



**ST. CLOUD METROPOLITAN TRANSIT COMMISSION  
(DBA – Metro Bus)  
TIRE LEASE CONTRACT INVITATION FOR BID**

The St. Cloud Metropolitan Transit Commission (DBA - Metro Bus) located at **665 Franklin Avenue Northeast, St. Cloud, MN 56304**, will be accepting bid proposals until **Monday, June 26, 2023, 12:00 p.m. CDT** to provide mileage lease tires and other services subject to the specified conditions and provisions.

Bids must be sent via digital format to: [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com). Proposals will be opened and reviewed by select members of the Metro Bus staff at the date and time specified above. Bids received after that time will be regarded as late and will not be considered. Anyone submitting a bid will not be permitted to withdraw their offer prior to thirty calendar days from the initial date it is opened.

Electronic specifications and further information can be obtained beginning **Friday, June 2, 2023** at the following web link: <https://ridemetrobus.com/business-metro-bus/>. All vendors are required to certify that they are not on the Controller General's List of Ineligible Contractors. The successful proposer will be required to comply with all applicable Equal Opportunity Laws and Regulations.

All questions in response to this Invitation for Bid must be submitted in writing no later than **Tuesday, June 13, 2023, 5:00 p.m. CDT**. Responses to all questions will be provided by **Tuesday, June 20, 2023, 5:00 p.m. CDT**.

Metro Bus hereby notifies all vendors that in regard to any contract entered into pursuant to this advertisement or solicitation, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response and will not be subjected to discrimination on the basis of race, color, sex, or national origin in consideration for a contract award.

Metro Bus reserves the right to accept or reject any or all proposals.

## **ST. CLOUD METROPOLITAN TRANSIT COMMISSION INVITATION FOR BID FOR LEASE OF TRANSIT TIRES**

### **1.0 PROPOSAL REQUIREMENTS**

#### **1.1 SCOPE**

This Invitation for Bid is for the leasing of tires for the St. Cloud Metropolitan Transit Commission's Fixed Route Transit, Paratransit, and Commuter Coach Bus operations. The bid proposal is for a Tire Lease Contract Agreement between the supplier and Metro Bus providing tires for transit and commuter coach buses to insure the safe and continuous operation of the system. Specific roles and responsibilities will be discussed between Metro Bus and the preferred supplier during the negotiation phase.

#### **1.2 SYSTEM DESCRIPTION**

Tires described herein will be used on the following fixed route, paratransit, and commuter coach buses identified in **Exhibit C**.

#### **1.3 PROPOSAL SUBMITTAL**

Proposals must be submitted per the Specifications or they will be considered non-responsive. **Late proposals will not be accepted and will be returned to the supplier.** Suppliers must use the accompanying bid quotation form, (**Exhibit A**), when submitting their proposal.

Proposal responses must be received no later than **12:00 p.m. CDT on Monday, June 26, 2023** to:

Attn: Gary Korneck, Procurement Ma  
St. Cloud Metropolitan Transit Commission  
665 Franklin Ave. NE  
St. Cloud, MN 56304

Via electronic format to: [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)

#### **1.4 EVALUATION AND AWARD OF PROPOSALS**

Evaluation of proposals by Metro Bus will include but may not be limited to:

- Prior knowledge of the suppliers past and of the services provided;
- The ability to deliver quality service to Metro Bus in terms of the requirements called for in the specifications;
- Experience and ability of the supplier to provide transit specific tire services to public transit & commuter coach fleets;
- Tire mileage costs.

Proposals will be reviewed on the following basis:

- 85% of the proposal consideration will be based upon the proposed lease rates. Total cost comparisons will be calculated using Metro Bus's average projected mileages for each tire group.
- 15% of the proposal consideration will be based on mileage history results provided by the supplier for similar geographic/vehicle fleets, (**New Flyer Xcelsior 35', ARBOC Spirit of Mobility 26' & 28', Champion LF Transport 26', MCI D4500 45'**), base average mileage information, along with service/support provided with the bid proposal.

### **1.5 AGREEMENT OF TERMS**

By submitting a proposal, the supplier agrees to all the terms and conditions of this IFB. Suppliers must not alter any portion of the IFB document, with the exception of adding the information requested. The supplier will not change the wording of its proposal after closing and no words or comments will be added to the proposal unless requested by Metro Bus for purposes of clarification.

### **1.6 MODIFICATION OF TERMS**

Metro Bus reserves the right to modify the terms of this IFB at any time at its sole discretion prior to opening.

### **1.7 LIABILITY OF INFORMATION**

Metro Bus has placed considerable effort to ensure the accuracy of the data provided in **Exhibit C** and within this IFB. Fluctuations in equipment requirements, operational structure, and other miscellaneous service adjustments must be held permissible.

### **1.8 ACCEPTANCE OF PROPOSALS**

This Invitation for Bid should not be construed as an agreement to provide goods or services. Metro Bus is not bound to accept the lowest price proposal, or any of those submitted. Proposals will be assessed in light of the evaluation criteria. Metro Bus will be under no obligation to receive further information, whether written or oral, from any supplier after the final submission date.

Metro Bus reserves the right to accept or reject any or all proposals and to waive any defects or technicalities or to advertise for new proposals where the acceptance, rejection, waiving or advertising of such would be in the best interest of Metro Bus.

### **1.9 ADDENDUMS**

Any Metro Bus changes or revisions, or any vendor requests for clarification/revision to this IFB must be communicated by written correspondence at the deadline to receive written inquiries listed on Page 1.

Any written addendum to this IFB will be collectively transmitted electronically to all known bidders at the acknowledged response to inquiries date and time on Page 1. A

copy of each addendum will be placed on Metro Bus's website <https://www.ridemetrobus.com/business-metro-bus/> where the IFB has been advertised.

All changes/revisions or accepted vendor requests for clarification/revision will be incorporated into the terms and conditions of any resulting Agreement.

**1.10 ENTIRE AGREEMENT**

The final Tire Lease Agreement, including all attachments, FTA clauses, certifications, DOT conditions, specifications, addendums, etc. as made part of this Invitation for Bid, will contain the entire understanding of the parties hereto with the subject matter hereof and there are no other agreements, understandings, representations or warranties, whether express, implied, statutory or otherwise, other than set forth herein.

**1.11 FINAL AGREEMENT**

A sample contract agreement has been included as part of this IFB. The selected supplier and Metro Bus will work towards negotiating and executing a mutually beneficial final agreement upon award of this bid.

The final agreement cannot be amended except in writing signed by both parties. The final agreement shall be governed, construed and interpreted in all respects in accordance with the laws of the State of Minnesota.

**1.12 TERM OF AGREEMENT**

The final agreement shall be a five (5) year term beginning **August 1, 2023, through July 31, 2028.**

**1.13 DISADVANTAGED BUSINESS ENTERPRISE (DBE) (49 CFR Part 26)**

The St. Cloud Metropolitan Transit Commission (Metro Bus) has established a Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26, to ensure all entities have an equal opportunity to participate in DOT assisted contracts.

