

**CONTRACT E194-75548-MA2275**

**BETWEEN**

**THE COMMONWEALTH OF VIRGINIA AND  
NEW FLYER OF AMERICA, INC.**

**2020**

**TRANSIT BUSES  
CNG, DIESEL, HYBRIDS**

**1. SCOPE OF CONTRACT**

This is a master ordering agreement (the "Master Agreement" or "Master Contract" or "Contract") between the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply ("Commonwealth" or "DGS" or "DPS" or "DGS/DPS" or "Virginia" or "Commonwealth of Virginia") and NEW FLYER OF AMERICA, INC. (the "Contractor" or "New Flyer"), a North Dakota corporation having its principal place of business at 6200 Glenn Carlson Drive, St Cloud, MN 56301 for the provision of buses, which services include provision of all related integral-and/or peripheral equipment, products, component parts, materials, and supplies (collectively termed "Equipment" or "Products" or "Buses"), together with related warranty and repair services (collectively termed "Services") necessary to provide and maintain Products in accordance with the Original Equipment Manufacturer ("OEM") technical specification and operational performance standards, pursuant to the Commonwealth Request For Proposal #E194-193, dated May 31, 2016 (the "RFP#E194-193" or "RFP") and the Contractor's proposal, dated August 11, 2016, in response thereto.

This Contract contains the terms and conditions by which Commonwealth agencies, institutions, and other public bodies as defined in Virginia Code § 2.2-4301, entitled "Definitions" of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users," are to acquire (new) heavy-duty, low-floor transit Buses, including all Equipment or Products as defined herein together with all Service needed to ensure that all Buses and Equipment acquired under the Contract can be operated, serviced, and maintained by Authorized Users in accordance with all pertinent operating standards and performance specifications of the Contractor, or OEM for any third-party Products or Services provided by the Contractor under this Master Agreement, and pursuant to the Commonwealth's RFP # E194-193, and the Contractor's proposal dated August 11, 2016 in response thereto.

This Contract is being entered into by DGS on behalf of the Virginia Department of Rail and Public Transportation ("DRPT"). Therefore, Contractor agrees that all Products or Services provided within scope of this Contract shall be provided to all Authorized Users in a manner that assists the DRPT in its core mission to facilitate and improve the mobility of all citizens of the Commonwealth and to promote the efficient transport of goods and people in a safe, reliable and cost-effective manner, with a transit goal to expand or improve transportation choices in Virginia and as embodied in DRPT's reference reports and materials: <http://www.drpt.virginia.gov/about-us/core-mission>.

Contractor and Commonwealth shall develop a first class model for public body support and ensure the Commonwealth is a national leader in understanding and meeting customer needs, and is a leader in contract innovation, while building a supplier-customer relationship that supports the Commonwealth's strategic objective to include obtaining high quality goods and services at reasonable costs, while ensuring ongoing innovation in the products obtained which provide overall best value.

This Contract is the result of a competitive solicitation and its use is optional for public bodies and entities authorized to use the Contract by the Code of Virginia § 2.2-1120. Pursuant to Code § 2.2-1120, Authorized Users shall also include any organization that provides transportation services in Virginia and receives funding from the Federal Transit Administration or the Commonwealth Transportation Fund, as well as certain private, nonprofit 501(c)(3) institutions of higher education, chartered in Virginia, and as allowable pursuant to Code 2.2-1120.

To ensure maximum transparency and public access to all Commonwealth procurement opportunities, and consistent with Code § 2.2-1110, Contractor agrees that all orders from any Commonwealth Authorized User shall be accepted solely through the Commonwealth of Virginia's central electronic procurement website, "eVA," [www.eva.virginia.gov](http://www.eva.virginia.gov), as delineated with the ordering instructions herein.

## **2. AUTHORIZED USERS**

The Contract is available for use by all Commonwealth public cities, towns, counties, and public entities--including state agencies; educational institutions, and other public bodies as defined in Section 2.2- 4301 entitled "Definitions" of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users." Pursuant to Code of Virginia § 2.2-1120, all private institutions of higher education chartered in Virginia and granted tax-exempt status under the Internal Revenue Code section § 501(c)(3) may also submit orders to purchase Products or Services directly from this Contract, and are included in the definition as an Authorized User. The Metropolitan Washington Council of Governments (MWCOG) and members of MWCOG shall also be included as an Authorized User on this Contract. Contractor shall provide all Products and Services in accordance with the provisions of this Contract upon receipt of a duly authorized order, as defined herein, from any Commonwealth public school division or entity, state agency, educational institution, or any other public body, as defined in § 2.2-4301 entitled "Definitions" and § 2.2-4304 of the Virginia Public Procurement Act (VPPA), as amended. The Contract is also available for use by certain charitable corporations and private nonprofit 501(c)(3) institutions of higher education, chartered in Virginia, and as allowable pursuant to Virginia Code 2.2-1120. Collectively, all aforementioned parties are referred to in the aggregate and hereinafter as Authorized Users for purposes of using this Contract. This is an optional use contract. To ensure maximum transparency and public access to the Commonwealth's procurement opportunities, and consistent with Code § 2.2-1110, all Authorized Users are to submit orders directly with Contractor through the Commonwealth's electronic procurement website, [www.eva.virginia.gov](http://www.eva.virginia.gov), as delineated in the "ORDERS" section of this contract.

## **3. INTERPRETATION OF CONTRACT**

As used in this Contract, the terms listed below shall include all related materials and documentation developed and provided in the performance of Contract, whether in machine-readable or printed form, and produced or provided pursuant to this Contract, or any order resulting from this Contract.

Headings are for reference purposes only and shall not be considered in construing this Contract.

The documents comprising this Contract, and their order of precedence in case of conflict, are: (1) this Contract, consisting of terms and conditions included herein, including all Attachments hereto; (2) all duly authorized and executed orders and Attachments referencing the Contract; (3) the RFP #E194-193 and (4) the Contractor's proposal submitted in response to the RFP. The foregoing documents represent the complete and final Contract of the parties with respect to the subject matter of this Contract.

If any term or condition of this Contract is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Contract shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

## **4. TERM**

Initial term of the Contract shall be effective from June 7, 2017 through May 31, 2018. All purchase orders and related documents shall survive the period of performance stated in this section until such time as all purchase orders (executed prior to the expiration date of the Contract) have been completely performed.

Current term of this contract is June 1, 2020 through May 31, 2021

## **5. RENEWAL OF CONTRACT**

(Final term of the contract is June 1, 2020 through May 31, 2021. No renewals remaining.)

## **6. PRICING**

Prices for base Buses with standard features and additional options/upgrades are listed herein as Attachment A entitled "Products and Pricing Schedule." As new technology unfolds, options/upgrades will be updated on Attachment A.

## **7. PRICE ESCALATION/DE-ESCALATION**

Discounts are to be considered the minimum for the entire term of the resulting contract. List price may be negotiated on an annual basis at the time of renewal. Price adjustments and/or discount adjustments may be permitted for changes in the Contractor's cost of materials or services. The Producer Price Index of the United

States Department of Labor, Bureau of Labor Statistics will be used by the Commonwealth as a guide in reviewing any Rate/Price increase requests. Price escalation may be authorized at the end of the initial (one year) term and then annually, only at the time of contract renewal and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

The Contractor shall document the amount of any general change in the price of materials. Documentation shall be supplied with the Contractor's request for increase which must: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the Contractor by the Contractor's suppliers. All changes in the prices and/or discounts applicable to the Commonwealth must be approved in writing by the Division of Purchases and Supply prior to implementation by the Contractor.

The DGS/DPS Contract Manager will notify the Authorized Users and Contractor in writing of the effective date of any approved increase. However, the Contractor shall fill all orders received prior to the effective date of the price adjustment at the old Contract prices. The Contractor is further advised that decreases that affect the cost of materials are required to be communicated immediately to the Contract Manager.

List price may be negotiated on an annual basis only at the time of renewal. At its sole discretion, the Commonwealth may permit such price adjustments only at the time of Contract renewal, and only where verified to the satisfaction of the Contracting Manager. The Contract pricing for any renewal period following the Initial Term shall not exceed the lesser of: a) 3% of the contract pricing for the prior term, or; b) the contract pricing for the prior period, increased/decreased by no more than the percentage increase/decrease for the previous twelve (12) month period, under the United States (US) Department of Labor's (DOL) Bureau of Labor Statistics' (BLS) Producer Price Index (PPI) category series identification "WPU141302"; Group identification "Transportation equipment," and; Item identification "Complete vehicles on purchased chassis" for the latest twelve (12) month period for which statistics are available. (\*<http://data.bls.gov/timeseries/WPU141302>). Price adjustments are at the sole discretion of the Commonwealth, only permitted annually at the time of Contract renewal and only where verified to the satisfaction of the DGS/DPS Contract Manager.

Contractor shall give not less than thirty (30) days advance notice of any price increase request, with documentation, to the Contract Manager. The Contract Manager will notify the Contractor in writing of any approved increase. Price increase shall take effect on the first day of the renewal period. However, the Contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old Contract prices. "Across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth and reflected in subsequent invoices.

