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CONTRACT FOR TESTING

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between The Pennsylvania State University, a non-profit corporation and an instrumentality of the Commonwealth of Pennsylvania with principal offices at University Park, Centre County, Pennsylvania, acting by and through The Thomas D. Larson Pennsylvania Transportation Institute, hereinafter called “Operator”  
- AND -

\_\_\_\_\_,  
\_\_\_\_\_  
\_\_\_\_\_ hereinafter called “Manufacturer”.

BACKGROUND:

A. Operator under contract with the Federal Transit Administration (“FTA”), operates a bus testing facility in accordance with the provisions of the Federal Transit Act as amended, 49 U.S.C. app., Sections 3(m) and 12(h) and the Proposed Rule Making, Interim Final Rule and Final Rules and Regulations on Bus Testing promulgated in accordance therewith, as from time to time enacted, made effective or amended (“Regulations”).

B. Manufacturer desires to contract with Operator to have Operator perform testing in accordance with the formal determination letter provided to the manufacturer by the (“FTA”), on a \_\_\_\_\_ model bus,

hereinafter called "Bus," owned by Manufacturer as contemplated by STURAA and the Regulations.

C. Operator and Manufacturer hereby enter into this Agreement to accomplish the above purposes.

NOW, THEREFORE, in consideration of the mutual terms contained in this Agreement and intending to be legally bound Operator and Manufacturer hereby agree as follows:

1. AUTHORITY AND TERMS. Operator and Manufacturer hereby incorporate in this Agreement by this reference the matters set forth in the BACKGROUND paragraphs above, including the applicable provisions of Federal Transit Act, as amended, and the FTA Bus Testing Regulations. It is further agreed that the defined words and terms as used in the Regulations shall also be as used herein.

2. DUTIES OF OPERATOR. Operator shall perform all required testing of Manufacturer's Bus in accordance with the FTA Regulations and the established testing procedures used at the bus testing facility and provided to Manufacturer which procedures are attached hereto marked Exhibit "A" and incorporated herein by this reference.

3. DUTIES OF MANUFACTURER. Manufacturer shall:

A. At its sole expense, deliver the Bus on or before \_\_\_\_\_  
\_\_\_\_\_ to the Altoona Bus Research and Testing Center,  
2237 Plank Road, Duncansville, Pennsylvania. The Bus shall be delivered in such condition that testing can immediately commence. Manufacturer shall arrange

for unloading of Bus, including all parts and equipment. The Bus shall be certified to be roadworthy and shall be licensed in such a manner as shall be valid in the Commonwealth of Pennsylvania for operation of the Bus at the testing facility or over the road between testing facility locations. The Bus shall meet all Federal Motor Vehicle Safety Standards as promulgated by the National Highway Traffic Safety Administration in 49 CFR Part 571. An agent of Manufacturer shall be present at the time of delivery of the Bus to Operator. The Bus shall be delivered with (i) a spare parts kit containing filters, one set of mounted tires, suspension components special lubricants and other such items contemplated to be used, consumed or replaced during the scope of the testing procedures, but not to include ordinary fuel and lubricants which shall be supplied by Operator; (ii) all operator's manuals, maintenance manuals, parts manuals and wiring schematics applicable to the Bus which shall include the recommended servicing procedures and specifications to be used in the course of maintenance and operation of the Bus; (iii) all special tools, nozzles, adapters and fixtures required for repairs, adjustments, fueling and towing relating to the Bus.

B. At its sole expense, load and transport the Bus from the testing facility at the completion of the testing.

4. FEES. Manufacturer shall pay to Operator as its portion of the fee for testing the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars, which shall be due in full at the time of the delivery of the Bus, and in any event shall be paid in full prior to the commencement of any test procedures. Said sum represents a twenty (20%) percent portion of the test fee as set forth in accordance with the Schedule of Fees attached to as Exhibit "B". The remaining eighty (80%) percent of the test fee is paid to the Operator by the FTA pursuant to the terms of Section

3(m) of the Federal Transit Act, as amended and regulations promulgated or to be promulgated thereunder. The FTA's fee subsidy is intended to reimburse the Operator for test procedures performed, and applies only to the standard fee schedule which includes the normal cost for testing, vehicle servicing, routine maintenance and fuel. It does not include any non-fee costs and expenses incurred during testing, and Manufacturer shall pay in addition to the amount previously set forth any such costs and expense including but not limited to those associated with non-routine maintenance or extraordinary repairs as provided in Paragraph 8 hereof, and those associated with any delays as provided in Paragraph 5 hereof. All such non-fee costs and expenses due from the manufacturer shall be paid to the Operator prior to the completion of the testing program and issuance of the test report. In the event that the testing program is terminated and the Bus is withdrawn from the facility by the Manufacturer before the completion of the testing, Manufacturer may be entitled to a refund of a portion of the fee amount paid by Manufacturer to Operator for testing procedures not completed as more fully set forth in Exhibit "B".