The objectives of Metro Bus's DBE/SBE program and of 49 CFR Part 26 are:

1. To ensure non-discrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBE's can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBE's;
5. To help to remove barriers to the participation of DBE's in DOT assisted contracts;
6. To promote the use of DBE's in federally assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE/SBE program.



8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBE's.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Therefore, the vendor/contractor must satisfy the requirements for DBE participation as stated herein. These requirements are in addition to all other Equal Opportunity Employment (EEO) requirements of this contract. The St. Cloud Metropolitan Transit Commission shall make all determinations with regard to whether or not a bidder/offeree is in compliance with the requirements stated herein.

The vendor/contractor, its subrecipients, or its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The vendor/contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the vendor/contractor to carry out these requirements is a material breach of this contract, which may result in termination of the contract or such remedy as deemed appropriate by the St. Cloud Metropolitan Transit Commission which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages (if applicable);
4. Disqualifying the vendor/contractor from future bidding as non-responsible (49 CFR Part 26.13 (b)).

The St. Cloud Metropolitan Transit Commission will only accept DBE's who are:

1. Certified at the time of bid opening or proposal evaluation;
2. An out-of-state firm who has been certified by either a local government, state government, or federal government entity who is authorized to certify DBE status;
3. An agency whose DBE certification process has received FTA approval.

The vendor/contractor is required to pay its subcontractors for satisfactory performance of their work in relation to this contract no later than thirty (30) days after the vendor/contractor's receipt of payment for that work from the St. Cloud Metropolitan Transit Commission or in accordance with state statutes, whichever is more restrictive. In addition, the vendor/contractor is required to return any retainage payments to those subcontractors within thirty (30) days (or in accordance with state law, whichever is more restrictive) after the subcontractor's work related to this contract is satisfactorily completed.

The vendor/contractor must promptly notify the St. Cloud Metropolitan Transit Commission whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work. The vendor/contractor must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The vendor/contractor may not terminate any DBE subcontractor and perform that work through its own forces, or those of an affiliate, without prior written consent of the St. Cloud Metropolitan Transit Commission.

**DBE PARTICIPATION GOAL:** There is no DBE participation goal for this contract.

## **1.14 PROTEST PROCEDURES**

Vendors that feel an alleged violation of Metro Bus's procurement procedures has occurred during a solicitation may file a written protest with the Chief Executive Officer (CEO) up to the date and time of the proposal opening. The CEO will review the protest and determine if the proposals will be opened or delayed. The CEO's decision will be transmitted in writing to the protesting party within five (5) working days.

Vendors that feel that an alleged violation of Metro Bus's procurement procedure has occurred after proposal opening may file a written protest with the CEO up to three working days after the date and time proposals were opened. The CEO will review the protest and determine if the award of the contract to the responsive Proposer should be delayed. The CEO's decision will be transmitted in writing to the protesting party within three (3) working days.

Parties not satisfied by the CEO's decision regarding either type of protest described above may, within five (5) working days of receipt of the CEO's written decision, appeal the decision to the Metro Bus Board of Commissioners. The appeal must be made in writing. The Commission Board will schedule a hearing where the appellant may be heard. Once the Commission's decision is announced, no further local appeals may be made.

Vendors should file all protests in care of the CEO, as appropriate, at the following address:

**Metro Bus**  
**Request for Proposal Protest**  
**665 Franklin Avenue NE**  
**St. Cloud, MN 56304**

The decision of the Metro Bus Board of Commissioners is final.

The Federal Transit Administration (FTA) will only review protests regarding the alleged failure of the purchases to have a written protest procedure or alleged failure to follow such procedures. Protestors may file a protest with the FTA regional office no later than five federal working days after a final decision of Metro Bus. Metro Bus will not award any contracts until it is sure that no protest has been filed with the FTA. The protest filed with the FTA shall:

- a. Include the name and address of the protestor.
- b. Identify the grantee, project number, and the proposal number.
- c. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
- d. Include a copy of the local protest filed with the grantee and include a copy of the grantee's decision, if any. Protests to the FTA should be addressed to:

**Office of Program Oversight  
Federal Transit Administration  
200 West Adams Street, Suite 320  
Chicago, IL 60606**

Vendors are cautioned that Metro Bus takes all protests seriously and that frivolous protests lacking factual basis will subject a protestor to assessment of Metro Bus's cost and legal fees in responding to the protest. Vendors must review the Metro Bus proposal protest guidelines carefully before filing a protest. At the time of filing a protest, the Vendor agrees to be bound by these guidelines.

**1.15 FORCE MAJEURE**

To the extent that either party is not able to perform an obligation under this Agreement due to fire, flood, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, acts of terrorism, epidemics, pandemics, any federal or state coronavirus mandates or protocols, any law or order of any governmental agency, or other cause beyond that party's reasonable control, that party may be excused from such performance so long as such party provides the other party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of nonperformance and continues performance whenever and to the extent such causes are removed.

**1.16 GOVERNING LAW**

The venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in the State of Minnesota. The laws of Minnesota shall govern this transaction.

**2.0 FUNCTIONAL REQUIREMENTS**

**2.1 CONTRACT TERM AND DISPOSITION OF TIRES AT TERMINATIONS**

The contract shall be for a five (5) year period. At the termination date of the contract, and unless the parties hereto enter into a new mileage or tire purchase contract to become effective on the termination date; Metro Bus shall have the following options:

**2.1. a** Purchasing the then current remaining lease tires furnished for service at the then current rate per tire mile times the suppliers stated Base Average Mileage less mileage run for that tire. When a tire is not available for inspection to apply the above calculation(s) whether lost, stolen or otherwise missing, or destroyed by fire, or involved in an accident, reimbursement shall not be in excess of fifty percent (50%) of the current value of a similar tire, unless supplier can provide an auditable accounting of the tire's accurate mileage just prior to the loss.

**2.1. b** Upon thirty (30) days prior written notice, (and in the event of a change of supplier), elect to run out the remaining mileage on any contract tires over a period not to exceed thirty-six (36) months from the date of the termination of the contract. The rate per tire mile during the run-out period shall be that rate in effect during the six months prior to the termination. Metro Bus

shall, to the extent possible, continuously use such tires until they are unfit for service. Any remaining tire life at the end of the thirty-six (36) month period must then be purchased as stated in **2.1. a** above.

At the termination of any agreement no additional costs/charges may be assessed Metro Bus such as casing charges, interest penalties, severance pay, etc. During the run-out period, the terms of the contract and any addenda will be in effect except that the supplier shall be relieved of any requirement to furnish tires, tubes, flaps, repair material, or tire service during the said thirty-six (36) month run-out period unless agreed to by the supplier. Tires will be purchased as is with no further warranty and paid for within 30 days of final invoice.

## **2.2 SALE OF BUSES AND TIRE TESTING**

If, during the term hereof, Metro Bus shall sell, or in any manner, dispose of any of its buses, which shall have been equipped with tires supplied hereunder, or if for any reason Metro Bus shall discontinue the use of any such buses, Metro Bus shall remove all tires first for use on other buses in the fleet or purchase each tire at the then current rate per tire mile times the supplier's stated Base Average Mileage less mileage run for that tire. Metro Bus reserves the right to install tires of other makes on up to five percent (5%) of its vehicles for the purposes of testing other makes of tires. No liability of any kind shall be passed to the supplier for test tires that are leased or purchased from another manufacturer.