## **8. ADDITION/DELETION OF PRODUCTS/SERVICES**

The Commonwealth recognizes that Products and Product line additions and/or Services to the Contractor's standard commercial catalog offerings during the life of the Contract are likely to occur. The Commonwealth considers these addition's as enhancements. Additions will be considered as follows:

a. Any and all new Products will be categorized with similar Products or Product lines into existing market categories previously defined and agreed to by the Commonwealth and with respect to discount structure, net price or grand total of the Product. The Commonwealth shall be notified of new item(s) and/or Product line(s). Contract amendment or modification will not be required for addition of new Product(s) to the Contractor's offerings that are consistent with pre-established categories and discount structure. Such products will be added to Contract thereby providing our citizens with the best Products available from Contractor at any time during the term of this Contract. (No online catalog available).

b. In the event the Contractor adds a new specialty Product line which represents Product(s) that are consistent with the type and class of Products covered under this Contract, but differ sufficiently from Products or brands represented in the existing Product categories, so that a separate pricing structure is appropriate, the Commonwealth and the Contractor may enter into negotiations to modify the Contract to establish a discount structure, net price, or grand total for the Product(s). Pricing must be competitive in order to add Products to this Contract. The Contractor shall provide appropriate documentation to support its position for separate pricing. Negotiations must be completed prior to order placement. Contract amendment or modification will be required in order to add negotiated items that are sufficiently different from pre-established categories and discount structure.

c. Contractor will develop new business opportunities and market its services by meeting current and potential clients, discussing their needs and opportunities for improvement.

d. Contractor will develop world class customer support and account management processes, by its making its equipment options, diagnostics and tools list available on the Contract.

## **9. VENDORS MANUAL**

This Contract is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this Contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under "Vendors Manual" on the vendors tab.

## **10. APPLICABLE LAWS AND COURTS**

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Commonwealth and the Contractor are encouraged to resolve any issues in controversy arising from the award of the Contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

## **11. ANTI-DISCRIMINATION**

The Contractor certifies to the Commonwealth that they shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

1. Meet or exceed all current Federal Transportation Administration (FTA) of Manufacturer I Vendor certifications, regulations and policies (i.e. Buy America policy).
2. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
3. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
4. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor shall include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions shall be binding upon each Subcontractor or vendor.

## **12. ETHICS IN PUBLIC CONTRACTING**

The Contractor certifies that the Contract has been entered into without collusion or fraud and that they have not

offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their submitted proposal or this resulting Contract, and that they have not conferred on any Commonwealth public body or Authorized User employee having official responsibility for ordering Equipment, Products or Services provided through this solicitation and Contract process, any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

### **13. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By entering into this Contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the Contract for goods and services in the Commonwealth knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

### **14. DEBARMENT STATUS**

Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of Goods and/or Services covered by this Contract. Contractor further certifies that they are not debarred from filling any order or accepting any resulting Order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

### **15. ANTITRUST**

By entering into this Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

### **16. PAYMENT**

#### **A. To Prime Contractor:**

1. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number.
2. Any payment terms requiring payment in less than 30 days for state agencies or less than 45 days for localities will be regarded as requiring payment 30/45 days (as applicable) after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30/45 days (as applicable), however.
3. All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which ordering entity is being billed.
4. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail or for state agencies the date of offset when offset proceedings have been instituted as authorized under the *Virginia Debt Collection Act*.

**Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, the Contractor is advised that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the ordering Authorized User shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an ordering entity of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

### **17. PRECEDENCE OF TERMS**

The following Terms and Conditions VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of

the other General Terms and Conditions contained in the original RFP, and any negotiated Terms and Conditions in this Contract, then the negotiated Terms and Conditions of this Contract shall apply.

#### **18. QUALIFICATIONS OF CONTRACTOR**

The Commonwealth or an Authorized User may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform any Services or furnish any Equipment or Products within the scope of this Contract. The Commonwealth or an Authorized User reserves the right to inspect, without advance notice, Contractor's physical facilities at any time during the initial term and any subsequent renewal periods, to satisfy any questions regarding the Contractor's capabilities.

#### **19. TESTING AND INSPECTION**

The Commonwealth or any ordering Authorized User reserves the right to conduct any test/inspection they may deem advisable to assure that Products and Services conform to all Contract requirements or specifications.

#### **20. ASSIGNMENT OF CONTRACT**

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

#### **21. CHANGES TO THE CONTRACT**

Changes can be made to this Contract in any of the following ways:

- A. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
- B. The Commonwealth may order changes within the general scope of the Contract acting reasonably and with written agreement of the parties in accordance with the terms of the Contract, at any time by written notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Commonwealth a credit for any savings. Said compensation shall be determined by either of the following methods:
  1. By mutual agreement between the parties acting reasonably in writing; or
  2. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Authorized User's right to audit the Contractor's records and/or to determine the correct number of units independently; or
  3. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Commonwealth with all vouchers and records of expenses incurred and savings realized. The Commonwealth shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings, subject to the obligations of confidentiality as set forth in the Contract. Any claim for an adjustment in price under this provision must be asserted by written notice to the Commonwealth within thirty (30) calendar days from the date of receipt of the written order from the Commonwealth. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by the Commonwealth or with the performance of the Contract generally.

#### **22. TAXES**

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Contract shall usually be free of

Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

For Authorized Users that are not Commonwealth state agencies, it is the Contractor's sole responsibility for determining those Authorized Users' sales tax exemption status.

### **23. TRANSPORTATION AND PACKAGING**

As applicable, for all Deliverables provided under this Contract, Contractor certifies and warrants that the prices are FOB destination, and includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

### **24. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Contract by the Contractor, or any of its subcontractors, whose employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

### **25. NONDISCRIMINATION OF CONTRACTORS**

No contractor shall be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Contractor employs ex-offenders unless DPS has made a written determination that employing ex-offenders on the specific Contract is not in its best interest. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, DPS shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

### **26. AVAILABILITY OF FUNDS**

It is understood and agreed between the parties herein that the Commonwealth shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.

### **27. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. DPS may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

### **28. FINANCIAL WARRANTY**

Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall

immediately notify the Commonwealth of the details and, at the Commonwealth's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and the Commonwealth shall grant such request if the Commonwealth in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon the Commonwealth's request (and annually), Contractor shall submit an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to the Commonwealth or others the financial terms made available to the public body; and upon request from the Commonwealth, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and the Commonwealth. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.

By signing this Contract, the Contractor is also confirming the price, discounts, incentives and other financial terms herein are the most favorable of any other Contract, existing or future, which the Contractor may have with another Commonwealth public body.

This Contract shall be the best "go-to" contract for any Virginia public body and transportation authority to acquire the Contractor's Products/Services: in terms of pricing, warranty, services, product range, and any other criteria essential to their need. Contract shall provide Products/Services of equal/better quality, equal/lower cost, less effort to understand (and use) by customers and suppliers.

## **29. AUDIT**

The Contractor shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Commonwealth, Authorized Users, and/or the Commonwealth's authorized User's auditors shall have full access to and the right to examine any of said materials during said period. The Commonwealth and the Authorized Users and their representatives and agents agree to enter into a confidentiality agreement with the Contractor prior to commencing an audit, review or analysis in order to protect and maintain the confidentiality of the Contractor's information.

## **30. USE OF CONTRACT BY THIRD PARTIES**

In accordance with the Code of Virginia § 2.2-4304, entitled "Cooperative Procurement," the intent of this Contract is to allow for such cooperative procurement to the maximum extent possible. Accordingly, any public body or public institution may access and use this Contract, if agreeable to Contractor and in accordance with the ordering provisions governing this Contract, together with all other Contract terms and conditions herein.

Participation in this cooperative procurement by any public body is voluntary. If agreed to by Contractor, this Contract may be used by the entities stated above to procure goods and/or services in accordance with Attachment A "Products and Pricing Schedule" attached hereto and incorporated herein.

Contractor shall notify the Commonwealth of Virginia, Division of Purchases and Supply (DPS) in writing by providing DPS a Contract Sales and Usage report for any entity placing an order(s) to use this Contract in accordance with Contract Reporting provisions, herein.

This is a master contract and no modification of the Contract, Participating Addendum, or Assignment Agreement is required from Virginia for a third party Authorized User to participate.

Copies of Contract-Related Documents shall be requested directly from the contractor. Such documents may include the solicitation (Invitation for Bids- IFB # 193 dated 5/31/16), contractor's bid response, and signed FTA certificates i.e. Buy America, Compliance w/ Buy America Rolling Stock Requirements and other related documents

Authorized Users will place their own orders directly with the Contractor and will fully and independently administer their use of this Contract to include contractual disputes, and invoicing and payments, without direct administration from DPS. Neither the Commonwealth nor DPS shall be held liable for any costs or damages by any other participating Authorized User as a result of any authorization by the Contractor to use the Contract.

Contractor hereby certifies and warrants that neither the Commonwealth nor DPS are responsible for any acts or omissions of any Authorized User, and shall not be considered in default of this Contract, no matter the circumstances.



The use of the Contract does not preclude any participating Authorized User from using other agreements or competitive processes as their needs may require.

### **31. AUTHORIZED REPRESENTATIVES**

This Contract may be modified in accordance with § 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so denoted below, or their duly authorized designees. No modifications to this Contract shall be effective unless in writing and signed by the duly authorized representative of both parties, delineated below. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

#### Authorized Representatives

COMMONWEALTH OF VIRGINIA  
Dennis Donahue, Contract Manager  
Department of General Services  
1111 East Broad Street, 6<sup>th</sup> FL  
Richmond, VA 23219  
Tel.: 804-786-5410  
Fax: 804-786-5413  
Email: [dennis.donahue@dgs.virginia.gov](mailto:dennis.donahue@dgs.virginia.gov)

NEW FLYER OF AMERICA, INC.  
Jennifer McNeill VP Sales & Marketing  
711 Kernaghan Avenue  
Winnipeg, Manitoba, R2C 3T4

### **32. DELIVERY**

Contractor shall deliver Buses to an Authorized User within 18 months after receipt of order ("ARO"). A Contractor Field Service Representative shall also arrive with the Bus delivery to help prepare the Bus/Buses to be put into revenue service and to conduct Operator and Maintenance orientation and familiarization training (including a complete set of Low Floor training DVDs and diagnostic interpretation training). Contractor is responsible to make all arrangements for delivery, set up, and preparation for safe vehicle operations. The Authorized User will not assume responsibility for receiving Buses or Product, unless otherwise indicated in the pertinent ordering documents. Contractor shall check with the Authorized User designated point of contact as identified in the ordering documentation to coordinate all necessary transportation and delivery arrangements prior to Product operations.

