMENT or the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307 as amended, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307 as amended on the CONTRACTOR, to the extent the Federal Government deems appropriate.



c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Section 41. 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 Contract Agreement, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR'S failure to comply shall constitute a material breach of this contract.

**Section 42. Incorporation of Federal Transit Administration (FTA) Terms.** The preceding provisions include, in part, certain Standard Terms and conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in the most current version of FTA Circular 4220.1F, dated November 1, 2008 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any DEPARTMENT requests which would cause the CONTRACTOR to be in violation of the FTA terms and conditions.

**Section 43. State and Local Law Disclaimer.** Since many of the clauses which are suggested for use by the CONTRACTOR in its procurement documents are affected by both state and federal law requirements, the CONTRACTOR understands that it should consult with its attorney in order to assure appropriate legal guidance regarding the preparation and wording of any of the legal documents it enters pursuant to this Contract Agreement, including, but not limited to, its procurement documents.

**Section 44. Substance Abuse.** The CONTRACTOR agrees to comply with Federal Transit Administration regulations concerning substance abuse as follows:

- a. The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR, Parts 655 as amended, produce any documentation necessary to establish its compliance and permit any authorized representative of the Department of the USDOT or the DEPARTMENT to inspect the facilities and records associated with the implementation of the program as required under 49 CFR, 655.
- b. The CONTRACTOR further agrees to certify annually its compliance with 49 CFR 655 at such time and in such format as the DEPARTMENT may require.

**Section 45. Certifications and Assurances.** Certifications and Assurances executed by the CONTRACTOR are attached hereto as a part of Exhibit A (attached hereto and incorporated herein by reference and made a part hereof as if fully copied herein in words and figures).

**Section 46. No Government Obligation to Third Parties.** The CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in our approval of the solicitation or award of the underlying contract:

- a. 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 of the CONTRACT pertaining to any matter resulting from the underlying contract.
- b. The CONTRACTOR agrees to include the above clause in each subcontract funded in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor.

**Section 47. Buy America.** The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, as amended, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

**Section 48. Charter Service Operations.** The CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, as amended, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," it must not interfere with or detract from the provision of mass transportation.

**Section 49. School Bus Operations.** Pursuant to 49 U.S.C. 5323(f) and 49 C.F.R. Part 605, as amended, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

**Section 50. Recycled Products-Recovered Materials.** The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**Section 51. Notification of Federal Participation.** To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the CONTRACTOR agrees to specify the amount of Federal assistance intended to be used to finance that acquisition and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract.

**Section 52. Entire Agreement.** This contract constitutes the sole and entire Agreement between the DEPARTMENT and the CONTRACTOR with respect to the project hereof and supersedes any and all prior agreements, discussions and negotiations between the DEPARTMENT and the CONTRACTOR.

**IN WITNESS WHEREOF**, this Contract Agreement has been executed by the DEPARTMENT, an agency of the State of Mississippi, and by the CONTRACTOR, and is the requisite authorization for the individuals executing this contract agreement to execute and bind the parties hereto.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**(Year) 5311 Contract**

**Contract #** \_\_\_\_\_

**DUN #** \_\_\_\_\_

**\$** \_\_\_\_\_

\_\_\_\_\_  
**Executive Director**

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

\_\_\_\_\_  
**Typed/Printed Name**

\_\_\_\_\_  
**Attest**

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

\_\_\_\_\_  
**Typed/Printed Name**

**MISSISSIPPI TRANSPORTATION COMMISSION**

By the duly authorized Executive Director of the Mississippi Department of Transportation

\_\_\_\_\_  
**Brad Martin**  
**Executive Director**  
**Mississippi Department of Transportation**

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

**Book** \_\_\_\_, **Page** \_\_\_\_\_

\_\_\_\_\_  
**Attest**

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

\_\_\_\_\_  
**Typed/Printed Name**