## **2.3 TITLE TO TIRES AND LIENS ON BUSES**

Title to all lease tires and equipment furnished hereunder shall be and remain at all times property of the supplier. Metro Bus will protect and hold supplier harmless against any claim or interest in supplier's tires made by any holder of a lien on any buses which Metro Bus uses or may use the supplier's tires. Metro Bus agrees to keep supplier advised concerning any such liens and will give supplier any details thereof, which supplier may request. Metro Bus shall not transfer, sublet, or lend the tires furnished by the supplier or permit the tires to be used by anyone other than Metro Bus without prior written consent of the supplier.

## **3.0 TIRE AND MATERIAL REQUIREMENTS**

### **3.1 DESCRIPTION**

Metro Bus currently utilizes the following tires on all of its 35' New Flyer buses:

- **(Fixed Route) 305/70R-22.5, Tubeless 16-ply load range "H".**

The 26' & 28' ARBOC and 26' Champion buses utilize the following tires:

- **(Dial-a-Ride) (225/75R16, Tubeless load range "E".**

Metro Bus currently utilizes the following tires on all of its 45' MCI Commuter Coaches:

- **(MCI) 315/80R22.5, R249, 20 -ply load range "L".**



Approved equals need not be specifically requested. Suppliers should provide with their proposal information on each comparable tire type per the attached **Exhibit B**. (Please provide as many copies as necessary).

\* (All tires must be uniquely identifiable with at least a five (5) digit alphanumeric brand for record keeping purposes. Branding must be done prior to delivery and clearly visible on both sides of each tire. Branding must not be more than six (6) digits alphanumeric).

### **3.2 MISCELLANEOUS TIRE AND MATERIALS RESPONSIBILITIES**

**3.2. a.** Tires furnished shall be shipped to the Metro Bus Operations Center. The supplier shall pay all freight or delivery charges. Shipping and disposal charges for tires removed from service shall be the responsibility of the supplier. If during the term of the contract Metro Bus purchases new buses, the supplier shall deliver to the Continental U.S. bus manufacturer the new tires as required. Costs for shipping in this case shall remain the responsibility of the supplier.

**3.2. b.** Supplier shall furnish an adequate stock of tires including spares for the proper upkeep and maintenance of the tire program as mutually agreed upon by both parties. Supplier will demonstrate a commitment of working with Metro Bus to reduce spare inventory by utilizing available vehicle and tire history and through proactive supply management.

### **3.3 RIMS, INFLATION OF TIRES AND LOADING CAPACITIES**

All rims shall be furnished by and remain the property of Metro Bus. Rims used shall be of the sizes and types and spaced as recommended by the Tire and Rim Association of America. Tire inflation and bus loading capacities per tire shall be in accordance with the recommendation of said Association.

### **3.4 USAGE, CARE AND STORAGE OF TIRES**

Metro Bus agrees that it will provide a safe and suitable place in an enclosed building for the storage of spare tires and tires unfit for further service so that such tires shall not be subject to damage by the elements; that it will provide inspection and adequate road service for its fleet so that a bus will never ordinarily be operated with a deflated or flat tire thereon; that it will exercise ordinary care in the use of all tires furnished and in operating, storing and parking its buses so that none of said tires may be subjected to misuse.

Metro Bus will pay to the supplier the amount of any damage or loss resulting from accident or improper or negligent use or theft or fraudulent conversion of said tires. The value of tires for the purpose of determining the amount of any damage or loss under this paragraph shall not exceed the current rate per mile times the suppliers stated Base Average Mileage less mileage run for that tire.

## **4.0 REPORTING AND PAYMENT**

### **4.1 MILEAGE REPORTS, PAYMENTS, INDIVIDUAL TIRE MILEAGE**

Metro Bus shall keep an accurate record of the number of miles covered by each bus during the term hereof and shall send a report of individual bus mileage at the end of each month to the supplier. Metro Bus shall make payment for the mileage run on the tires furnished hereunder, terms Net 30, at the accepted rate per tire mile for each said mile of service.

The number of miles used by each bus shall be determined by means of an instrument which will accurately record mileage being traveled.

#### **4.1.1 TAX EXEMPTION**

Metro Bus is tax exempt. A copy of Metro Bus's Certificate of Exemption Form will be provided upon request.

#### **4.1.2 REPORTING**

Metro Bus agrees to provide supplier, (in electronic format), monthly tire change information and appropriate vehicle numbers and mileage for changes to enable the Supplier to maintain any historical individual tire records.

### **4.2 RATE ADJUSTMENTS**

It is expected that rate adjustments would be made annually on August 1<sup>st</sup> of each contract year. Rate adjustments should be specified in **Exhibit A**. Suppliers must provide quotes on an annual basis for the entire 5-year term of the contract.

## **5.0 APPROVED EQUALS AND CLARIFICATIONS**

Requests for approved equals; clarifications of the specifications, and protest of specifications must be received by Metro Bus, in writing, not less than ten (10) days before the date of the proposal opening. Any requests for an approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to, or meets, the specification requirements. Metro Bus will not approve any recommended use of recapped tires.

## **6.0 TIRE RUN-OUT CLARIFICATION**

Metro Bus currently has a contract with Bridgestone/Firestone expiring July 31, 2023. Should an award be extended to another supplier, Metro Bus, upon thirty (30) days prior written notice, has then exercised its option to run out any remaining tire stock during the next thirty-six (36) month period at the current lease rate upon termination of the agreement. It is Metro Bus' intention to run out any and all mileage left in these tires as quickly as possible as a priority over utilizing new supplier stock.

## **7.0 TERMINATION FOR DEFAULT**

In the event of early termination of the agreement by Metro Bus for default, Metro Bus,

upon thirty (30) days prior written notice, will then exercise its option to run out all remaining tires in service over the next thirty-six (36) month period at the current lease rate. It will be Metro Bus's intention to run out all mileage left in these tires as a priority over utilizing new supplier stock. All new remaining tire stock will be returned to the supplier at the suppliers expense.

## **8.0 DELIVERY**

All tire orders must be shipped **no later** than fifteen (15) working days from the submitted order date once the supplier receives an order request from Metro Bus. It will be the responsibility of the supplier to provide adequate justification and to notify Metro Bus immediately of any potential delivery delay. Overdue deliveries minus prior notification and supporting justification will be held subject to a 5% penalty reduction on the ensuing month tire lease invoice determined at Metro Bus' sole discretion.

## **9.0 INDEMNIFICATION**

Notwithstanding anything in a subsequent contract to the contrary, Metro Bus/Supplier agrees to indemnify and hold harmless Metro Bus/Supplier from and against any and all damages, and liabilities including reasonable attorney's fees which arise out of injury or damage proximately caused by defective workmanship or materials in products manufactured for Metro Bus/Supplier and leased /sold to Metro Bus/Supplier pursuant to any subsequent contract. Metro Bus/Supplier shall not be liable in any way for any errors or omissions by Metro Bus/Supplier's authorized independent dealers or franchises that may provide services to Metro Bus/Supplier. The supplier shall not be liable for any damages and liabilities to the extent caused by the misuse or abuse of the product(s) or negligence by Metro Bus.

