

**AUTHORIZING AN AGREEMENT WITH GILLIG, LLC TO PURCHASE 1 E-GEN FLEX HYBRID AND 5 DIESEL BUSES IN A TOTAL AMOUNT NOT TO EXCEED \$4,005,384 FROM REBUILD ILLINOIS CAPITAL GRANT FUNDS.**

**WHEREAS**, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

**WHEREAS**, the City's Transit Manager recommends approving an agreement with Gillig, LLC to purchase five (5) 35' Gillig Low Floor Transit Diesel Buses and one (1) 35' Gillig Low Floor Transit Allison Hybrid Bus in a total amount not to exceed \$4,005,384.00 from Rebuild Illinois Capital Grant funds per the agreement attached and incorporated as Exhibit A (the "Agreement"); and

**WHEREAS**, the City's corporate authorities find that approving the Agreement is in the City's best interests for the protection of the public health, safety, morals, and welfare; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

**SECTION 1:** The recitals to this resolution are true, material, adopted and incorporated as Section 1 to this resolution.

**SECTION 2:** The City's corporate authorities authorize and approve: (1) the Agreement, subject to such changes as the City Manager deems to be in the City's best interests; and (2) the City Manager to take all necessary acts to effectuate the Agreement.

**SECTION 3:** This resolution shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provision of non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

**SECTION 4:** This resolution shall be in full force and effect from and after its passage and approval as provided by law.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a regular meeting thereof held on the 27<sup>th</sup> day of January 2025 and approved by me as Mayor on the same day. Passed by a 7-0-1 roll call vote. Aye: Zasada, Larson, Perkins, Powell, Verbic, Walker, Barnes. Nay: None. Absent: Smith.



  
COHEN BARNES, Mayor

ATTEST:  
  
Ruth A. Scott, Executive Assistant

## AGREEMENT FOR THE MANUFACTURE AND SALE OF GILLIG BUSES

THIS AGREEMENT ("Agreement") is made and entered into as of this 27<sup>th</sup> day of January, 2025 ("Effective Date") by and between GILLIG LLC ("Seller or Contractor") a California limited liability company headquartered at 451 Discovery Drive, Livermore, CA 94551 and the Buyer, City of DeKalb, ("Buyer" and together with Seller, the "Parties"), located at 164 E. Lincoln Highway DeKalb, IL 60115. Seller will be responsible for providing the goods and/or performing the services described herein. City of DeKalb is not party to defining the division of work between the Contractor and its Subcontractors, if any, and the Specifications and/or Scope of Services has not been written with this intent.

Contractor represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. Contractor's performance under this Contract may be monitored and reviewed by City of DeKalb staff. Reports and data required to be provided by the Contractor shall be delivered to the Transit Manager. Questions by Contractor regarding interpretation of the terms, provisions, and requirements of this Contract shall be addressed to the Transit Manager for response.

A. WHEREAS, Cooperative purchasing, also known as piggybacking, allows municipalities to secure competitive costs for a particular product or service by using the same contract for a vendor that was used by another government agency; and eliminating the competitive bid process; and

B. WHEREAS, Enterprise Services, on behalf of the State of Washington, has competitively bid, evaluated, and awarded pursuant to the State of Washington's procurement laws for goods/services the resulting Master Contract No 06719 and Addendums (Exhibit A and Exhibit B); and

C. WHEREAS, Buyer desires to purchase five (5) 35' Gillig Low Floor Transit Diesel Buses and one (1) 35' Gillig Low Floor Transit Allison Hybrid Bus based on quotes provided on December 12, 2024. This vehicle quotation and specification summaries are included in this Agreement as Exhibit C and Exhibits F and G.

D. WHEREAS Buyer desires to engage Seller to have the vehicles identified above manufactured and delivered in accordance with all the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the representations, warranties, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and Seller, intending to become legally bound, agree as follows:

1. Terms and Conditions of Sale. The seller hereby agrees to sell five (5) 35' Gillig Low Floor Transit Diesel Buses and one (1) 35' Gillig Low Floor Transit Allison Hybrid Bus (collectively, the "Vehicles") to the Buyer, upon and subject to, the terms and any conditions hereof. The terms and conditions of this Agreement constitute the full and final expression of the contract for the sale of the Vehicle to the Buyer, and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between Seller and Buyer. Buyer acknowledges and agrees that any other documents related to the transaction covered by this Agreement and issued by Buyer or its agents, are issued solely for authorization and internal uses of the issuing party and Seller specifically objects to, and shall not be bound by, any such terms and conditions which are not specifically set forth herein or are in conflict with this Agreement, and Buyer further acknowledges and agrees that delivery by Seller to Buyer is not an acceptance of the terms and conditions of any other document issued by Buyer or its agents. The Parties shall be bound by this Agreement when it is fully executed by both Parties.

2. Incorporation of State of Illinois and FTA terms. The following provisions include, in part, certain Standard Terms and Conditions required by IDOT, whether or not expressly set forth in the agreement provisions as described in Exhibit D and Exhibit E. Anything to the contrary notwithstanding, all State of Illinois mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The selected CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY request that would cause the CITY to be in violation of the State of Illinois terms and conditions. The CONTRACTOR shall always comply with all applicable State of Illinois regulations, policies, procedures and directives, including without limitation to those listed directly or by reference herein, as they may be amended or promulgated from this time during the term of this agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this agreement.