5. DURATION OF TESTING. The anticipated time for completing the testing will be within \_\_\_\_\_ days of when testing on the bus commences, subject to:

(i) Extension for a time equivalent to any period of mechanical breakdown of the Bus or other matter beyond the control, such as delays in parts availability or technical decisions of Operator which shall cause a delay in the performance of the testing;

(ii) Extension for a time equivalent to any period of delay caused by Manufacturer's failure to comply with any of its obligations under this Agreement; in which case Manufacturer shall be obligated to pay Operator as a result of such delay as more fully set forth in Exhibit "B".

In the event of any delay as set forth above, resumption of testing shall be scheduled by the Operator subject to the availability of the

test facility and personnel, and the time for completion of the testing shall be extended to accommodate such scheduling. Operator shall provide reasonable notice to Manufacturer of any Operator-created delays which cause an extension of the completion date. In the event of a delay of more than ten days, Operator will send a formal notification to Manufacturer 's Technical Service Contact, as identified in Article 10.

6. TERMINATION OF TESTING BY MANUFACTURER.

Manufacturer shall have the right to terminate the test program at any time before completion of testing by providing written notice thereof to Operator, in which event Manufacturer shall be responsible for that portion of the fee set forth on Exhibit "B" hereof.

7. TERMINATION OF TESTING BY OPERATOR. Operator shall have the right to terminate the test program at any time for cause, by providing written notice thereof to Manufacturer, in which event Manufacturer shall be responsible for that portion of the fee set forth on Exhibit "B" hereof. "Cause" shall include (i) a breach of any obligation of Manufacturer under the terms of this Agreement; (ii) nonpayment of any fees, costs or expenses; (iii) technical or mechanical problems which, in the judgment of Operator, make continuation of testing unsafe; (iv) the failure to supply equipment, parts or material necessary for repairs as required by this Agreement; and (v) any other just cause.

8. MAINTENANCE AND REPAIRS. Operator shall perform all routine maintenance and ordinary repairs on the test vehicle consistent with the Manufacturer's specifications to be delivered to Operator in accordance with Paragraph 3A hereof. Any non-routine maintenance and extraordinary repairs required to be performed on the test vehicle shall be done at the sole cost and expense of Manufacturer; provided, however, that any such non-routine maintenance or extraordinary repairs required to be

performed on a test vehicle which arise solely from Operator's negligent maintenance of a test vehicle shall be performed at the sole cost and expense of the Operator. In the event of the necessity for non-routine maintenance or extraordinary repairs not of an emergency nature, Operator shall provide Manufacturer reasonable notice thereof before commencing such maintenance or repairs. Any non-routine maintenance or extraordinary repairs of an emergency nature may be performed by Operator and notice thereof shall be given to Manufacturer as soon as practical thereafter. Manufacturer shall pay Operator for all costs of labor and materials necessary to perform maintenance and repair services for which Manufacturer is responsible. Any maintenance or repair performed by the Manufacturer must be conducted under the direct observation of the Operator. The labor rate to perform maintenance and repair services, including the charge for Operator's observation of maintenance or repairs performed by Manufacturer, is more fully set forth in Exhibit "B". All parts, equipment or supplies necessary for such repairs shall be furnished without charge to Operator by Manufacturer within twenty-four (24) hours after Operator's notice to Manufacturer of the need for such parts, equipment or supplies.

9. OBSERVATION OF TESTING. Manufacturer shall have the right to observe any and all testing, provided that nothing contained herein shall allow Manufacturer to alter the scheduling of testing which scheduling shall be solely within the control of Operator. Manufacturer's access to the vehicle during testing for the purpose of data collection, repair or maintenance is solely at the discretion of the Operator. Operator shall provide an office at the test facility which will be available to Manufacturer for on-site personnel to observe testing. Manufacturer representatives who do not comply with the requirements in Articles 8 and 9 may be barred from the test site.