Notwithstanding any other provision of a subsequent contract to the contrary, in no event shall either party be liable for any loss of actual or anticipated profits, loss of anticipated business, downtime costs or delay claims (whether direct or indirect), nor for any other special, indirect, incidental, or consequential damages arising out of, relating to, or in any way connected with a subsequent contract or the provision of tires and/or services, whether based in warranty, contract, tort, negligence, strict liability, or otherwise.

## **10.0 INSURANCE REQUIREMENTS**

Each vendor will submit to Metro Bus upon project award (and prior to any services performed) certificates of the vendor's insurance coverage indicating the presence of coverages and limits no less than the following:

1. Workers' Compensation:

Coverage A. Statutory Benefits.

Coverage B. Employer's Liability.

Bodily Injury by accident                      \$1,000,000 each accident

Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage must include a Waiver of Subrogation endorsement as it pertains to the vendor’s negligence.

2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for “Any Auto” or “All Owned, Scheduled, Hired and Non-Owned”.

Coverage must include a Waiver of Subrogation endorsement as it pertains to the vendor’s negligence.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
General Aggregate Limit (Other than Products/Completed Operations)	\$2,000,000

Coverage must include a Waiver of Subrogation endorsement as it pertains to the vendor’s negligence.

**11.0 CONTRACTING ETHICS**

**Gratuities**

It is a breach of contracting ethics for any person to offer, give, or agree to give any Metro Bus employee or former employee, or for any Metro Bus employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

**Kickbacks**

It is a breach of contracting ethics for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

**Contingent Fees**

It is a breach of contracting ethics for a person to be retained, or to retain a person, to solicit or secure a Metro Bus contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

**Collusion**

It is a breach of contracting ethics for a person to collude, conspire, or agree with other persons, firms or corporations to submit a sham proposal, to refrain from proposal, to fix prices, costs, or profits, or to secure any other advantage against Metro Bus.

**Certification**

When signing the Proposal Quotation Form, Vendors are cognizant of these requirements and thereby certify that it has not breached any of the foregoing contracting ethics. No Vendor shall sign the proposal without reviewing all material facts. False or fraudulent certifications shall subject the Vendor to all penalties and remedies provided by law, and to liability for Metro Bus costs and fees, including attorney's fees, in enforcing this provision.

**Specification Documents**

These documents shall not include any exclusionary or discriminatory provisions that are not needed to meet the requirements of Metro Bus.

**12.0 FTA REQUIRED CERTIFICATIONS and DBE SCHEDULES  
(Attached Separately)**

A "Buy America" Certificate, Debarment-Suspension, and Certification Regarding Lobbying are required to be submitted with each vendor's bid along with DBE Schedule's C, D, and F. (Schedule D must be submitted prior to contract award if applicable).

Any proposal which does not include these documents will be considered non-responsive.

**13.0 FTA THIRD PARTY CONTRACT CLAUSES**

**No Federal Government Obligation to Third Parties**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal

assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts**

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

**Access to Records and Reports**

**a. Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

**b. Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

**c. Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

**d. Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### **Federal Charges**

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 Metro Bus and FTA , as they may be amended or promulgated from time to time during the term of this contract.

Contractor's failure to so comply shall constitute a material breach of this contract.

### **Civil Rights and Equal Opportunity**

Metro Bus is an Equal Opportunity Employer. As such, Metro Bus agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Metro Bus agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24,

1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

### **Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, 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 Metro Bus requests which would cause Metro Bus to be in violation of the FTA terms and conditions.

**21. METRIC REQUIREMENTS 15 U.S.C. §§205 2007-Pub. L. 110-69** As required by U.S. DOT or FTA, Metro Bus agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive



Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Metro Bus agrees to accept products and services with dimensions expressed in the metric system of measurement.

**22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS)**

**ARCHITECTURE AND STANDARDS** 23 U.S.C. Section 517(d) 23 U.S.C. §502 Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

**23. CORRIDOR PRESERVATION 49 U.S.C. 5323(q)** The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

**24. VETERANS EMPLOYMENT 49 U.S.C. 5325 (k) Veterans Employment.** As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, Contractor agrees that it: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and b. Contractor also assures that its sub-recipients will: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**Energy Conservation**

The contractor agrees to comply with 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.

### **Termination for Convenience**

Metro Bus may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in Metro Bus'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 Metro Bus to be paid the Contractor. If the Contractor has any property in its possession belonging to Metro Bus, the Contractor will account for the same, and dispose of it in the manner Metro Bus directs.

### **Termination for Default [Breach or Cause]**

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, Metro Bus 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 will be paid only 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 Metro Bus 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, Metro Bus, 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.

### **Opportunity to Cure**

Metro Bus, 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 will state the time period in which cure is permitted and other appropriate conditions.

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

### **DBE**

The contractor, subrecipients 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 C.F.R. part 26 in the award and administration of DOT-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 the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

**DBE PARTICIPATION GOAL:** There is no DBE participation goal for this contract

### **Recycled Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

**14.0**

**STANDARD DOT CONDITIONS**

UNITED STATES DEPARTMENT OF TRANSPORTATION  
ST. CLOUD METROPOLITAN TRANSIT COMMISSION

C-1 REQUIRED CLAUSES, CONTRACT PROVISIONS

The services identified in these specifications are to be purchased with the assistance of a grant from the Federal Government under the Urban Mass Transportation Act of 1964, as amended (hereinafter referred to as Federal Transit Administration (FTA). In the course of its performance under this tire lease Contract, the successful proposer will be required to comply with all applicable terms and conditions prescribed for third party contracts in grant contract/s between the United States of America and Metro Bus.

The contract between Metro Bus and the successful proposer, and between the contractor in each of its related subcontracts, shall contain the following provisions:

C-2 FEDERAL LAWS AND REGULATIONS

Federal laws, regulations, policies, and related administrative practices applicable to this Contract on the date the Contract is executed may be modified from time to time and said modifications will apply to this project as required. All standards or limits set forth in this Contract to be observed in the performance of the project are minimum requirements.

C-3 PROHIBITED INTERESTS

No member, officer, or employee of Metro Bus or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement of the proceeds thereof.

C-4 INTEREST OF MEMBERS OR OF 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 Agreement or to any benefit arising therefrom.

C-5 INELIGIBLE CONTRACTORS

The contractor hereby certifies that it is not one included on the U.S. Comptroller General's Consolidated List of Persons or Firms currently debarred for violations of various public contracts incorporating labor standards provisions.

C-6 INTEREST OF CONTRACTOR

The contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in such performance of this Agreement, no person having such interest shall be employed.

C-7 AUDIT AND INSPECTION OF RECORDS

The Contractor shall permit the authorized representative of Metro Bus, the U.S. Department of Transportation and the Comptroller General of the United States to inspect all non-proprietary project work, materials, payrolls and other data, and to audit the books, records, and accounts of the Contractor relating to its performance under this contract with thirty (30) days' prior written, during Contractor's normal business hours, and Metro Bus, Federal, State, Local or agency conducting the audit shall bear its sole expense.