### **33. BUS DELIVERY NOTIFICATION**

Contractor shall notify the Authorized User no less than two (2) full business days prior to delivery of Buses or Equipment so Authorized User personnel can be available to allow access to their facility, verify items received, and perform any Services needed to prepare Equipment for safe operations. Notification shall be made to the individual identified in the applicable eVA Order. In the even no individual is identified, then the Contractor will contact the Authorized User in advance to identify and coordinate with the responsible staff.

Authorized Users are to include the best point-of-contact information in their orders to assist Contactor.

### **34. PROMOTIONAL DISCOUNTS**

For any special or promotional sale prices, reductions, or other discounts provided to any Authorized User eligible to use this Contract, Contractor shall immediately extend and provide notification of such sale prices or discounts to the Commonwealth and all other Authorized Users. Such notice shall also advise the duration of the specific sale or discount price. The Contract Manager shall be provided notice in advance of any such promotional discount being extended to any Authorized User that is eligible to utilize this Contract.

### **35. EXTRA CHARGES NOT ALLOWED**

Pricing for all Equipment covered under Warranty/maintenance that is being returned as a furnish and install as a result of a return from the manufacturer or depot service, repair or replacement shall include complete delivery and installation and ready for the Commonwealth's or Authorized User's use and include all applicable freight and installation charges; extra charges shall not be allowed.

### **36. INSPECTION/LATENT DEFECTS**

All Products are subject to inspection and test, as provided herein under the provision entitled Testing and Inspection. Products that do not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability for latent or hidden defects subsequently revealed, within the Warranty period for the applicable part, when Products are used after Acceptance has occurred. If latent defects are found at any time during the term of this

Contract, the Contractor shall repair or replace the defective Products. This remedy shall be in addition to any other remedies or obligations under this Contract or provided by law.

### **37. PRODUCT AVAILABILITY/SUBSTITUTION**

Substitution of a product, brand or manufacturer under this Contract is expressly prohibited unless approved in writing by the Contact Manager or Authorized User. An Authorized User may, at its discretion, require the Contractor to provide a substitute item of equivalent or better quality subject to their written approval, for the item's current price(s) as listed in the Contract. Products which become obsolete/ unavailable to the Contractor shall be removed from the options list on Contract. New/ replacement Products shall be added/ updated on the Options list.

Contractor will provide citizens and transportation managers with the best products possible at any time during the term of this contract by making users aware of new products/ replacement parts and technologies.

### **38. MAINTENANCE MANUALS**

Upon delivery of Buses, Contractor shall provide with each piece of Equipment and operations and maintenance (owner's) manual with wiring diagrams, electrical schematics, parts list, and component supplier manuals. Contractor shall provide a copy of all warranties set forth in this Contract along with related documents as per the manufacturer's standard practice within fifteen (15) calendar days after delivery.

### **39. ACCEPTANCE**

Following delivery, all Products (to include diagnostic parts, but not Buses) shall be deemed accepted by the Authorized User, at its sole discretion, acting reasonably and in accordance with the terms of the Contract, following testing which meets the criteria as agreed upon with the Contractor prior to the Contractor building the Products/Buses, including applicable operational testing to ensure Products/Buses meet expected and required OEM operating standards, requirements, and performance specifications, such that all components - integral and peripheral - operate in the manner designed by the OEM, and for such period of time deemed reasonable and necessary by the Authorized User. If the Product/Bus passes these tests or if the Authorized User does not notify the Contractor of non-acceptance in writing within fifteen (15) calendar days after delivery of the Product/Bus, acceptance of the Product/Bus by the Authorized User shall be deemed to have occurred on the fifteenth (15th) calendar day after delivery. Acceptance shall occur earlier if the Authorized User notifies the Contractor of early acceptance or places the Product/Bus into revenue service. ("Acceptance").

Warranty shall commence upon the date of Acceptance. Should Products/Buses be deemed by the Authorized User to be not acceptable, acting reasonably, then the Authorized User shall reject Products/Buses, in writing, providing the Contractor with such details as needed in writing as to the reason why Products/Buses are deemed not to be acceptable/meet specifications.

The Authorized User shall assume risk of loss of the Products/Buses on delivery. Prior to delivery, the Contractor shall have risk of loss of the Products/Buses. Title to the Products/Buses shall pass to the Authorized User upon acceptance of Products/Buses by the Authorized User.

### **40. WARRANTY (Buses)**

Upon Acceptance of Buses by an Authorized User, and to ensure the maximum safety, protection and satisfaction to any Authorized User, and to their passengers, Contractor agrees that any new Bus shall be provided with the following warranties: two (2) year/100,000-mile (whichever comes first) full-service, bumper-to-bumper new vehicle warranty for New Flyers' MiDi (MD30) and (MD 35) bus models; with other New Flyer bus models having one (1) year/50,000-mile (whichever comes first) full-service, bumper-to-bumper new vehicle warranty (all such warranties hereinafter collectively or individually, as applicable "Warranty"), as follows: Warranty is to include all Buses and integral and peripheral components, materials, parts, assemblies and subassemblies e.g., body, chassis, engine, transmission, cooling, drive train, suspension, electrical and manual controls, steering, starter and alternator, safety equipment, heater and air conditioning, etc. together with all Services necessary to correct any malfunction or defect in materials or workmanship that occurs during the Warranty period, necessary to keep Equipment in good operating condition and preserve its operating efficiency in accordance with all OEM technical specifications and operating standards. The rights and remedies provided herein are in addition to and do not limit those available to any Authorized User by any other Contractual provision, or as provided in law.

Warranty covered repairs, shall be performed by the Authorized User's trained personnel, in accordance with commercially reasonable industry standards, with reimbursement by New Flyer in accordance with the terms of this

Contract. The Authorized User at its sole discretion, acting reasonably may hire a third party service provider to conduct the Warranty covered repairs and shall remain liable for the quality of such repairs pursuant to the indemnification provision in this Contract.

Warranty-covered repairs for Major Components (e.g. engine, transmission, HVAC and destination sign) shall be performed by an authorized dealer of the OEM.

Warranty excludes the following normal wear items: tires, filter, and wiper blades. The Warranty shall not apply to scheduled maintenance items, acts of nature, or normal consumables such as belts, bulbs/tubes or items with progressive wear characteristics (bushings, friction surfaces), nor to items furnished by the Authorized User such as radios, fare boxes and other auxiliary equipment, except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible.

Selected optional component equipment e.g., cameras, radios, GPS, etc., may be provided with a separate Warranty provision, but such Warranty shall be provided solely in accordance with the Products and Price Schedule, attached hereto.

Warranty of Buses shall not include any work that is external to the Bus, the furnishing of supplies, or adding or removing accessories, attachments, or other equipment that is not provided under this Contract. Warranty of Buses also shall not include repair of damage that is the direct result from the operational use by the Authorized User or from accident, unless the accident is caused by negligent or intentional acts or omissions of Contractor or its agents.

Contractor shall not be responsible for the cost of any Warranty repair due to the result of an Authorized User's intentional or negligent failure to properly use, maintain, and care for the Bus as outlined in the documentation or manuals provided by the Contractor. Authorized Users are advised to maintain copies of all maintenance records and receipts for review by the Contractor.

Nothing herein shall be construed to waive or limit any rights or remedies otherwise available to the Commonwealth or Authorized User under any other provisions herein, or in Code.

#### **41. AUTHORIZED USER RESPONSIBILITIES DURING WARRANTY**

- A. During any term of warranty/maintenance, Authorized User staff shall not perform maintenance or attempt repairs to Buses except for routine preventative maintenance, and/or as authorized in writing by Contractor. Authorized User will refrain from performing any maintenance and/or repairs which could void OEM Warranties.
- B. The Authorized User shall permit Contractor access to Buses to be maintained, as agreed upon between the Contractor and Authorized User, subject to the Authorized User's site security policies.
- C. Upon request by Contractor, an Authorized User is to provide Contractor with storage space for spare parts and supplies, as needed, including any heat, light, ventilation, electric current and outlets, and telephones (for local calls only) for use by Contractor's maintenance staff.
- D. The Authorized User shall maintain Buses and Products in accordance with all OEM and Contractor-furnished specifications, manuals, and documents, or as otherwise agreed upon in writing between the Contractor and an Authorized User.

#### **42. ENGINEERING CHANGES**

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

#### **43. SUPPLIES**

Authorized charges may not include standard operational vehicle replacement supplies (e.g. tires, filters, belts, bulbs, etc.) unless such supplies are specifically identified in Attachment A, or as may be agreed upon by the Authorized User in advance in any duly executed order. All supplies used by the Authorized User shall conform to the Contractor's published specifications provided to the Authorized User upon Product delivery or acceptance. At all times, an Authorized User reserves the right to acquire such supplies from any source of its choice, but such supplies

are required to conform to all OEM or Contractor provided technical specifications and documentation. The provision of such supplies from alternative sources by an Authorized User shall under no circumstances void Contractor responsibilities for Warranty, as described herein, or as may otherwise be provided by the Contractor to an Authorized User under this Contract.

#### **44. CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT**

By its signature on this Contract, Contractor certifies and warrants that its firm, and any individual employees and/or subcontractor(s) is/are properly certified and/or licensed by the appropriate federal, state, or other regulatory authorities to provide all Products/services specified or fulfill the requirements delineated herein.

