

## **CONTRACT**

The parties to this contract (Contract) are the state of North Dakota, acting through its State Procurement Office (STATE), and Hometown Manufacturing having its principal place of business at 750 Industrial Parkway, Crandon, WI 54520 (CONTRACTOR);

### **1. SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the following commodities and services as referenced below:

Notice of Intent to Make a Noncompetitive Purchase, solicitation number 110.7-22-023, issued on April 18, 2022 made reference of five (5) floorplans of Hometown Manufacturing busses to be purchased through this Contract. The floorplans were labeled as 178WB, 190WB, 208WB, 228WB and 242WB. The five (5) floorplans are represented in the six (6) following Exhibits to this Contract:

- a. Exhibit A- 178WB 22 Passenger- \$170,956.00
- b. Exhibit B- 190 WB 24 Passenger- \$173,456.00
- c. Exhibit C- 208WB 32 Passenger- \$175,356.00
- d. Exhibit D- 228WB 34 Passenger- \$177,556.00
- e. Exhibit E- 242WB 38 Passenger- \$219,522.00
- f. Exhibit F- 2022 Villager Model & Options
- g. Exhibit G – FTA Clauses and Certifications, to be completed by CONTRACTOR and verified by STATE.

These seven (7) Exhibits include the specifications and FTA Clauses/Certifications. These seven (7) Exhibits are therefore included in this Contract and may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Failure of the STATE to specifically identify Federal and State regulations in this Contract does not relieve the CONTRACTOR of the responsibility to meet them.

### **2. COMPENSATION**

#### **a. Payment**

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty five (45) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.
- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

**b. Model Year Changes**

If there is a model year change over the course of the Contract period, CONTRACTOR must send a written request for a change by letter or email to the STATE contact listed in Section 21 (NOTICE) of this Contract.

- 1) The Contract change request must identify all vehicle specification changes between the previously awarded model year and the proposed model year.
- 2) Upon receipt of the Contract change request, the STATE reserves the right to review within 30 days, and may agree to cancel the awarded vehicle by issuance of an amendment to the Contract.
- 3) Awarded vehicle Contract changes will become effective as set forth in a written amendment to the Contract upon execution by both parties.

**c. Pricing**

Pricing under this Contract shall be as follows:

**Pricing, Firm-Fixed with Adjustment Provisions.** The total price listed for the Villager to include all discounts and deductions, and is to be less federal and state taxes, for which exemption certificates will be furnished upon request. Pricing shall be firm for the first sixty (60) days of the contract period, or less if agreed upon by both parties through written amendment, after which time CONTRACTOR may submit a request for a price increase to the STATE contact listed in Section 21 (NOTICE) of this Contract.

- 1) **Pricing Changes/Model Year Change.** If during the Contract period there is a model year change by the (OEM) manufacturer or additional costs are incurred by the CONTRACTOR from their 3<sup>rd</sup> party, CONTRACTOR must send a written request for a change by letter or email to the STATE contact listed in Section 21 (NOTICE) of this Contract.
- 2) This request for a price increase or decrease must include a copy of the (OEM) manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers.
- 3) Upon receipt of the Contract price change request, the STATE reserves the right to accept or reject within 30 days. The price change request, if agreeable to STATE, will become effective as set forth in a written amendment to the Contract upon execution by both parties. If STATE does not accept the price change the vehicle may be cancelled by amendment to the Contract.
- 4) If STATE accepts the awarded vehicle Contract price change request, the dealer shall supply the new model year at the amended price for the remainder of the awarded Contract period.
- 5) All vehicle shipments are to be billed at prices in effect at the time of the order, not the date the shipment is made.

**d. Travel**

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

**e. Prepayment**

STATE will not make any advance payments before performance by CONTRACTOR under this Contract.

**f. Payment of Taxes by STATE**

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E 2001. The federal tax-free transaction number is 45-70-0010K. STATE will furnish certificates of exemption upon request by the CONTRACTOR. CONTRACTOR must be authorized to sell the vehicle in North Dakota or they are required to pay any excise taxes.

**g. Taxpayer ID**

CONTRACTOR'S federal employer ID number is: 20-2211894.

**h. Purchasing Card**

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

**3. TERM OF CONTRACT**

This Contract begins on its effective date, and ends on **July 1, 2023**.

**a. No Automatic Renewal**

This Contract will not automatically renew.

**b. Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to four (4) options to renew this Contract under the same terms and conditions for a period of twelve (12) months each.

**4. TERMINATION**

**a. Termination by Mutual Agreement**

This Contract may be terminated by mutual consent of both parties executed in writing.