Metro Bus has agreed to require each third party contractor whose contract award is not based on competitive proposal procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all non-proprietary work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

Contractors shall maintain contract records for three years after final agreement is made.

C-8 COPYRIGHT AND PATENT

No reports, maps or other documents produced in whole or in part under this Agreement shall be subject of an application for copyright by or on behalf of the contractor.

If any contract or subcontract involves the development of patents, a Patent Rights Clause must be obtained from FTA and included in the contract.

C-9 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from

the underlying contract.

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

#### C-10 ENERGY CONSERVATION

All contractors shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. ' 6321 et seq

#### C-11 PROHIBITION AGAINST THE USE OF FEDERAL FUNDS FOR LOBBYING

Contractors who apply or submit proposals for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, New Restrictions on Lobbying. @ Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer to 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 award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### C-12 BREACHES AND DISPUTE RESOLUTION

- 1.Disputes. Metro Bus and the Contractor will intend to resolve all disputes under this Contract to the best of their abilities in an informal manner within a mutually agreed upon timeframe. In the event that a resolution of the dispute is not mutually agreed upon within the agreed upon timeframe, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under this Contract shall be heard by a court de novo within the state in which Metro Bus is located and the court shall not be limited in such proceeding to the issue of whether Metro Bus or the Contractor acted in an arbitrary, capricious or grossly erroneous manner.
- 2.Performance During Dispute. Unless otherwise directed by Metro Bus, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- 3.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 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 or damage, but not later than the expiration of applicable limitation periods as defined by Federal standards.

4. Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Metro Bus 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 the State in which the Metro Bus is located.

(5) Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder 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 Metro Bus shall constitute a waiver of any right or duty afforded under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### C-13 CARGO PREFERENCE - U.S. FLAG VESSELS

46 C.F.R. Part 381, Metro Bus shall insert the following clauses in contracts let by Metro Bus in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

THE CONTRACTOR AGREES IN THE COURSE OF ITS PERFORMANCE UNDER THIS TIRE LEASE AGREEMENT:

- (1) To utilize privately owned United States-Flag Commercial Vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to 46 C.F.R. Part 381 to the extent such vessels are available at fair and reasonable rates for United States-Flag Commercial Vessels.
- (2) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.

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

#### C-14 DISADVANTAGED BUSINESS ENTERPRISE

2.The Federal Fiscal Year goal has been set by Metro Bus in an attempt to match projected procurements with available qualified disadvantaged businesses. Metro Bus' goals for procurements, budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by Metro Bus as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26 and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987 and is considered pertinent to any contract resulting from this request for proposal.

- (2) It is the policy of the Department of Transportation and Metro Bus that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have 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 Part 26 and section 106(c) of the STURAA of 1987, apply to this contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 and Section 106(c) of the STURAA of 1987, 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, all recipients or contractors shall take all necessary and reasonable steps in accordance with the regulations in 49 CFR, Part 26, to insure that DBEs have the maximum opportunity to compete for and perform contracts/subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of contracts/subcontracts.

It is further the policy of Metro Bus to promote the development and increase the participation of businesses owned and controlled by the disadvantaged. DBE involvements in all phases of Metro Bus procurement activities are encouraged.

- (3) The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary



and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

- (4) Minority participation, achieved through the purchase of materials or supplies from a minority business that is not a manufacturer, will be determined by sixty (60%) percent of the value of the supplies purchased, as compared to the total dollar value of the contract. If the minority business is the manufacturer or directly performs all services, then 100% of the total dollar value of the contract is counted. Expenditures to businesses that are joint ventures should be counted on the basis of percentage ownership of the eligible DBE.
- (5) Submission of a properly signed proposal, price quotation, or their equivalent is commitment to the Agreement between a proposer and a DBE, in which the DBE promises not to provide subcontracting quotations to other proposers, are prohibited.

(6) Along with submission of the proposal, the proposer shall include the following:

Schedule F - Certification of Compliance with DBE Requirements (enclosed)  
Schedule C - Contractors Schedule of DBE Participation (enclosed)

Prior to contract award, proposer must provide the following:

\*Schedule D - DBE Letter of Intent to Perform as a Subcontractor (enclosed)

\*DBE Certification Eligibility

\*Copies of DBE subcontractor certifications from other transit properties (DOT's, transit systems, etc)

(7) Metro Bus will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

\* Identification of qualified DBE

\* Available listing of Minority Assistance Agencies

\* Holding request for proposal (RFP) conference to emphasize requirements

(8) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Metro Bus / DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of Metro Bus and will be submitted to Metro Bus upon request.

(9) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts

to involve DBE's in the work provided, Metro Bus may declare the contractor noncompliant and in breach of contract.

C-15 SMALL BUSINESS ENTERPRISE

Disadvantaged Business Enterprise or DBE means a for-profit small business concern

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals, and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The United States Small Business Administration (SBA) defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, listed below, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three year period. The general size standards for small businesses to be applied to this Program are:

- (1) Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
- (2) Wholesaling: Maximum number of employees may range from 100 to 500 depending on the particular product being provided;
- (3) Services: Annual receipts may not exceed \$2.5 to \$21.5 million, depending on the particular service being provided;
- (4) Retailing: Annual receipts may not exceed \$5.0 to \$21.0 million, depending on the particular product being provided;
- (5) General and Heavy Construction: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction;
- (6) Special Trade Construction: Annual receipts may not exceed \$7 million;
- (7) Agriculture: Annual receipts may not exceed \$0.5 to \$9.0 million, depending on the agricultural product.

The terms used throughout this program have the meanings defined in 49 CFR 26.5.

C-16 BUY AMERICA

**The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.**

**General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11.**

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

Proposers must include a signed Buy America certification statement.

#### C-17 PROTEST PROCEDURES

Contractors that feel an alleged violation of Metro Bus's procurement procedures has occurred during a solicitation may file a written protest with the Executive Director up to the date and time of the proposal opening. The Executive Director will review the protest and determine if the proposals will be opened or delayed. The Executive Director's decision will be transmitted in writing to the protesting party within five city working days.

Contractors that feel that an alleged violation of Metro Bus's procurement procedure has occurred after proposal opening may file a written protest with the Executive Director up to three working days after the date and time proposals were opened. The Executive Director will review the protest and determine if the award of the contract to the responsive proposer should be delayed. The Executive Director's decision will be transmitted in writing to the protesting party within three city working days.

Parties not satisfied by the Executive Director's decision regarding either type of protest described above, may, within five city working days of receipt of the Executive Director's written decision, appeal the decision to the St. Cloud Metro Bus Commission. The appeal must be made in writing. The Commission will schedule a hearing where the appellant may be heard. Once the Commission's decision is announced, no further local appeals may be made.

Contractors should fill all protests in care of the Executive Director or the Metro Bus Commission, as appropriate, at the following address:

Metro Bus  
Request for Proposal Protest  
665 Franklin Avenue NE  
St. Cloud, MN 56304

The decision of the Metro Bus Commission is final.