#### **45. PRIME CONTRACTOR RESPONSIBILITIES**

The Contractor shall have prime responsibility for completely and solely supervising and directing all work performed, goods provided and/or services provided under this Contract, and for all subcontractors the Contractor may utilize. Subcontractors that perform work under this Contract shall be responsible to the prime Contractor. Contractor agrees that it shall be fully and solely responsible for the acts and omissions of its subcontractors and of any persons employed by them as he is for the acts and omissions of his own employees.

#### **46. SUBCONTRACTS**

No portion of the work shall be subcontracted without prior written consent of the DGS/DPS Contract Manager. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the DGS/DPS Contract Manager the names, qualifications and experience of its proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.

#### **47. INSURANCE**

By entering into this Contract, the Contractor certifies that it has and will maintain the following insurance coverages. The Contractor further certifies that it shall maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

##### **MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED:**

- A. Workers' Compensation--Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify DPS of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
- B. Employer's Liability--\$100,000.
- C. Commercial General Liability--\$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- D. Automobile Liability--\$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle).

#### **48. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS**

The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and all public bodies. The Contractor providing goods and/or services under this Agreement to all Authorized Users shall participate in the eVA Internet eProcurement program by completing the free eVA Vendor Registration. Contractor must register in eVA and pay the Vendor Transaction Fees specified below for all Order transactions.

Vendor transaction fees are determined by the date the original eVA Purchase Order is issued and the current fees are as follows:

A. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is: (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order. (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia, Department of General Services, typically within sixty (60) calendar days of the eVA Purchase Order issuance date. Any adjustments (increases/decreases) will be handled through eVA Purchase Order changes.

For questions about eVA billing, contractors may call eVA Customer Care at 866-289-7367 or 804-371-2525, and selecting option 2, or emailing [eVACustomerCare@DGS.Virginia.gov](mailto:eVACustomerCare@DGS.Virginia.gov).

#### **49. Governing Contract**

No employee or agent of the Commonwealth or of any Authorized User shall be required to sign or execute any additional contract, license or other contractual document containing contractual terms and conditions. Any documents signed by persons other than the Director, DPS or his/her authorized designee shall have no validity or effect upon the contract.

#### **50. LOBBYING AND INTEGRITY**

Contractors are cautioned that communications with individuals other than the Contract Officer may result in incorrect and/or insufficient information being provided. In addition, the Contractor shall not, in connection with this or any other contract or agreement with the Commonwealth, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Commonwealth officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state or public officer or employee.

Upon request of the Commonwealth, the Contractor shall provide any type of information the Authorized User deems relevant to the Contractor's integrity or responsibility to provide the services or goods, described herein.

#### **51. ORDERS**

The Contractor agrees that all purchases for new Buses under the Contract by the Authorized Users in the Commonwealth shall be processed through eVA. Orders from in the Commonwealth for new Buses which are not processed through eVA are not authorized by this Contract. If the Contractor receives a non-eVA order for new Buses that purports to be issued under this Contract, Contractor shall promptly notify the Authorized User in the Commonwealth that orders outside eVA are not made under this Contract and would require a separate competitive procurement process under the Virginia Public Procurement Act, and Contractor shall request the Commonwealth Authorized User to resubmit the order through eVA. If the Contractor accepts an order that purports to be under this Contract but where the order has not been processed through eVA, the Contractor shall be in breach of this Contract, and, shall notify DGS of the occurrence and shall reimburse DGS for all eVA fees that would have been generated by placement of the order in accordance with this Contract. Upon request by DGS, Contractor shall certify its compliance with this section.

Authorized Users may order Buses, Products, and Services from this Contract by any of the following methods:

- A. eVA: An eVA order issued by an ordering entity of the Commonwealth or Authorized User through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>. Use of eVA for ordering is mandatory for all Commonwealth Authorized Users.
- B. Charge Card: As applicable, an Authorized User may use their p-card, or any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, that is under contract for the use by the ordering Authorized User. Contractor agrees that it shall not accept any Charge Card Order that exceeds the minimum amount (e.g., \$5,000, etc.) or any other card limitation established and authorized for use with the Contractor by an Authorized User. (Applies to maintenance, repair or services equipment under \$5,000).

The Authorized User is solely limited to issuing orders for Products and/or Services available under this Contract.

#### **52. E-VERIFY PROGRAM**

Pursuant to Code of Virginia, §2.2-4308.2, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or

provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of its Maintain Company page from E-Verify to prove that it is enrolled in E-Verify.

### **53. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the applicable Authorized User no later than sixty (60) calendar days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) calendar days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the Authorized User's decision on the claim, unless that Authorized User fails to render its decision within thirty (30) calendar days. The decision of the Authorized User shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Commonwealth of Virginia, Department of General Services, its officers, agents and employees, including, without limitation, the Contract Manager and applicable Authorized User, are executing this Contract, or issuing any orders hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth or Authorized User that is purchasing and receiving the Products or Services to this Contract or on the subsequent Order in question and need not be joined as a party to any dispute that may arise there under.

In the event of any breach by the Commonwealth, then Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this section. In no event shall Contractor's remedies include the right to terminate any order or support services hereunder.

### **54. TERMINATION FOR DEFAULT**

Contractor shall be deemed in breach of this Contract if the Contractor (a) fails to deliver Products and/or Services on time as previously agreed upon between Contractor and Authorized User, not for reason of force majeure or by agreement of the parties (b) fails to comply with any other material term of the order or this Contract and fails to cure such noncompliance within ten (10) calendar days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (c) fails to provide a written response to the Commonwealth's Show Cause Notice within ten (10) calendar days after receiving same.

The Contractor shall not be in breach of this Contract if its default was due to reason of force majeure which are causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in its sovereign or Contractual capacity or of the Authorized User, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, natural disasters, acts of war or terrorism, labor shortages, lock-outs or shortages or loss of transportation. If such event of force majeure occurs, then the time for completion of the work and/or the delivery dates shall be extended by the Commonwealth or Authorized User, as applicable, by a reasonable period of time after such event of delay has ended in order that the Contractor may complete the work or deliver the Buses.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for the return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth or Authorized User to exercise any remedy available to it be construed as a waiver of or consent to any breach. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination.

### **55. LATE DELIVERY PENALTY**

Delivery of Buses is required not later than 18 months after receipt of purchase order from all districts in the Commonwealth. For other Products and Services, delivery is thirty (30) calendar days after receipt of order. It is understood and agreed by the Contractor that time is of the essence in the delivery of Buses. In the event Buses are not delivered by the date specified and no acceptable substitute is provided, then there will be deducted the sum of \$50 per day for each and every business day of delay beyond the time specified; except that if the delivery be delayed by any reason of force majeure, as set forth in section 54 above, wherein a reasonable extension of time as the procuring Authorized User deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, DGS/DPS may extend the time for performance of the Contract or delivery of Buses herein specified, at DGS/DPS's sole discretion, acting reasonably for good cause shown.

#### **56. INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the Commonwealth of Virginia and any Authorized User, together with its officers, agents, and employees, from any proven damages to a third party resulting from an action of any kind or nature, whether at law or in equity, arising from or caused by a negligent act or omission of the Contractor, or a defective product provided by the Contractor, provided that such liability is not attributable to the negligence of the Authorized User or the Commonwealth, or the failure of the Authorized User or the Commonwealth to use the Buses or Products in the manner already and permanently described by the Contractor on the Buses or Products provided.

#### **57. NON-APPROPRIATION**

All funds for payment of Products or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for items provided under this Contract, the Commonwealth or Authorized User will terminate this Contract for those Products or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, then the Commonwealth or Authorized User may terminate this Contract for Products or Services dependent on such federal funds, without further obligation.

#### **58. TERMINATION FOR CONVENIENCE**

The Commonwealth may terminate this Contract, or any Authorized User may cancel an order placed with the Contractor any time before delivery of the Products or Services, without penalty, by delivering to the Contractor a notice of termination specifying the extent to which performance under the Contract or purchase order is terminated, and the date of termination. After receipt of a notice of termination, the Contractor must stop all work or deliveries under the Contract or eVA Order on the date notified, and to the extent specified. There shall be no penalty to the Commonwealth when the Contract is terminated for convenience, or to an Authorized User for the termination of order.

The Commonwealth shall pay the Contractor for the cost of any work already performed, and any materials used, up to the point of notice. However, the Contractor must use all reasonable efforts to defray that cost by using the bus to fulfill another customer's outstanding order, selling to a different customer, returning materials, or any other available means. If the Contractor is able to defray that cost, but the Commonwealth has already paid the Contractor, the Contractor must reimburse the Commonwealth for the amount later defrayed.

#### **59. FINAL INSPECTION**

At the conclusion of any Services performed, Product delivered, or for any Product returned under Warranty from the Contractor, manufacturer or depot service, or repair or replacement, the Contractor shall demonstrate to the Authorized User's representative that the Services have been fully completed or the Product is fully operational and in compliance with OEM or contract specifications, requirements, and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense, prior to final acceptance of Product or of Services provided to the Authorized User. (Section included herein entitled "Acceptance" will govern the delivery and final acceptance process under the Contract.)

#### **60. SALES AND SUPPORT SERVICE**

The Commonwealth anticipates that this will be a high volume usage contract. The Contractor shall have a full time sales representative assigned to the Commonwealth to make regular calls to assist users, address problems, e-procurement concerns and other matters. The Contractor shall apprise the Commonwealth of any quality issues including recalls, upgrades, and product warnings that may affect product performance and safety. All service representatives must have on-line access to information to provide immediate response to inquiries concerning the

status of orders, delivery information, back-order information, statewide contract pricing, and general product information. Representatives shall be available by phone, fax or email. Such contact information shall be provided to the Commonwealth and any ordering entities.

**61. SUBJECT DATA**

All "subject data", including specifications, technical data, records and reports, engineering drawings (including shop drawings and working drawings), manuals and instruction materials and computer or microprocessor software that is delivered or specified to be delivered under the Contract shall remain the property of the Contractor; provided however, the Commonwealth shall have a royalty-free, non-exclusive, non-transferable and irrevocable license to use such subject data only for the purposes of operating and maintaining the Buses.