10. DESIGNATION OF TECHNICAL SERVICE CONTACT. Manufacturer hereby designates the following individual as the principal technical service contact of Manufacturer with respect to the testing to be performed hereunder:

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

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

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

11. TEST REPORTS. Upon completion of testing, the Operator shall prepare a test report which shall state the results of the test performed on each Bus, and shall provide that test report to the Manufacturer not later than the forty-fifth (45<sup>th</sup>) day following the completion of testing. The test report shall be available to the public on or after the sixtieth (60<sup>th</sup>) day following the completion of testing unless:

(i) the Manufacturer provides written notice to the Operator indicating that the bus has been withdrawn from the market and that no buses have, or will be delivered to an FTA funded recipient, in which event the test report will not be available to the public; or

(ii) the Manufacturer provides written notice to the Operator indicating that the Bus has not been delivered to an FTA funded recipient, and further setting forth the date upon which the Bus is scheduled to be delivered, in which event that date of delivery provided by the Manufacturer will be the date when the test report is made available to the public; provided that, if the Operator has received written notice at least seven (7) days prior to a scheduled delivery date that a delay in delivery will occur, the report will be made available to the public on the new delivery date that has been scheduled.

12. INSURANCE. Manufacturer, and any of its Subcontractors, shall at its own expense, carry and maintain the following insurance or self-insurance during the term of this Agreement, in amounts not less than that specified for each type. The limits required for the Employers' Liability, Automobile Liability and Commercial General Liability coverages may be satisfied through primary insurance or any combination of primary and umbrella/excess liability insurance as long as the umbrella/excess liability insurance follows the form of the primary coverage. Failure to procure the following insurance or self-insurance shall not relieve the Manufacturer, and any Subcontractor thereof, of any obligation or liability assumed under the Agreement, nor of any obligation or liability imposed by law. In no event shall the liability of the manufacturer be limited to the extent of any insurance or self-insurance or the minimum limits required herein, or the contract value. Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Manufacturer. The Manufacturer or its insurers must provide thirty (30) days advanced written notice to the University of any cancellation or material reduction in the required insurance or self-insurance programs below.

**Workers' Compensation** for statutory obligations imposed by workers' compensation and occupational disease laws. **Employers' Liability** insurance shall be provided with limits of not less than \$500,000 for each subcategory of coverage.

**Automobile Liability** insurance (Bodily Injury Liability and Property Damage Liability) for all owned, leased, hired, non-owned vehicles with limits not less than \$1,000,000 Combined Single Limit. Such insurance shall also provide physical damage coverage on any vehicle delivered to the University for testing. Such physical damage coverage shall include collision and comprehensive insurance in an amount not less than the actual cash value of the vehicle.

**Commercial General Liability** insurance including coverage for bodily injury, property damage, and personal injury for premises and operations, products and completed operations, and contractual liability arising from all operations, written on an occurrence basis with limits not less than \$1,000,000, and which must apply to ongoing operations. "The Pennsylvania State University" must be named as an additional insured.



**Insurance coverages must be written with an insurer rated not less than A- by A. M. Best.**

**An Insurance Certificate evidencing the above required insurance coverages, limits, and the Commercial General Liability additional insured provision, must be provided to the University at the time of delivery of this contract and in any event, not later than ten (10) days prior to the delivery of the vehicle. The Certificate Holder must be as follows:**

The Pennsylvania State University  
c/o Risk Management Office  
Rider Building – Suite 103  
227 West Beaver Avenue  
State College, PA 16801

13. INDEMNIFICATION. Manufacturer further agrees to indemnify and hold Operator harmless from and against any and all claims and demands for or in connection with any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, out of the testing, maintenance, repairs or operation of the Bus, and from and against any and all costs and expenses, including reasonable attorney fees, incurred in connection with any such claim, demand or proceeding brought thereon.

14. CHOICE OF LAWS. This Agreement shall be governed by the laws of the United States of America and the Commonwealth of Pennsylvania.

15. NOTICES. Any notices provided for in this Agreement shall be effective upon receipt and shall be sent by United States registered or certified mail, return receipt requested, or by any commonly recognized overnight courier service which requires a receipt upon delivery, and shall be addressed as follows:

Operator: Director, Altoona Bus Research and Testing Center  
The Pennsylvania State University  
The Thomas D. Larson  
Pennsylvania Transportation Institute  
201 Transportation Research Building  
University Park, Pennsylvania 16802

Manufacturer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. MISCELLANEOUS. This is the entire Agreement between the parties with respect to the subject matter hereof. Any changes, modifications or waivers of any terms shall not be effective unless in writing and signed by the parties. This Agreement shall be binding on the parties, their respective heirs, successors, administrators and assigns. The section headings in this Agreement are for reference only and shall not be considered for purposes of construing or interpreting the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

OPERATOR:  
THE PENNSYLVANIA STATE UNIVERSITY:  
By: \_\_\_\_\_

MANUFACTURER:  
\_\_\_\_\_  
By: \_\_\_\_\_