The Federal Transit Administration (FTA) will only review protests regarding the alleged failure of the purchases to have a written protest procedure or alleged failure to follow such procedures. Protestors may file a protest with the FTA regional office not later than five federal working days after a final decision of the Metro Bus Commission. Metro Bus will not award any contracts until it is sure that no protest has been filed with the FTA. The protest filed with the FTA shall:

- a. Include the name and address of the protestor.
- b. Identify the grantee, project number, and the proposal number.
- c. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
- d. Include a copy of the local protest filed with the grantee and include a copy of the grantee's decision, if any.

Protests to the FTA should be addressed to:

Office of Program Oversight  
Federal Transit Administration  
200 West Adams Street, Suite 2410  
Chicago, IL 60606

Cost and Fees: Vendors are cautioned that Metro Bus takes all protests seriously and that frivolous protests lacking factual basis will subject a protestor to an assessment of Metro Bus' cost and legal fees in responding to the protest. Vendors must review the Metro Bus proposal protest guidelines carefully before filing a complaint. At the time of filing a protest, the vendor agrees to be bound by these guidelines.

#### C-18 TERMINATION FOR CONVENIENCE

Metro Bus may terminate a contract, in whole at any time, by thirty (30) days prior written notice to the Contractor. The successful proposer shall be paid its costs, including contract closeouts, and the contract price for the remaining value of tread on leased tires mounted on

buses and in spare stock, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid the successful proposer. If the Contractor has any property in its possession belonging to Metro Bus, the Contractor will account for the same, and dispose of it in the manner Metro Bus directs.

The Contractor may terminate this Agreement for any other reason ninety (90) days after providing Metro Bus written notice thereof.

#### C-19 TERMINATION FOR DEFAULT

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 successful proposer fails to comply with any other material provisions of the contract, and, in each case, the failure is material and remains unremedied thirty (30) days after written notice of such failure is received by Contractor, Metro Bus may terminate this contract for default. Termination shall be effected by serving a thirty (30) day prior written notice of termination on the Contractor setting forth the manner in which the successful proposer is in default.

The Contractor will 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 including its closeout costs the remaining value of tread on leased tires mounted on buses and in spare stock in accordance with 6.1 Termination for Default.

In the event Metro Bus fails to make any payment due within ninety (90) days from receipt of invoice, or to perform any obligation under this Contract, Contractor may, at its option and without waiving or limiting any of its other rights or remedies under this Contract or at law, declare all of Metro Bus's indebtedness and obligations to Contractor to be immediately due and payable and may immediately terminate this Contract by giving thirty (30) days written notice to Metro Bus to that effect unless it is later determined by the Contractor that Metro Bus had an excusable reason for not performing, such as strike, fire, flood, or events which are not the fault of, or beyond the control of Metro Bus.

If it is later determined by Metro Bus 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, Metro Bus after setting up a new delivery or performance schedule, may allow the successful proposer to continue work, or treat the termination as a termination for convenience.

C-20 CIVIL RIGHTS REQUIREMENTS

- (1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. ' 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. ' 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. ' 12132, and Federal transit law at 49 U.S.C. ' 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (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 U.S.C. ' 2000e, and Federal transit laws at 49 U.S.C. ' 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, @ 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity, @ as amended by Executive Order No. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity,@ 42 U.S. C. ' 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future effect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - b. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. ' 623 and Federal transit law at 49 U.S.C. ' 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - c. Disabilities. In accordance with section 102 of the American with Disabilities Act as amended, 42 U.S.C. '12112, the Contractor agrees that it will comply with

the requirements of the U.S. Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, @ 29 C.F.R. part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### C-21 CLEAN WATER

AS APPLICABLE TO AND DURING THE COURSE OF ITS PERFORMANCE OF THIS TIRE LEASE AGREEMENT:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation as required under any applicable law or regulation.

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.

#### C-22 CLEAN AIR

AS APPLICABLE TO AND DURING THE COURSE OF ITS PERFORMANCE OF THIS TIRE LEASE AGREEMENT:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. ' 7401 *et seq.* The Contractor agrees to report each violation as required under any applicable law or regulation.

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 the FTA.

#### C-23 PROGRAM FRAUD AND FALSE FRAUDULENT STATEMENTS OR RELATED ACTS

- (1) 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, A Program Fraud Civil Remedies, @ 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy in all

material respects of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it knowingly 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 available penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it knowingly makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. ' 5307, the Government reserves the right to impose the available penalties of 18 U.S.C. ' 1001 and 49 U.S.C. ' 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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.

C-24 FEDERAL CHANGES

IN THE COURSE OF ITS PERFORMANCE OF THIS TIRE LEASE AGREEMENT:

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 Agreement (Form FTA MA (2) dated October 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

C-25 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1C, dated May 1, 1995, and 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 Metro Bus requests in each case for performance required hereunder, which would cause Metro Bus to be in violation of the FTA terms and conditions.



C-26 PREFERENCE FOR RECYCLED PRODUCTS

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference for recycled products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6962

C-27 FLY AMERICA

IN THE COURSE OF ITS PERFORMANCE OF THIS TIRE LEASE AGREEMENT:

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by these carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and with U.S. General Services Administration (U.S. GSA) regulations pertaining to the use of United States flag air carriers, 41 C.F.R. 301-2.61 (b), and any later regulations at 41 C.F.R. 301-10.131 *et seq*

## Buy America Certificate

### §661.5 General requirements.

- (a) Except as provided in §661.7 and §661.11 of this part, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.
- (b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.
- (c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.
- (d) For a manufactured product to be considered produced in the United States:
  - (1) All of the manufacturing processes for the product must take place in the United States; and
  - (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]

### §661.6 Certification requirements for procurement of steel or manufactured products.

If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b) of this part.

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

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

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

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



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

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

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY  
MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract) \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment 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;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) or this certification; and
- 4) 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.

If the primary participant (applicant for an FTA grant or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation of this certification.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

\_\_\_\_\_  
Signature and Title of Authorized Official

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

## Lobbying Restrictions

The undersigned 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, 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 section 1352, title 31, U.S. Code. 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.