**62. KITS**

Each Bus shall be equipped with a First Aid kit (large size) and a Blood borne Pathogen kit.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

**NEW FLYER OF AMERICA INC.**

BY: \_\_\_\_\_

NAME: Jennifer McNeill

Printed

TITLE: Vice President, Sales and Marketing

DATE: May 28, 2019

2020 Jm d

**COMMONWEALTH OF VIRGINIA**

BY: \_\_\_\_\_

NAME: Dennis M. Donahue

Printed

TITLE: CONTRACT Manager

DATE: MAY 28, 2020



**ATTACHMENT A**  
**PRODUCTS AND PRICING SCHEDULE**

CONTRACT E194-75548-MA2275

BETWEEN THE

COMMONWEALTH OF VIRGINIA

AND

NEW FLYER OF AMERICA, INC.

Attachment "A" is hereby incorporated into and made an integral part of Contract **E194-75548** between the Commonwealth of Virginia and New Flyer Of America, Inc. in the event of any discrepancy between this Attachment "A" and the Contract, the provisions of the Contract shall control.

Contractor agrees to meet the requirements stated in the Commonwealth's RFP #E194-193, Section III, entitled "Statement of Needs," including all Products and Services, as applicable and as delineated in Contractor's proposal, submitted in response thereto, for provision of Buses and other Products and Services as delineated therein, and in accordance with the following, or as otherwise stipulated in any modification to this Contract.

**I. LISTING OF PRODUCTS AND PRICES (attached at end of contract)**

**II. LOGISTICS**

**A. Buses**

All Buses shall be delivered F.O.B. Destination. Prices include all standard freight costs.

**B. Small Package Maintenance & Repair Parts\_(as applicable)**

All maintenance and repair parts shall be delivered F.O.B. Destination.

Prices shall include all standard freight cost. Additional shipping charges for rush, over-size, special orders or shipments made outside of the Commonwealth may be the responsibility of the Authorized User. Shipping costs that are specified as other than standard shipping when an order is placed shall be quoted to the Authorized User prior to shipment.

Contractor must adhere to any and all security requirements at any facilities that are served.

A packing label must be on each box to include at a minimum name, Authorized User, address, and purchase order number (as applicable). A packing list must be included with each shipment to include, at a minimum, the line item description, quantity ordered, quantity included, backordered items purchase order number and contact (as applicable).

No minimum order limits apply.

Special order products or products ordered incorrectly by the Authorized User may incur a restocking fee if required by the manufacturer.

Products judged by the Authorized User to be unacceptable may be rejected. All costs associated with rejection are the responsibility of the Contractor. Over-shipments will be accepted at the Authorized User's discretion. The Contractor shall be responsible for the disposition of all defective, damaged or rejected over-shipped products.

Return authorization shall be provided by the Contractor within 14 calendar days of verbal notification.

### **III. REPORTING REQUIREMENTS**

Reports are due semiannually for periods ending June 30<sup>th</sup> and December 31<sup>st</sup> – for all delivered and invoiced Products and Services).

During the term of the Contract, or any renewal thereof, the Contractor agrees that the following reports shall be submitted to the Contract Manager. Failure to comply with reporting and payment requirements of this section may result in payment(s) being withheld until compliance with the plan is received and confirmed. The Authorized User reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

Reports include, but are not limited to, the following:

*Note: In lieu of the format (A) below, Contractor may send copies of their reports to the Contracting Manager as given to the U.S. Dept. of Transportation.*

- A. UTILIZATION OF SMALL BUSINESSES AND BUSINESS OWNED BY WOMEN AND MINORITIES Contractor shall provide a semiannual report on the involvement of small businesses and businesses owned by women and minorities. This report shall specify actual dollars expended year to date, by month, with such businesses on this Contract. This information shall be provided separately for small businesses, women-owned businesses and minority-owned businesses, as delineated herein under the section entitled "Small Business Subcontracting and Evidence of Compliance."

The following is a suggested format for information in an electronic spreadsheet as follows (sample):

<u>Firm Name &amp; Phone Number</u>	<u>SWaM Cert. #</u>	<u>SWaM * Type</u>	<u>T.I.N.</u>	<u>NIGP Code and Description of Services</u>	<u>Amount (\$)</u>
Example: ABC Company, Inc. (123) 456- 7890	123456	SW	12-3456789	96239 (Vehicle)	\$25,000
<u>TOTAL</u>			<u>\$25,000</u>		

\*Small (Small), Woman-owned (W), Minority-owned (M) or combination (i.e., SW, SM, etc.)

This report shall be submitted in electronic spreadsheet format via email to within thirty (30) days after the end of each semiannual reporting period as defined herein to the Contract Manager.

#### **B. VENDOR USAGE - SEMIANNUALSALES REPORT**

On a semiannual basis, the Contractor shall provide the Contract Manager with reports of the total dollar volume of purchases by each Contract User. Reports shall be due no later than the 15th day of the month following the reported (June 30<sup>th</sup> and December 31<sup>st</sup>). If the 15th of the month falls on a weekend or holiday, the report shall be due the next business day. All semiannual reports, in an unlocked spreadsheet format, shall be delivered electronically to the Contract Manager Dennis Donahue at ([dennis.donahue@dqs.virginia.gov](mailto:dennis.donahue@dqs.virginia.gov)).

Failure to submit information in the required format and time may result in cancellation of the awarded contract. (ref. Attachment B: VENDOR USAGE - SEMIANNUALSALES REPORT)

#### **C. SEMIANNUAL REVIEW**

On a semiannual basis, Contractor and Commonwealth will have a brief discussion regarding contract compliance,

sales and any customer service issues. Discussion may include FTA changes, new products, technology and innovation forthcoming. Contractor shall provide reference to technical websites and/or catalogs as requested by the Commonwealth.

#### **IV. INVOICING AND PAYMENT**

##### **A. Invoices**

As applicable, all invoices shall be rendered promptly to any Authorized User after all Products and/or Services covered by the invoice have been provided. The Contractor shall invoice monthly in arrears. No invoice may include any cost other than those identified in the Contract or individual order referencing this Contract. Invoices shall provide at a minimum:

1. Name of Authorized User (the ordering entity)
2. Authorized User point of contact name
3. Description of the Products and/or Services provided
4. Invoice number
5. Invoice date
6. Monthly charges
7. Contract Number
8. Purchase Order Number

Contractor shall render invoices for any Authorized User in accordance with the instructions contained in the order.

##### **B. Methods of Payment**

- i. Payment will be made in thirty (30) days (or 45 days as appropriate) after receipt of Products and/or services or a valid invoice, whichever is later. Contractor shall submit a valid invoice to the invoice address designated in any order issued by an Authorized User in accordance with the invoice mailing instructions therein.
- ii. For valid invoices in the amount of \$5,000 or less, or any then-current charge card small dollar usage threshold, Contractor shall accept payment using the Commonwealth of Virginia's Small Purchase Charge Card (SPCC), if the SPCC card is offered for payment. For any amount exceeding \$5,000, or any then-current charge card small dollar usage threshold, Contractor shall accept payment by the Commonwealth's Gold Card, if the Gold Card is offered for payment (as applicable).
- iii. Payment may be made by any other duly authorized official payment method or card as mutually agreed upon between any Authorized User and the Contractor.

##### **C. Credit (Equipment)**

Contractor shall accept and provide full credit for equipment based on the manufacturer's decision regarding such return and credit. Contractor shall act as an advocate in all instances.

#### **V. DGS POINTS OF CONTACT**

##### **Contract Administration/Compliance**

Dennis M. Donahue, Contract Manager  
1111 East Broad Street  
Richmond, VA 23219  
Tel.: 804-786-5410  
Fax: 804-786-5413  
Email: dennis.donahue@dgs.virginia.gov

##### **eVA Customer Care**

Hours: 8:00 AM – 4:45 PM (Eastern) M - F  
Toll Free: 866-289-7369  
Outside US: 804-371-2525  
Email: eVACustomerCare@DGS.Virginia.gov

## **VI. CONTRACTOR POINTS OF CONTACT**

### **Primary Contact / Invoice Questions**

John S. Andrews, Regional Sales Manager  
New Flyer of America, Inc.  
7550 Hinson Street  
Orlando, FL 32819  
Cell: 407-408-5610  
Email: john-andrews@newflyer.com

## **VII. FTA / APTA REQUIREMENTS**

For all Buses delivered to Authorized Users under this Agreement, Contractor shall be in compliance with the following, or any then-current, requirements established by the Federal Transit Administration (FTA) and the American Public Transportation Association (APTA), and as published on the FTA's and APTA's current website, or any-then current website existing during the term of this Contract. Examples of current requirements\* are noted below.

