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CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made this 20th day of August, 2024, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Public Works (hereinafter referred to as "Government") and Model I Commercial Vehicles, Inc. (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor for the design, fabrication, and delivery of seven (7) transit vehicles which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the Contractor was selected under 31 V.I.C. §239(a)(8) using a State Cooperative Purchasing Contract; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide all labor, materials, equipment and services described for the design, fabrication and delivery of seven (7) transit vehicles in accordance with the specifications and requirements which are more particularly described in Addendum I (Scope of Services) and subject to Attachment A (Floor Plan) and Attachment B (Terms and Conditions), incorporated herein by reference and made a part of this Contract.

2. TERM AND EFFECTIVE DATE

This Contract shall commence upon execution by the Governor of the U.S. Virgin Islands and shall terminate within **one thousand, twenty-five (1,025)** calendar days from the issuance of the formal Notice to Proceed or in accordance with an approved extension of time granted by the Commissioner of the Department of Property and Procurement.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor a sum not to exceed **Two Million, Seventy-Six Thousand, Nine Hundred Forty-Nine Dollars and Zero Cents (\$2,076,949.00)** in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this Contract.

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Contractor's Initials: NC *nc*



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4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed N/A (\$ N/A).

5. LIQUIDATED DAMAGES

It is hereby expressly agreed by the parties hereto that in the event the Contractor has not completed the scope of work under the term set forth in Paragraph 2 hereof, **two hundred fifty dollars (\$250.00)** for each calendar day or portion thereof shall be due the Government. The liquidated damages shall first be deducted from any Contract monies due, but not yet paid to the extent available.

6. RECORDS

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract.

7. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

8. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

9. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipt, excise, and social security taxes for Contractor, its servants, agents or independent contractors.



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10. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

11. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

12. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

13. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

14. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

15. ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this Agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this agreement, whether written or oral.

16. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its



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option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

17. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor of the US Virgin Islands.

18. TERMINATION

Either party will have the right to terminate this Contract with or without cause on sixty (60) days written notice to the other party specifying the date of termination.

19. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing sixty (60) days written notice to the Contractor. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the sixty (60) day notice.

20. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

21. CONFLICT OF INTEREST

- (a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- (b) Contractor further covenants that it is:
 - (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
 - (2) a territorial officer or employee and, as such, has:



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- (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
- (ii) not made, negotiated or influenced this Contract, in its official capacity; and
- (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

22. NOTICE

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lisa M. Alejandro
Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas Virgin Islands 00802

Derek Gabriel
Commissioner
Department of Public Works
6002 Estate Anna's Hope
Christiansted, VI 00820

CONTRACTOR

Nicholas (Nick) R. Corley
Transit Bid Manager
Model 1 Commercial Vehicles, Inc.
9225 Priority Way W Drive, Suite 300
Indianapolis, IN 46240

23. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

24. OTHER PROVISIONS

Addenda I, II, III and IV, and Attachments A and B, attached hereto are a part of this Contract and are incorporated herein by reference.

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25. DEBARMENT CERTIFICATION

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

26. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

27. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

28. DAVIS BACON ACT

Contractor hereby agrees that it shall comply with all rulings and interpretations of the Davis-Bacon Act (40 USC 276a-5) and that the Contractor and Subcontractor agrees that all employees shall be paid the local prevailing wages as established by the applicable jurisdiction where the work is being performed.

29. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than Two Million Dollars and Zero Cents (\$2,000,000.00) for any one person per occurrence for death or personal injury and Two Million Dollars and Zero Cents (\$2,000,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.



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- (b) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

30. CONTRACTOR'S REPRESENTATIONS

The Contractor agrees that it is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract, and that it has been engaged in and now does such work and represents that it is fully equipped, competent, and capable of performing the work and is ready and willing to perform such work. The Contractor agrees further to begin work not later than the date indicated on the formal Notice to Proceed and complete the work within the number of days specified in the proposal or as extended in accordance with the provisions of the Contract.

The Work shall be done under the direct supervision of the Government, and in accordance with the laws of the Government and its Rules and Regulations thereunder issued and any and all applicable federal rules and regulations. The parties hereto agree that this contract shall, in all instances, be governed by the Laws of the Government of the Virgin Islands.

31. WARRANTY OF NON-SOLICITATION

The Contractor expressly warrants that it nor its officers, agents or employees has employed no person to solicit or obtain this contract on its behalf, or to cause or procure the same to be obtained upon compensation in any way, contingent, in whole or in part, upon such procurement, and that it nor its officers, agents or employees has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by him hereunder; and that it nor its officers, agents or employees has not, in estimating the contract price demanded by it included any sum by reason of such brokerage, commission or percentage; and that all monies payable to it hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract.

Breach of the warranty shall give the Government the right to terminate this Contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees.