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

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

\_\_\_\_\_ Date

**EXHIBIT A: BID QUOTATION FORM - Fixed Route**

**ST. CLOUD METROPOLITAN TRANSIT COMMISSION**

**LEASE TIRE MILEAGE RATE PROPOSAL**

**Bus Fleet Name:** New Flyer, 35' Fixed Route (2 Front /4 Rear - 6 Total Tires)

**(Please reference tabs below for each tire group)**

Tire Size Description	Base Avg. Mileage	8/1/23 Rate per Tire Mile	8/1/24 Rate per Tire Mile	8/1/25 Rate per Tire Mile	8/1/26 Rate per Tire Mile	8/1/27 Rate per Tire Mile	8/1/28 Rate per Tire Mile

SUPPLIERS NAME: \_\_\_\_\_

ADDRESS: P.O. BOX: \_\_\_\_\_

STREET: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT A: BID QUOTATION FORM - Dial-a-Ride**

**ST. CLOUD METROPOLITAN TRANSIT COMMISSION**

**LEASE TIRE MILEAGE RATE PROPOSAL**

**Bus Fleet Name:** ARBOC/Champion Dial-a-Ride (2 Front /4 Rear - 6 Total Tires)

**(Please reference tabs below for each tire group)**

Tire Size Description	Base Avg. Mileage	8/1/23 Rate per Tire Mile	8/1/24 Rate per Tire Mile	8/1/25 Rate per Tire Mile	8/1/26 Rate per Tire Mile	8/1/27 Rate per Tire Mile	8/1/28 Rate per Tire Mile

SUPPLIERS NAME: \_\_\_\_\_

ADDRESS: P.O. BOX: \_\_\_\_\_

STREET: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT A: BID QUOTATION FORM - MCI Commuter Coach**

**ST. CLOUD METROPOLITAN TRANSIT COMMISSION**

**LEASE TIRE MILEAGE RATE PROPOSAL**

**Bus Fleet Name:** MCI Commuter Coach (2 Front/4 Rear/2 Steer - 8 Total Tires)

**(Please reference tabs below for each tire group)**

Tire Size Description	Base Avg. Mileage	8/1/23 Rate per Tire Mile	8/1/24 Rate per Tire Mile	8/1/25 Rate per Tire Mile	8/1/26 Rate per Tire Mile	8/1/27 Rate per Tire Mile	8/1/28 Rate per Tire Mile

SUPPLIERS NAME: \_\_\_\_\_

ADDRESS: P.O. BOX: \_\_\_\_\_

STREET: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_



## EXHIBIT B: TIRE SPECIFICATION FORM

### Metro Bus: Leased Tire Services Bid

(Please provide separate documents for each tire group, e.g. Fixed Route, Dial-a-Ride, MCI)

(Please reference tabs below for each tire group)

**Bus Fleet:**

Fixed Route

<b>Tire Description</b>	
<b>Ply Rating</b>	
<b>Rim Width</b>	

#### Inflated New Tire Dimensions

<b>Section Widths (inches)</b>	
<b>Overall Diameter (inches)</b>	
<b>Skid Depth (32<sup>nd</sup> inches)</b>	
<b>Base Depth (32<sup>nd</sup> inches)</b>	

#### Maximum Individual Tire Levels & Cold Inflation Pressures

<b>Single Application</b>	
<b>Dual Application</b>	

#### Loaded Dimensions

<b>Static Radius</b>	
<b>Rev's Per Mile</b>	

## EXHIBIT B: TIRE SPECIFICATION FORM

### Metro Bus: Leased Tire Services Bid

(Please provide separate documents for each tire group, e.g. Fixed Route, Dial-a-Ride, MCI)

(Please reference tabs below for each tire group)

**Bus Fleet:**

Dial-a-Ride

<b>Tire Description</b>	
<b>Ply Rating</b>	
<b>Rim Width</b>	

#### Inflated New Tire Dimensions

<b>Section Widths (inches)</b>	
<b>Overall Diameter (inches)</b>	
<b>Skid Depth (32<sup>nd</sup> inches)</b>	
<b>Base Depth (32<sup>nd</sup> inches)</b>	

#### Maximum Individual Tire Levels & Cold Inflation Pressures

<b>Single Application</b>	
<b>Dual Application</b>	

#### Loaded Dimensions

<b>Static Radius</b>	
<b>Rev's Per Mile</b>	

## EXHIBIT B: TIRE SPECIFICATION FORM

### Metro Bus: Leased Tire Services Bid

(Please provide separate documents for each tire group, e.g. Fixed Route, Dial-a-Ride, MCI)

(Please reference tabs below for each tire group)

**Bus Fleet:**

MCI Commuter Coach

<b>Tire Description</b>	
<b>Ply Rating</b>	
<b>Rim Width</b>	

#### Inflated New Tire Dimensions

<b>Section Widths (inches)</b>	
<b>Overall Diameter (inches)</b>	
<b>Skid Depth (32<sup>nd</sup> inches)</b>	
<b>Base Depth (32<sup>nd</sup> inches)</b>	

#### Maximum Individual Tire Levels & Cold Inflation Pressures

<b>Single Application</b>	
<b>Dual Application</b>	

#### Loaded Dimensions

<b>Static Radius</b>	
<b>Rev's Per Mile</b>	

### Exhibit C: Metro Bus Fleet Specifications

New Flyer Xcelsior, Low Floor	ARBOC/Champion Paratransit Low Floor	MCI D4500, Commuter Coach
Quantity: 38	Quantity: 35	Quantity: 5
Vehicle Length: 35'	Vehicle Length: ARBOC 26 & 28'/ Champion 26'	Vehicle Length: 45'
Estimated Monthly Miles: <b>80,767</b>	Estimated Monthly Miles: <b>57,567</b>	Estimated Monthly Miles: <b>5,026</b>
Estimated Annual Miles: <b>969,204</b>	Estimated Annual Miles: <b>690,804</b>	Estimated Annual Miles: <b>60,312</b>

# EXHIBIT D

## Contract (Example for bid purposes)

This Contract, made as of August 1, 2023, by and between \_\_\_\_\_, a \_\_\_\_\_ (sole proprietorship, LLC, corporation, etc.) located at \_\_\_\_\_, hereafter referred to as "Contractor", and the St. Cloud Metropolitan Transit Commission, located at 665 Franklin Avenue, N.E.. St. Cloud, MN 56304 hereafter referred to as "Metro Bus". Metro Bus and the Contractor are parties ("Parties") to this contract ("Contract").

WHEREAS, Metro Bus desires to utilize Contractor's professional services for Transit Bus Tire Leasing Services, and

WHEREAS, Contractor has represented that it is a qualified provider and is willing to perform these services under the terms and conditions hereinafter set forth.

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

### ARTICLE 1: THE CONTRACT DOCUMENTS

The Contract Documents, in order of precedence, consist of the following:

- A. This Contract and any amendments thereto;
- B. Federal Transit Administration Contract Clauses and Standard DOT Conditions;
- C. Invitation for Bid dated June 2, 2023, the General and Technical Specifications, all addenda issued prior to and all modifications thereto issued after the execution of the Contract;
- D. The Contractor's bid proposal and Required Certificates; all as fully a part of the contract as if attached to this Contract or repeated herein.

### ARTICLE 2: THE WORK

The Contractor shall perform the work required by the Contract Documents for this Invitation for Bid in accordance with the generally accepted standards of the profession for services of this type.

### ARTICLE 3: TERM

This Contract shall be effective on August 1, 2023, and shall remain in effect until July 31, 2028, or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first, unless terminated earlier as provided herein. Metro Bus may elect to continue to use all tires furnished by the contract in effect at the time of termination or expiration for a period of thirty-six (36) months from said termination or expiration date. Metro Bus will be able to invoke the run-out procedure with five (5) days written notice. In the event of no notification, the run-out period will be entered automatically.

### ARTICLE 4: CONTRACT SUM

Metro Bus shall pay the Contractor in current funds for the performance of work as provided in the contract documents in the amount accepted.