(\*Source: APTA Standard Bus Procurement Guidelines RFP, Section 5: Federal Requirements, Published May 2013.  
Website: <http://www.apta.com/resources/reportsandpublications/Pages/BusParatransit.aspx>)

- R 1. Access to Records
  - FR 1.1 Local Governments
  - FR 1.2 State Governments
- FR 2 Federal Funding, Incorporation of FTA Terms and Federal Changes
- FR 3 Federal Energy Conservation Requirements
- FR 4 Civil Rights Requirements
- FR 5 No Government Obligation to Third Parties
- FR 6 Program Fraud and False or Fraudulent Statements or Related Acts
- FR 7 Suspension and Debarment
- FR 8 Disadvantaged Business Enterprise (DBE)
- FR 9 Clean Water Requirements
- FR 10 Clean Air Requirements
- FR 11 Compliance with Federal Lobbying Policy
- FR 12 Buy America (FTA issued On September 1, 2016, policy guidance on phased increase in domestic content for manufacturers)
- FR 13 Testing of New Bus Models
- FR 14 Pre-Award and Post-Delivery Audits
- FR 15 Cargo Preference
- FR 16 Fly America
- FR 17 Contract Work Hours and Safety Standards Act

ATTACHMENT A  
PRODUCTS AND PRICING SCHEDULE  
(Bus Prices attached)



**NEW FLYER**  
**MASTER CONTRACT E194-75548 MA2274**  
**PRODUCTS AND PRICING SCHEDULE**

**2020**

**35 Ft - Diesel Engine**

Vendor Name: New Flyer of America Inc.  
 Manufacturer: New Flyer of America Inc.  
 Model: Xcelior XD35  
 Length /Size: 35'

PART 1, BASE BUS, STANDARD FEATURES				
A) Model Year	New 2020, or current model year.			
B) Engine (i.e. diesel) / HP	Diesel / Cummins L9 280			
C) Transmission	Allison B400R (with retarder).			
D) Seating Capacity	27			
E) Doors	2			
F) Wheelchair Locations	2			
G) Weight	26,000			
H) Alternate Fuel Options	Hybrid, CNG			
I) Brakes	Knorr/ Bremse Disc brakes			

PART 2, BASE BUS PRICE					
	Purchase Qty ----->	1 to 5	6 to 10	11 to 15	16 +
Base Price / Per Bus		\$ 409,942.90	\$ 409,942.90	\$ 409,942.90	\$ 409,942.90
Less discount for volume level		\$ -	\$ 2,049.71	\$ 4,099.43	\$ 8,198.86
Net Price		\$ 409,942.90	\$ 407,893.18	\$ 405,843.47	\$ 401,744.04
(discount % )		0%	0.5%	1%	2%

PART 3, Additional Options, Upgrades				
Description	Order Code	Price	Discount %	Net Price
Add MAN end of life indication with MGM E-Stroke	XD35_1	\$ 9,503.78	10.71%	\$ 8,485.92
Add Drain Valves	XD35_3	\$ 63.43	10.71%	\$ 56.64
Add Upper Rear Turn Signals	XD35_4	\$ 85.89	10.71%	\$ 76.70
Add Curb Side Cornering Lights	XD35_5	\$ 158.63	10.71%	\$ 141.64
Add Street Side Cornering Lights	XD35_6	\$ 158.63	10.71%	\$ 141.64
Change to Flush Fixed Windows	XD35_7	\$ 2,783.64	10.71%	\$ 2,485.51
Add Luminator Rear Destination Sign	XD35_8	\$ 218.59	10.71%	\$ 195.18
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XD35_9	\$ 982.12	10.71%	\$ 876.93
Add Fire Suppression Fog Maker 40"	XD35_10	\$ 3,963.61	10.71%	\$ 3,539.11
Change - Insight 40 Seats Forward Facing	XD35_11	\$ 4,690.93	10.71%	\$ 4,188.54
Warranty - Extended Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XD35_12	\$ 6,273.12	10.71%	\$ 5,601.27
Warranty - Engine - Cummins extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XD35_13	\$ 8,123.15	10.71%	\$ 7,253.16
Warranty - Transmission - extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XD35_14	\$ 3,921.06	10.71%	\$ 3,501.12
Warranty - HVAC - limited extended warranty of 1 year (total 3 years/unlimited miles)	XD35_15	\$ 2,049.08	10.71%	\$ 1,829.63
Percent discount on all other options not listed above =		10.71%		

**35 Ft - Hybrid Engine**

Vendor Name: New Flyer of America Inc.  
 Manufacturer: New Flyer of America Inc.  
 Model: Xcelior XDE35  
 Length /Size: 35'

PART 1, BASE BUS, STANDARD FEATURES				
A) Model Year	New 2020, or current model year.			
B) Engine (i.e. diesel) / HP	Cummins 280			
C) Transmission	Allison R40UEP or BAE APS3			
D) Seating Capacity	27			
E) Doors	2			
F) Wheelchair Locations	2			
G) Weight	28,500			
H) Alternate Fuel Options	Diesel, CNG			
I) Brakes	Knorr/ Bremse Disc brakes			

PART 2, BASE BUS PRICE					
	Purchase Qty ----- >	1 to 5	6 to 10	11 to 15	16 +
Base Price / Per Bus		\$ 686,352.31	\$ 686,352.31	\$ 686,352.31	\$ 686,352.31
Less discount for volume level		\$ -	\$ 3,431.76	\$ 6,863.52	\$ 13,727.05

Net Price		\$ 686,352.31	\$ 682,920.55	\$ 679,488.79	\$ 672,625.26
(discount % )		0%	0.5%	1%	2%

PART 3, Additional Options, Upgrades				
Description	Order Code	Price	Discount %	Net Price
Add MAN end of life indication with MGM E-Stroke	XDE35 1	\$ 9,503.78	10.71%	\$ 8,485.92
Add Drain Valves	XDE35 3	\$ 63.43	10.71%	\$ 56.64
Add Upper Rear Turn Signals	XDE35 4	\$ 85.89	10.71%	\$ 76.70
Add Curb Side Cornering Lights	XDE35 5	\$ 158.63	10.71%	\$ 141.64
Add Street Side Cornering Lights	XDE35 6	\$ 158.63	10.71%	\$ 141.64
Change to Flush Fixed Windows	XDE35 7	\$ 2,783.64	10.71%	\$ 2,485.51
Add Luminator Rear Destination Sign	XDE35 8	\$ 218.59	10.71%	\$ 195.18
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XDE35 9	\$ 982.12	10.71%	\$ 876.93
Add Fire Suppression Fog Maker 40'	XDE35 10	\$ 3,963.61	10.71%	\$ 3,539.11
Change - Insight 40 Seats Forward Facing	XDE35 11	\$ 4,690.93	10.71%	\$ 4,188.54
Warranty - Extended Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XDE35 12	\$ 7,318.15	10.71%	\$ 6,534.38
Warranty - Engine - Cummins extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XDE35 13	\$ 8,123.15	10.71%	\$ 7,253.16
Warranty - Hybrid Drive (Allison) - extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XDE35 14	\$ 27,716.76	10.71%	\$ 24,748.30
Warranty - HVAC - limited extended warranty of 1 year (total 3 years/unlimited miles)	XDE35 15	\$ 3,659.08	10.71%	\$ 3,267.19
Percent discount on all other options not listed above =		10.71%		

### 35 Ft - CNG Engine

Vendor Name: New Flyer of America Inc.  
 Manufacturer: New Flyer of America Inc.  
 Model: Xcelsior XN35  
 Length /Size: 35'

PART 1, BASE BUS, STANDARD FEATURES			
A) Model Year	New 2020, or current model year		
B) Engine (i.e. diesel) / HP	L9 280 (CNG)		
C) Transmission	Allison B400R (with retarder)		
D) Seating Capacity	27		
E) Doors	2		
F) Wheelchair Locations	2		
G) Weight	31,000		
H) Alternate Fuel Options	Hybrid, Diesel		
I) Brakes	Knorr/ Bremse Disc brakes		

PART 2, BASE BUS PRICE					
	Purchase Qty ---->	1 to 5	6 to 10	11 to 15	16 +
Base Price / Per Bus		\$ 459,907.05	\$ 459,907.05	\$ 459,907.05	\$ 459,907.05
Less discount for volume level		\$ -	\$ 2,299.54	\$ 4,599.07	\$ 9,198.14
Net Price		\$ 459,907.05	\$ 457,607.51	\$ 455,307.98	\$ 450,708.90
(discount % )		0%	0.5%	1%	2%

PART 3, Additional Options, Upgrades				
Description	Order Code	Price	Discount %	Net Price
Add MAN end of life indication with MGM E-Stroke	XN35 1	\$ 9,503.78	10.71%	\$ 8,485.92
Add Drain Valves	XN35 3	\$ 63.43	10.71%	\$ 56.64
Add Upper Rear Turn Signals	XN35 4	\$ 85.89	10.71%	\$ 76.70
Add Curb Side Cornering Lights	XN35 5	\$ 158.63	10.71%	\$ 141.64
Add Street Side Cornering Lights	XN35 6	\$ 158.63	10.71%	\$ 141.64
Change to Flush Fixed Windows	XN35 7	\$ 2,783.64	10.71%	\$ 2,485.51
Add Luminator Rear Destination Sign	XN35 8	\$ 218.59	10.71%	\$ 195.18
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XN35 9	\$ 982.12	10.71%	\$ 876.93
Add Fire Suppression Fog Maker 40'	XN35 10	\$ 3,963.61	10.71%	\$ 3,539.11
Change Seating - Insight 40 Seats Forward Facing	XN35 11	\$ 4,690.93	10.71%	\$ 4,188.54
Warranty - Extended Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XN35 12	\$ 6,273.12	10.71%	\$ 5,601.27
Warranty - Engine - Cummins extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XN35 13	\$ 11,123.59	10.71%	\$ 9,932.25
Warranty - Transmission - extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XN35 14	\$ 3,921.06	10.71%	\$ 3,501.12
Warranty - HVAC - limited extended warranty of 1 year (total 3 years/unlimited miles)	XN35 15	\$ 2,049.08	10.71%	\$ 1,829.63
Percent discount on all other options not listed above =		10.71%		



**40 Ft - Diesel Engine**

Vendor Name: New Flyer of America Inc.  
 Manufacturer: New Flyer of America Inc.  
 Model: Xcelisior XD40  
 Length /Size: 40'