32. DELIVERY DATE

The transit vehicles shall be delivered within 930 days from the Notice to Proceed unless extended by the terms of this Contract particularly those set out in Paragraph 2. The Contractor agrees to work with due diligence towards the completion of the transit vehicles. The delivery to Port of Jacksonville Cargo Facilities at 9620 Dave Rawls Blvd., Jacksonville, Florida shall only be made after the transit vehicles are accepted for delivery at Contractor's manufacturing yard in Indiana and any delay in providing such acceptance shall extend the delivery date by such delay.



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33. COMPLETION AND TENDER FOR DELIVERY

The Parties agree that the vehicles shall be tendered for delivery when the Contractor has completed construction of the vehicles in accordance with Addendum I. In connection with the delivery, the Parties shall compile a list of incomplete or unsatisfactorily completed items ("Exceptions List"). The Contractor will notify the Government when the vehicles are completed. Within 930 days after delivery FOB destination at Jacksonville Cargo Facilities, the Government will accept delivery of the vehicles and execute a Delivery and Acceptance Certificate in a form provided by the Government, which shall include the Exceptions List with any incomplete or unsatisfactorily completed items noted thereon. The Parties agree that any work to be performed by the Contractor in conjunction with the Government's outside contractors will be performed on a schedule agreeable to the parties at locations other than the Contractor's manufacture yard selected by the Contractor and agreed upon by the Government.

34. LATE DELIVERY

If the Contractor fails to deliver the transit vehicles to the Government within the time permitted, the Government may declare the Contractor in default and assess liquidated damages in accordance with Paragraph 5.

35. RISK OF LOSS

During the design, fabrication and delivery, the Contractor shall retain title and assume all risk of loss of the seven (7) transit vehicles. At the time the vehicles are delivered to the Government, the Government will assume all risk of loss for the seven (7) transit vehicles.

(a) Repairable Damages. If any vehicles sustain repairable damage during manufacture/build and outfitting prior to delivery, as determined in the Contractor's insurance Underwriter's reasonable discretion, and Contractor is not in default hereunder, all proceeds payable under Contractor's standard builder's risk insurance policy will be applied to repairing the damage. The Contractor shall repair the damage as soon as reasonably practicable. Notwithstanding the foregoing, the Government shall have no obligation to accept the delivery of the vehicles after they have sustained repairable damage unless the vehicles are returned to its pre-casualty condition in all material respects.

(b) Unrepairable Damage. If any vehicles sustain unrepairable damage during manufacture/build and outfitting and prior to delivery, or if any vehicles are declared an actual, agreed or constructive total loss in the Underwriter's reasonable discretion, the Contractor shall reimburse to the Government all payments previously received from the Government, together with the cost of all materials, and equipment furnished by the Government without interest, upon receipt of the insurance proceeds, in which case the parties will have no further obligations to one another under this Contract. Any dispute as to whether the damage is repairable shall be submitted to the Surveyor, whose decision shall be final and binding on the parties.



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36. WARRANTY

The Contractor warrants that the transit vehicles shall substantially conform to the specifications and extends a warranty as provided for in Addendum IV attached hereto and made a part of this Contract.

37. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

{INTENTIONALLY LEFT BLANK; SIGNATURES FOLLOW}

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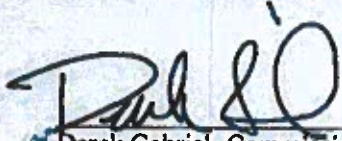
Contractor's Initials: NC *m*



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The Parties have hereunto set their hands on the day and year as set forth below.

GOVERNMENT OF THE VIRGIN ISLANDS


Derek Gabriel, Commissioner
Department of Public Works

Date: 7/12/2024


Lisa M. Alejandro, Commissioner
Department of Property and Procurement

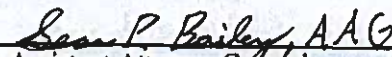
Date: 7/31/2024

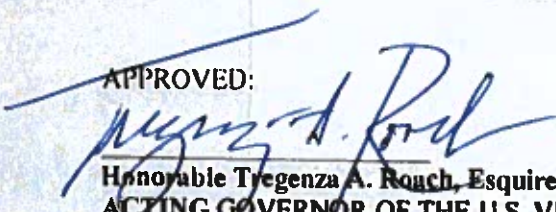
CONTRACTOR


Nicholas (Nick) R. Corley, Transit Bid Manager
Model I Commercial Vehicles, Inc.

Date: 6-25-2024

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:  Sean P. Bailey, AAG Date: 8/12/2024
Assistant Attorney General

APPROVED:

Honorable Tygenza A. Rouch, Esquire
ACTING GOVERNOR OF THE U.S. VIRGIN ISLANDS

Date: 8/20/2024

PURCHASE ORDER NO. _____