**b. Early Termination in the Public Interest**

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of the North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to the CONTRACTOR, may terminate this Contract in whole or in part.

**c. Termination for Lack of Funding or Authority**

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

**d. Termination for Cause**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; **or**
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**5. COOPERATIVE PURCHASING CONTRACT**

This contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (NDCC) sections 54-44.4-13. This contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C. chapter 39-04.2, and the International Peace Garden. Participation in this open-ended contract is not mandated.

**6. RECORD OF SALES**

The contractor must maintain records of sales under the contract and furnish volume of sales information to State Procurement Office, and are due 10 days following the conclusion of each contract period. The report format shall be in a spreadsheet compatible and editable with the state system. A sample report will be agreed to prior to contract execution. Any changes to the agreed report format must be reviewed and agreed to by State.

**Report Format:**

Contract spend reports, may be requested by State and due in 10 days. Reports shall be in an editable spreadsheet format, shall include the following details:

- a. Report titled with contract name, contractor name, quarter dates of the report period,
- b. Name of ordering entity, for example ND Purchasing Agency or Cooperative Purchasing Entity,
- c. Order date, ship date,
- d. Brief description of vehicle,
- e. OEM Model number, Make, Year
- f. Sell price of unit,
- g. Units sold,
- h. Grand total for the report.

Contractor may be required to provide additional reporting, upon request from State within 10 days.

**7. DEALER CONTRACT REPRESENTATIVE AND IN-STATE WARRANTY SERVICE LOCATION**

CONTRACTOR must provide a dealer contact representative to provide support, service, required warranty in-state warranty service, and the ordering contact for this contract.

During the contract period, the contractor shall notify the State Procurement Office within 10 days of a change in the dealer contract representative or in-state warranty service location. Failure to notify of changes may result in termination of the contract and debarment.

## **8. OPTIONS**

Any additional options not listed in this Contract are to be billed at dealer Invoice plus 3% handling. All deleted Options will be deleted at dealer invoice. Upon request, CONTRACTOR shall supply an Option Invoice Pricing List.

## **9. FACTORY INSTALLATION**

Any and all advertised standard equipment cannot be deleted without written approval from the STATE. Accessories, equipment, and component parts shall be factory installed. Prior approval may be granted for those items not made or installed at the factory.

## **10. WARRANTY**

See **Exhibit I** – Warranty Matrix for all warranty provisions set forth in this Contract.

## **11. SUSPENSION AND DEBARMENT**

Before entering into any contract agreement with supplier, vendor, service provider or contractor, Name of Provider will certify that neither the supplier, vendor, service provider or contractor, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in that transaction nor from federal financial or non-financial assistance, nor are any of the participants involved in the execution of that purchase suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 Debarment and Suspension) and CFR 44 Part 17, or are on the disbarred vendors list at [C](#). Further, Name of Provider will notify NDDOT by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of that purchase.

## **12. F.O.B. POINT AND FREIGHT**

Delivery and passage of title under this Contract shall be as follows.

- a. Delivery will be F.O.B. Destination to various locations throughout North Dakota. The freight is to be included in the price of the products.
- b. Title will pass to Purchasing Agency or entity upon delivery to the specified destination.
- c. Vehicle(s) shall be delivered, with a reasonably full tank of gasoline.

## **13. DELIVERY AND ORDERS**

CONTRACTOR shall deliver commodities and services ordered under this Contract as follows:

- a. Order Acknowledgment. Dealer Order Receipt Acknowledgement (w/reference to P.O. Number) or similar document shall be furnished within 15 days to the Purchasing Agency or to the cooperative purchasing entity.
- b. Delivery must be made approximately within **180 - 300** days after the contractor receives an order from the Purchasing Agency or entity by issuance of a purchase order or use of a purchasing card. May be subject to chassis availability.
- c. CONTRACTOR shall provide on-site training if requested.
- d. Confirmation of After Receipt of Order delivery lead time is required and listed in Exhibits A and C.
- e. Vehicle(s) will not be considered delivered if they have arrived in a condition that does not meet the specifications listed in section 1 (Scope of Work) of this Contract.

If delivery requirements cannot be met within the specified time, the bidder must notify the Purchasing Agency or entity promptly by telephone with a follow-up by email or mail of the delay and the

approximate date delivery may be expected. Repeated delivery delays may be considered as failure to deliver.

#### **14. DELIVERY DOCUMENTS**

The following documents are required at time of delivery:

- a. Certificate of origin (MCO)
- b. Dealer Invoice (with contract pricing)
- c. Damage Disclosure
- d. Manuals - All manuals providing parts information, operating instructions, and electrical schematics for the vehicle(s) and the lift or ramp equipment shall be delivered with each unit; and all warranty information and registrations shall be completely filled out and presented at time of delivery.