PART 1, BASE BUS, STANDARD FEATURES					
A) Model Year	New 202, or current model year.				
B) Engine (i.e. diesel) / HP	Diesel / Cummins L9 280				
C) Transmission	Allison B400R (with retarder).				
D) Seating Capacity	34				
E) Doors	2				
F) Wheelchair Locations	2				
G) Weight	26,000				
H) Alternate Fuel Options	Hybrid, CNG				
I) Brakes	Knorr/ Bremse Disc brakes				
PART 2, BASE BUS PRICE					
	Purchase Qty ----->	1 to 5	6 to 10	11 to 15	16 +
Base Price / Per Bus		\$ 417,480.59	\$ 417,480.59	\$ 417,480.59	\$ 417,480.59
Less discount for volume level		\$ -	\$ 2,087.40	\$ 4,174.81	\$ 8,349.61
Net Price		\$ 417,480.59	\$ 415,393.19	\$ 413,305.79	\$ 409,130.98
(discount % )		0%	0.5%	1%	2%

PART 3, Additional Options, Upgrades				
Description	Order Code	Price	Discount %	Net Price
Add MAN end of life indication with MGM E-Stroke	XD40 1	\$ 9,503.78	10.71%	\$ 8,485.92
Add Drain Valves	XD40 3	\$ 63.43	10.71%	\$ 56.64
Add Upper Rear Turn Signals	XD40 4	\$ 85.89	10.71%	\$ 76.70
Add Curb Side Cornering Lights	XD40 5	\$ 158.63	10.71%	\$ 141.64
Add Street Side Cornering Lights	XD40 6	\$ 158.63	10.71%	\$ 141.64
Change to Flush Fixed Windows	XD40 7	\$ 2,783.64	10.71%	\$ 2,485.51
Add Luminator Rear Destination Sign	XD40 8	\$ 218.59	10.71%	\$ 195.18
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XD40 9	\$ 982.12	10.71%	\$ 876.93
Add Fire Suppression Fog Maker 40"	XD40 10	\$ 3,963.61	10.71%	\$ 3,539.11
Change - Insight 40 Seats Forward Facing	XD40 11	\$ 4,690.93	10.71%	\$ 4,188.54
Warranty - Extended Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XD40 12	\$ 6,273.12	10.71%	\$ 5,601.27
Warranty - Engine - Cummins extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XD40 13	\$ 8,123.15	10.71%	\$ 7,253.16
Warranty - Transmission - extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XD40 14	\$ 3,921.06	10.71%	\$ 3,501.12
Warranty - HVAC - limited extended warranty of 1 year (total 3 years/unlimited miles)	XD40 15	\$ 2,049.08	10.71%	\$ 1,829.63
Percent discount on all other options not listed above =		10.71%		

**40 Ft - Hybrid Engine**

Vendor Name: New Flyer of America Inc.  
 Manufacturer: New Flyer of America Inc.  
 Model: Xcelisior XDE40  
 Length /Size: 40'

PART 1, BASE BUS, STANDARD FEATURES					
A) Model Year	New 2020 or current model year.				
B) Engine (i.e. diesel) / HP	Cummins 280				
C) Transmission	Allison H40EP or BAE APS3				
D) Seating Capacity	34				
E) Doors	2				
F) Wheelchair Locations	2				
G) Weight	28,500				
H) Alternate Fuel Options	Diesel CNG				
I) Brakes	Knorr/ Bremse Disc brakes				
PART 2, BASE BUS PRICE					
Purchase Qty ----->		1 to 5	6 to 10	11 to 15	16 +
Base Price / Per Bus		\$ 694,055.83	\$ 694,055.83	\$ 694,055.83	\$ 694,055.83
Less discount for volume level		\$ -	\$ 3,470.28	\$ 6,940.56	\$ 13,881.12
Net Price		\$ 694,055.83	\$ 690,585.56	\$ 687,115.28	\$ 680,174.72

(discount % )		0%	0.5%	1%	2%
<b>PART 3, Additional Options, Upgrades</b>					
<b>Description</b>	<b>Order Code</b>	<b>Price</b>	<b>Discount %</b>	<b>Net Price</b>	
Add MAN end of life indication with MGM E-Stroke	XDE40 1	\$ 9,503.78	10.71%	\$ 8,485.92	
Add Drain Valves	XDE40 3	\$ 63.43	10.71%	\$ 56.64	
Add Upper Rear Turn Signals	XDE40 4	\$ 85.89	10.71%	\$ 76.70	
Add Curb Side Cornering Lights	XDE40 5	\$ 158.63	10.71%	\$ 141.64	
Add Street Side Cornering Lights	XDE40 6	\$ 158.63	10.71%	\$ 141.64	
Change to Flush Fixed Windows	XDE40 7	\$ 2,783.64	10.71%	\$ 2,485.51	
Add Luminator Rear Destination Sign	XDE40 8	\$ 218.59	10.71%	\$ 195.18	
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XDE40 9	\$ 982.12	10.71%	\$ 876.93	
Add Fire Suppression Fog Maker 40'	XDE40 10	\$ 3,963.61	10.71%	\$ 3,539.11	
Change - Insight 40 Seats Forward Facing	XDE40 11	\$ 4,690.93	10.71%	\$ 4,188.54	
Warranty - Extended Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XDE40 12	\$ 7,318.15	10.71%	\$ 6,534.38	
Warranty - Engine - Cummins extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XDE40 13	\$ 8,123.15	10.71%	\$ 7,253.16	
Warranty - Hybrid Drive (Allison) - extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XDE40 14	\$ 27,716.76	10.71%	\$ 24,748.30	
Warranty - HVAC - limited extended warranty of 1 year (total 3 years/unlimited miles)	XDE40 15	\$ 3,659.08	10.71%	\$ 3,267.19	
Percent discount on all other options not listed above =	10.71%				

#### 40 Ft - CNG Engine

Vendor Name: New Flyer of America Inc.  
Manufacturer: New Flyer of America Inc.  
Model: Xcelisior XN40  
Length /Size: 40'

<b>PART 1, BASE BUS, STANDARD FEATURES</b>					
A) Model Year	New 2020, or current model year				
B) Engine (i.e. diesel) / HP	ISL-G 280 (CNG)				
C) Transmission	Allison B400R (with retarder)				
D) Seating Capacity	34				
E) Doors	2				
F) Wheelchair Locations	2				
G) Weight	31,000				
H) Alternate Fuel Options	Hybrid, Diesel				
I) Brakes	Knorr/ Bremse Disc brakes				
<b>PART 2, BASE BUS PRICE</b>					
	<b>Purchase Qty ----&gt;</b>	<b>1 to 5</b>	<b>6 to 10</b>	<b>11 to 15</b>	<b>16 +</b>
Base Price / Per Bus		\$ 467,660.10	\$ 467,660.10	\$ 467,660.10	\$ 467,660.10
Less discount for volume level		\$ -	\$ 2,338.30	\$ 4,676.60	\$ 9,353.20
Net Price		\$ 467,660.10	\$ 465,321.80	\$ 462,983.50	\$ 458,306.90
(discount % )		0%	0.5%	1%	2%

<b>PART 3, Additional Options, Upgrades</b>					
<b>Description</b>	<b>Order Code</b>	<b>Price</b>	<b>Discount %</b>	<b>Net Price</b>	
Add MAN end of life indication with MGM E-Stroke	XN40 1	\$ 9,503.78	10.71%	\$ 8,485.92	
Add Drain Valves	XN40 3	\$ 63.43	10.71%	\$ 56.64	
Add Upper Rear Turn Signals	XN40 4	\$ 85.89	10.71%	\$ 76.70	
Add Curb Side Cornering Lights	XN40 5	\$ 158.63	10.71%	\$ 141.64	
Add Street Side Cornering Lights	XN40 6	\$ 158.63	10.71%	\$ 141.64	
Change to Flush Fixed Windows	XN40 7	\$ 2,783.64	10.71%	\$ 2,485.51	
Add Luminator Rear Destination Sign	XN40 8	\$ 218.59	10.71%	\$ 195.18	
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XN40 9	\$ 982.12	10.71%	\$ 876.93	
Add Fire Suppression Fog Maker 40'	XN40 10	\$ 3,963.61	10.71%	\$ 3,539.11	
Change Seating - Insight 40 Seats Forward Facing	XN40 11	\$ 4,690.93	10.71%	\$ 4,188.54	
Warranty - Extended Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XN40 12	\$ 6,273.12	10.71%	\$ 5,601.27	
Warranty - Engine - Cummins extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XN40 13	\$ 11,123.59	10.71%	\$ 9,932.25	
Warranty - Transmission - extended warranty of 3-years/300,000 miles (Total 5 years/300,000 miles/whichever occurs first) on major components	XN40 14	\$ 3,921.06	10.71%	\$ 3,501.12	
Warranty - HVAC - limited extended warranty of 1 year (total 3 years/unlimited miles)	XN40 15	\$ 2,049.08	10.71%	\$ 1,829.63	
Percent discount on all other options not listed above =	10.71%				

**60 Ft - Diesel Engine**

Vendor Name: New Flyer of America Inc.  
 Manufacturer: New Flyer of America Inc.  
 Model: Xcelsior XD60  
 Length /Size: 60'

PART 1, BASE BUS, STANDARD FEATURES			
A) Model Year	New 2020, or current model year.		
B) Engine (i.e. diesel) / HP	Diesel / Cummins L9 330		
C) Transmission	Allison B500R (with retarder)		
D) Seating Capacity	48		
E) Doors	2		
F) Wheelchair Locations	2		
G) Weight	39,000		
H) Alternate Fuel Options	Hybrid, CNG		
I) Brakes	Knorr/ Bremse Disc brakes		

PART 2, BASE BUS PRICE					
	Purchase Qty ----->	1 to 5	6 to 10	11 to 15	16 +
Base Price / Per Bus		\$ 640,704.03	\$ 640,704.03	\$ 640,704.03	\$ 640,704.03
Less discount for volume level		\$ -	\$ 3,203.62	\$ 6,407.04	\$ 12,814.08
Net Price		\$ 640,704.03	\$ 637,500.41	\$ 634,296.99	\$ 627,889.95
(discount % )		0.0%	0.5%	1.0%	2.0%