## **ARTICLE 5: PAYMENTS TO CONTRACTOR**

Metro Bus will reimburse Contractor based on acceptable monthly billings for leased tires. Payment does not imply acceptance of work. The granting of any payments by Metro Bus, or receipt thereof by the Contractor shall not constitute in any sense acceptance of the work or any portion thereof and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Metro Bus may withhold payment for Contractor's services where the services are in dispute, where the services or any claimed reimbursable expenses are not documented or warranted, or when the service was not performed in accordance with the terms of the Contract Documents.

Materials, components or workmanship which does not conform to the instruction of these Contract requirements and specifications or are not equal to samples submitted to and approved by the Metro Bus Maintenance Manager will be rejected and shall be replaced by the Contractor without delay.

## **ARTICLE 6: INVOICES**

All invoices shall include supporting documentation of the quantities and details Metro Bus's satisfaction to support the pay request. Invoices should be forwarded to:

**St. Cloud Metropolitan Transit Commission**  
**Accounts Payable Department**  
**665 Franklin Avenue, N.E.**  
**St. Cloud, MN 56304**

## **ARTICLE 7: CHANGES TO THE CONTRACT**

Metro Bus or the Contractor may, from time to time, request changes in the scope of the services to be performed hereunder. Such changes, which are mutually agreed upon by and between Metro Bus and the Contractor, shall be incorporated in written amendments to the Contract.

## **ARTICLE 8: DELAYS**

Contractor shall notify Metro Bus in writing of any delays, including all relevant details, immediately upon encountering any difficulties which threaten to delay the timely performance of this Contract and may at that time or subsequently request an extension of the delivery date or schedule. However, such notification or request or acceptance of delinquent equipment shall not constitute acceptance of the delay, or request for extension, without written acceptance by Metro Bus.

## **ARTICLE 9: REPORTS AND INSPECTION**

### **A. Establishment and Maintenance of Records**

Records shall be maintained by the Contractor in accordance with the requirements prescribed by Metro Bus and with respect to all matters covered by this Contract. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Contract.

B. Reports and information.

Contractor shall be responsible for furnishing to Metro Bus records, data and information as Metro Bus may require, pertaining to matters covered by this Contract.

C. Audits and Inspections

Contractor shall ensure that at any time during normal business hours, and as often as Metro Bus may deem necessary, there shall be made available to Metro Bus for examination, all of its records with respect to all matters covered by this Contract.

D. Confidentiality of Information

Contractor and Metro Bus must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the Contractor and Metro Bus under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor and Metro Bus under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Contractor. If Contractor receives a request to release the data referred to in this clause, Contractor must immediately notify Metro Bus and consult with Metro Bus as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law.

E. Ownership of Data

All notes, reports, design plans, specifications, special studies, records and other data prepared under this Contract shall become the property of Metro Bus when prepared and shall be delivered to Metro Bus upon completion or termination of the services of Contractor or at such earlier time as requested by Metro Bus.

**ARTICLE 10: INDEMNIFICATION**

The Contractor and Metro Bus shall defend, indemnify, save and hold harmless the other party against all costs, charges, damages, and loss of any kind that may grow out of the matter covered by this Contract. Said obligation does not include indemnification of the Contractor and Metro Bus for claims of liability arising out of the sole negligent or intentional acts or omissions of the Contractor and Metro Bus but shall include, but not be limited to, the obligation to defend, indemnify and save harmless the Contractor and Metro Bus in all cases where claims of liability against the Contractor and Metro Bus arise out of acts or omissions of the Contractor and Metro Bus which are derivative of the negligence or intentional acts or omissions of the Contractor and Metro Bus, such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by the Contractor and Metro Bus and other of such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this Contract and to the work to be done and things to be supplied hereunder.

**ARTICLE 11: INSURANCE**

The contractor will submit to Metro Bus upon project award (and prior to any services performed) certificates of the Contractor's insurance coverage indicating the presence of coverages and limits no less than the following:

- 1. Workers' Compensation:
- Coverage A. Statutory Benefits.
- Coverage B. Employer's Liability.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage must include a Waiver of Subrogation endorsement as it pertains to the vendor's negligence.

- 2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto" or "All Owned, Scheduled, Hired and Non-Owned".

Coverage must include a Waiver of Subrogation endorsement as it pertains to the vendor's negligence.

- 3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
General Aggregate Limit (Other than Products/Completed Operations)	\$2,000,000

Coverage must include a Waiver of Subrogation endorsement as it pertains to the vendor's negligence.

**ARTICLE 12: SUBCONTRACTING AND ASSIGNMENTS**

Contractor shall not subcontract or assign this Contract or any portion thereof, without the prior written consent of Metro Bus.

**ARTICLE 13: RULES AND REGULATIONS**

Contractor agrees to observe and comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City of St. Cloud, MN and Metro Bus which are applicable to its activities under this Contract.

**ARTICLE 14: INDEPENDENT CONTRACTOR**

That at all times and for all purposes hereunder, Contractor shall be an independent contractor and is not an employee of Metro Bus for any purpose. No statement contained in this Contract shall be construed so as to find Contractor to be an employee of Metro Bus, and Contractor



shall not be entitled to any of the rights, privileges, or benefits of employees of Metro Bus, including, but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

**ARTICLE 15: FORCE MAJEURE**

To the extent that either party is not able to perform an obligation under this Agreement due to fire, flood, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, acts of terrorism, epidemics, pandemics, any federal or state coronavirus mandates or protocols, any law or order of any governmental agency, or other cause beyond that party's reasonable control, that party may be excused from such performance so long as such party provides the other party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of nonperformance and continues performance whenever and to the extent such causes are removed.

**ARTICLE 16: NO THIRD PARTY RIGHTS**

This Contract is to be construed and understood solely as a Contract between Metro Bus and the Contractor and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this Contract or of any of the terms and conditions hereof, which, as between Metro Bus and Contractor, may be waived at any time by mutual agreement.

**ARTICLE 17: SEVERABILITY**

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the Parties to this Contract.

**ARTICLE 18: RIGHTS AND REMEDIES**

The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Failure of Metro Bus to act shall in no way constitute a waiver of any right or duty afforded to it under the Contract, nor shall any such action or failure to act constitute an approval of or an acquiescence in any breach of this Contract, except as may be specifically agreed in writing by the Metro Bus CEO.

**ARTICLE 19: COMMUNICATIONS**

Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. Communications in connection with this Contract shall be in writing and shall be delivered by e-mail addressed to the officer(s) or employee(s) of Metro Bus and of the Contractor designated to receive such communications.

**ARTICLE 20: EXTENT OF AGREEMENT**

The Contract Document represents the entire and integrated agreement between Metro Bus and the Contractor and supersedes all prior negotiations, representations or agreements, either

written or oral. The Contract Documents may be amended only by written instrument signed by both Metro Bus and Contractor.

**ARTICLE 21: GOVERNING LAW**

Unless otherwise specified, this Contract shall be governed by the applicable laws of the City of St. Cloud and State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in the court located is Benton County, Minnesota. However, litigation in Federal Courts involving the Parties shall be in the appropriate federal court in the State of Minnesota.

**St. Cloud Metropolitan Transit Commission**

**Contractor**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_