#### **15. INSPECTION: UPON DELIVERY**

Vehicle(s) will not be considered delivered if they have arrived in a condition that does not meet the specifications and ordered options. Vehicle(s) shall be delivered to various locations throughout the North Dakota, with a full tank of gasoline and a title. Acceptance and payments for the vehicle(s) will not be made until the vehicle(s) have passed delivery inspection by the ordering entity.

#### **16. REQUIRED FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES AND CERTIFICATIONS**

**Exhibit G:** FTA Clauses and Certifications, completed by CONTRACTOR and verified by STATE, is made part of this Contract by reference.

The following sections must be completed by the CONTRACTOR and verified to be correct:

- a. Page 19, Certification and Restrictions on Lobbying
- b. Pages 11, Government-Wide Debarment and Suspension (NonProcurement)
- c. Page 12, Bus Testing Certification
- d. Pages 13 thru 15, Pre-Award Certification Requirement for Procurement of Rolling Stock (Vendor) – In addition to the federal required certification, a Pre-Award Buy America Cost Breakdown must also be submitted for each vehicle offered or this percentage must be shown in the specific Vehicle Build Sheets
- e. Page 16, Transit Vehicle Manufacturer (TVM) Certification. CONTRACTOR must provide documentation of eligibility in addition to signing this certification.
- f. CONTRACTOR is required to include a mock invoice for each specification to confirm compliance with the vehicle specifications.
- g. The bidder shall provide a copy of the manufacturer's self-certification information that the vehicle(s) comply with the relevant Federal Motor Safety Standards (FMVSS) per 49 CFR Part 571.
- h. CONTRACTOR shall provide a copy of the vehicle testing report to be incorporated as a part of this Contract.
- i. CONTRACTOR shall include vehicle build sheets to be incorporated as a part of this Contract.
- j. CONTRACTOR shall include a copy of the sam.gov registration showing they are Active.

#### **17. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.



## 18. INDEMNIFICATION

The State and the Contractor each agrees to assume its own liability for any claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

## 19. INSURANCE

The State and Contractor each shall secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool or government self-retention fund authorized to do business in North Dakota, commercial general liability with minimum limits of liability of \$500,000 per person and \$2,000,000 per occurrence.

## 20. WORK PRODUCT

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE'S request upon termination of this Contract.

## 21. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

| STATE                                | CONTRACTOR |
|--------------------------------------|------------|
| Chad Keech                           |            |
| Procurement Officer, State of ND     |            |
| 14 <sup>th</sup> Floor Capitol Tower |            |
| 600 E Boulevard Ave, Dept 012        |            |
| Bismarck, ND 58505-0310              |            |

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

## 22. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

## 23. COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE promptly upon receiving a

request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

#### **24. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Contract, except to the extent specified in this Contract.

#### **25. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

#### **26. SPOILIATION – PRESERVATION OF EVIDENCE**

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

#### **27. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:



Exhibit A- 178WB 22 Passenger- \$170,956.00

Exhibit B- 190 WB 24 Passenger- \$173,456.00

Exhibit C- 208WB 32 Passenger- \$175,356.00

Exhibit D- 228WB 34 Passenger- \$177,556.00

Exhibit E- 242WB 38 Passenger- \$219,522.00

Exhibit F- 2022 Villager Model & Options

Exhibit G – FTA Clauses and Certifications, to be completed by CONTRACTOR and verified by STATE.

## **28. SEVERABILITY**

If any term of this Contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

## **29. APPLICABLE LAW AND VENUE**

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

## **30. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **31. ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

## **32. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

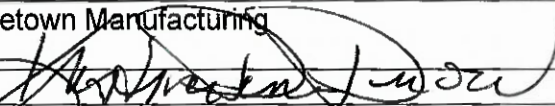
CONTRACTOR agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this Contract all licenses and permits required by law.

## **33. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

### 34. EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.

| CONTRACTOR                                                                            | STATE OF NORTH DAKOTA                                                                  |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| Hometown Manufacturing                                                                | Acting through its <b>Office of Management and Budget</b>                              |
| BY:  | BY:  |
| <b>Kristina Pence-Dunow</b>                                                           | <b>Chad Keech</b>                                                                      |
| <b>President</b>                                                                      | <b>Procurement Officer</b>                                                             |
| Date: 5.11.22                                                                         | Date: 5/24/2022                                                                        |