PART 3, Additional Options, Upgrades (list Top 15 most requested Options)				
Description	Order Code	Price	Discount %	Net Price
Warranty - Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XD60_1	\$ 9,513.60	10.71%	\$ 8,494.69
Warranty - Engine - Cummins limited extended 3-years/300,000 miles warranty on major components (Total 5 years/300,000 miles/whichever occurs first)	XD60_2	\$ 8,123.15	10.71%	\$ 7,253.16
Warranty - Transmission - extended limited 3-years/300,000 miles warranty on major components (Total 5 years/300,000 miles/whichever occurs first)	XD60_3	\$ 3,782.02	10.71%	\$ 3,376.97
Warranty - HVAC - extended limited 1 year warranty (total 3 years/unlimited miles)	XD60_4	\$ 4,098.16	10.71%	\$ 3,659.25
Warranty - Brake System - 3 year/150,000 miles (whichever occurs first)	XD60_5	\$ 731.82	10.71%	\$ 653.44
Add Tire Pressure Monitoring System	XD60_6	\$ 50.09	10.71%	\$ 44.73
Change to Odyssey Batteries	XD60_7	\$ 2,542.96	10.71%	\$ 2,270.61
Add Curb Side Cornering Lights	XD60_8	\$ 158.63	10.71%	\$ 141.64
Add Street Side Cornering Lights	XD60_9	\$ 158.63	10.71%	\$ 141.64
Add Roof Hatch - 3 SkyLight Hatches	XD60_10	\$ 691.76	10.71%	\$ 617.67
Change to Flush Fixed Windows	XD60_11	\$ 24,570.02	10.71%	\$ 21,938.57
Add Luminator Rear Destination Sign	XD60_12	\$ 218.59	10.71%	\$ 195.18
Change - High Mount Streetside Mirror	XD60_13	\$ 182.89	10.71%	\$ 163.30
Change - High Mount Curbside Mirror	XD60_14	\$ 187.33	10.71%	\$ 167.27
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XD60_15	\$ 982.12	10.71%	\$ 876.93
Percent discount on all other options not listed above =	10.71%			

**60 Ft - Hybrid Engine**

Vendor Name: New Flyer of America Inc.  
 Manufacturer: New Flyer of America Inc.  
 Model: Xcelsior XDE60  
 Length /Size: 60'

PART 1, BASE BUS, STANDARD FEATURES			
A) Model Year	New 2020, or current model year.		
B) Engine (i.e. diesel) / HP	Cummins 330 Diesel Engine.		
C) Transmission	Allison H50EP or BAE APS3		
D) Seating Capacity	52		
E) Doors	2		
F) Wheelchair Locations	2		
G) Weight	42,000		
H) Alternate Fuel Options	Diesel, CNG		
I) Brakes	Knorr/ Bremse Disc brakes		

PART 2, BASE BUS PRICE					
	Purchase Qty ----->	1 to 5	6 to 10	11 to 15	16 +
Base Price / Per Bus		\$ 957,933.29	\$ 957,933.29	\$ 957,933.29	\$ 957,933.29
Less discount for volume level		\$ -	\$ 4,789.67	\$ 9,579.33	\$ 19,158.67
Net Price		\$ 957,933.29	\$ 953,143.62	\$ 948,353.96	\$ 938,774.62
(discount % )		0.0%	0.5%	1.0%	2.0%

PART 3, Additional Options, Upgrades				
Description	Order Code	Price	Discount %	Net Price
Warranty - Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XDE60 1	\$ 9,513.60	10.71%	\$ 8,494.69
Warranty - Engine - Cummins limited extended 3-years/300,000 miles warranty on major components (Total 5 years/300,000 miles/whichever occurs first)	XDE60 2	\$ 8,123.15	10.71%	\$ 7,253.16
Warranty - Transmission - extended limited 3-years/300,000 miles warranty on major components (Total 5 years/300,000 miles/whichever occurs first)	XDE60 3	\$ 3,782.02	10.71%	\$ 3,376.97
Warranty - HVAC - extended limited 1 year warranty (total 3 years/unlimited miles)	XDE60 4	\$ 4,098.16	10.71%	\$ 3,659.25
Warranty - Brake System - 3 year/150,000 miles (whichever occurs first)	XDE60 5	\$ 731.82	10.71%	\$ 653.44
Add Tire Pressure Monitoring System	XDE60 6	\$ 50.09	10.71%	\$ 44.73
Change to Odyssey Batteries	XDE60 7	\$ 2,542.96	10.71%	\$ 2,270.61
Add Curb Side Cornering Lights	XDE60 8	\$ 158.63	10.71%	\$ 141.64
Add Street Side Cornering Lights	XDE60 9	\$ 158.63	10.71%	\$ 141.64
Add Roof Hatch - 3 Skylight Hatches	XDE60 10	\$ 691.76	10.71%	\$ 617.67
Change to Flush Fixed Windows	XDE60 11	\$ 24,570.02	10.71%	\$ 21,938.57
Add Luminator Rear Destination Sign	XDE60 12	\$ 218.59	10.71%	\$ 195.18
Change - High Mount Streetside Mirror	XDE60 13	\$ 182.89	10.71%	\$ 163.30
Change - High Mount Curbside Mirror	XDE60 14	\$ 187.33	10.71%	\$ 167.27
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XDE60 15	\$ 982.12	10.71%	\$ 876.93
Percent discount on all other options not listed above =		10.71 %		

### 60 Ft - CNG Engine

Vendor Name: New Flyer of America Inc.  
Manufacturer: New Flyer of America Inc.  
Model: Xcelisior XN60  
Length /Size: 60'

PART 1, BASE BUS, STANDARD FEATURES			
A) Model Year	New 2020, or current model year.		
B) Engine (i.e., diesel) / HP	Cummins L9N 320 CNG		
C) Transmission	Allison B500R (with retarder)		
D) Seating Capacity	48		
E) Doors	2		
F) Wheelchair Locations	2		
G) Weight	43,000		
H) Alternate Fuel Options	Hybrid, Diesel		
I) Brakes	Knorr/ Bremse Disc brakes		

PART 2, BASE BUS PRICE									
Base Price / Per Bus	Purchase Qty ----- >	1 to 5		6 to 10		11 to 15		16 +	
		\$	736,217.39	\$	736,217.39	\$	736,217.39	\$	736,217.39
Less discount for volume level		\$	-	\$	3,681.09	\$	7,362.17	\$	14,724.35
Net Price		\$	736,217.39	\$	732,536.30	\$	728,855.22	\$	721,493.04
(discount % )			0.0%		0.5%		1.0%		2.0%

PART 3, Additional Options, Upgrades				
Description	Order Code	Price	Discount %	Net Price
Warranty - Base Bus - additional 1 year/50,000 miles (total 2 years/100,000 miles whichever occurs first)	XN60 1	\$ 9,513.60	10.71%	\$ 8,494.69
Warranty - Engine - Cummins limited extended 3-years/300,000 miles warranty on major components (Total 5 years/300,000 miles/whichever occurs first)	XN60 2	\$ 8,123.15	10.71%	\$ 7,253.16
Warranty - Transmission - extended limited 3-years/300,000 miles warranty on major components (Total 5 years/300,000 miles/whichever occurs first)	XN60 3	\$ 3,782.02	10.71%	\$ 3,376.97
Warranty - HVAC - extended limited 1 year warranty (total 3 years/unlimited miles)	XN60 4	\$ 4,098.16	10.71%	\$ 3,659.25
Warranty - Brake System - 3 year/150,000 miles (whichever occurs first)	XN60 5	\$ 731.82	10.71%	\$ 653.44
Change to Odyssey Batteries	XN60 7	\$ 2,542.96	10.71%	\$ 2,270.61
Add Curb Side Cornering Lights	XN60 8	\$ 158.63	10.71%	\$ 141.64
Add Street Side Cornering Lights	XN60 9	\$ 158.63	10.71%	\$ 141.64
Add Roof Hatch - 3 Skylight Hatches	XN60 10	\$ 691.76	10.71%	\$ 617.67
Change to Flush Fixed Windows	XN60 11	\$ 24,570.02	10.71%	\$ 21,938.57
Add Luminator Rear Destination Sign	XN60 12	\$ 218.59	10.71%	\$ 195.18
Change - High Mount Streetside Mirror	XN60 13	\$ 182.89	10.71%	\$ 163.30
Change - High Mount Curbside Mirror	XN60 14	\$ 187.33	10.71%	\$ 167.27
Change Driver's Seat - Recaro M (with Seatbelt, Right Hand Arm	XN60 15	\$ 982.12	10.71%	\$ 876.93
Percent discount on all other options not listed above =		10.71 %		

**ATTACHMENT B**

**VENDOR USAGE- SEMI-ANNUALSALES REPORT**

CONTRACT E194-75548-MA2275

BETWEEN THE COMMONWEALTH OF VIRGINIA AND

NEW FLYER OF AMERICA INC.

(Sample Sheet Only)

Vendor's Report of Sales

Contract Number
Vendor Name
Report Preparer Name
Contact E-mail
Contact Phone
Report Start Date
Report End Date

Instructions:

Enter the contract#, your company name, contact info, and the dates covered by this report above.

Fill in all the cells for each line-item purchased. Follow the example shown below.

Please ensure correct spelling of the Agency/Institution/Public Body and Division/Department

Total Sales for Reporting Period: \$ \_\_\_\_\_

L i n e #	Order Date	Purchase Order Number	Agency/Institution/Public Body	Contract Item # and Description	Qty	Unit Price	Actual Price Extended with Options
1							