3. Sales Price. The base sales price shall be \$606,629.00 per diesel vehicle and \$972,239.00 per hybrid vehicle for the vehicles as described in Exhibit F and Exhibit G, for a total base sales amount of \$4,005,384.00 (the "Total Base Sale Price"). The vehicles shall materially conform with the base specifications described in Exhibit F and Exhibit G, respectively. The base sales price and any quoted contract option prices do not include sales, use, excise, or similar taxes or assessments, which shall be the sole obligation of Buyer. Buyer's or Seller's requests for vehicle changes or additional parts and equipment from the agreed quotation and vehicle specifications will be subject to change order and revised pricing as must be mutually agreed upon in writing between Buyer and Seller.

4. Production. The Seller will build the buses in accordance with the production schedule to be issued at time of purchase and included in this agreement as [Exhibit H [MN1]]. These dates are estimates only and Seller shall employ commercially reasonable means to commence production within this stated time frame.

- A. Notification of Delay. Contractor will notify City DeKalb's Transit Manager as soon as Contractor has, or should have, knowledge that an event has occurred which will delay delivery or start-up of services. Within five days, Contractor will confirm such notice in writing furnishing as many details as is available.
- B. Request for Extension. The contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by City of DeKalb's Transit Manager to make a decision of any request for extension. City of DeKalb's Transit Manager will examine the request and any documents supplied by the Contractor and will determine if the Contractor is entitled to an extension and the duration of such extension. City of DeKalb's Transit Manager will notify the Contractor of the decision in writing. It is expressly understood and agreed that Contractor will not be entitled to damages or compensation and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

5. Force Majeure. Provided that the Party claiming force majeure has exercised due care with respect to those matters within its reasonable control, that Party will not be liable for any default or delay in its performance under the Agreement to the extent such default or delay is impacted or caused by, and only for the duration of, a Force Majeure Event, but only (a) if such Force Majeure Event has the effect of delaying or preventing such performance; (b) if the affected Party makes reasonable efforts within its control to comply with its obligations despite the occurrence and (c) if the Party affected by the Force Majeure Event, as soon as reasonably practicable, provides written notice to the other Party of the occurrence of the Force Majeure Event, its expected duration and its impact on the affected Party's performance. If the foregoing requirements are met, the Parties will discuss in good faith, any extension to the time for performance of the obligations under the Agreement, but any such extension of time would be commensurate with the delay caused by the event of force majeure. For purposes of this Agreement, "Force Majeure Event" means any natural disaster, act of God (including, without limitation, typhoon,

hurricane, flood, tsunami, earthquake or tidal wave), war, fire, riot, terrorism, labor disputes, epidemics, pandemics, or the spread of infectious diseases or other similar public health crisis (including, but not limited to COVID- 19), supply chain shortages, or other similar occurrences beyond a Party's reasonable control, including interruptions in or failure of sources of materials, supplies, or equipment, and changes in Laws and other governmental actions or directives taken in response to the underlying event that have the effect of making performance impractical or impossible.

6. Shipment and Risk of Loss. Seller shall deliver the Vehicles to the Buyer's physical address at 1216 Market St., DeKalb, IL 60115 or other such address as agreed upon by both parties prior to delivery. Any risk associated with the sale or transit of the Vehicles rests with Seller up to the time of delivery to the Buyer's location. After delivery all risk of loss transfers to the Buyer.

7. Terms of Payment. A 10% deposit of the total amount of \$400,538.40 (four hundred thousand, five hundred thirty-eight dollars and 40/100 cents) shall be required 45 days after order placement. All remaining amounts per Vehicle shall be due immediately upon the ship date of each Vehicle.

8. Title. Manufacturers Statement of Origin documentation for the Vehicles will pass from Seller to Buyer within two days of Vehicle payment in full.

9. Termination. (a) Buyer may terminate this agreement and recover 100% of the deposit by giving the Seller written notice of cancellation up to the date of the Pre-Production Meeting. (b) after the Pre-Production Meeting, Buyer may also terminate the Agreement without cause by giving written notice to Seller, and Buyer will pay Seller all Compensation owed for completed Buses manufactured by Seller as of the date of such termination as well as Sellers documented unrecoverable actual direct costs associated with such termination, including contract close-out costs, supplier termination costs that cannot be reasonably mitigated, (but no more than the total Compensation set forth in the terminated Agreement). (c) Buyer may terminate the Agreement due to Seller's material breach of the Agreement by giving written notice of breach to Seller, and Seller shall then have a reasonable period of time to cure the breach, if curable, as long as Seller: (i) commences the cure within fifteen days (15) days; and (ii) continues to diligently pursue the cure. If Seller does not cure the breach as provided herein, then Buyer may terminate the Agreement for cause, and Buyer will be entitled to receive all completed Buses manufactured by Seller pursuant to the Agreement for which Compensation has been paid to Seller by Buyer. Upon such payments, Buyer will be entitled to receive all completed Buses manufactured by Seller pursuant to the Agreement. (d) If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Contract or in any amendment hereto, City of DeKalb may, upon written notice to Contractor, terminate this Contract in whole or in part. Such termination shall be in accordance with City of DeKalb's rights to terminate for convenience or default.

10. Seller Warranty. Seller shall provide its standard written warranty ("Seller's Warranty") to be issued at time of purchase and included in this agreement as Exhibit I. [MN2] **EXCEPT AS STATED IN SELLER'S WARRANTY, THERE IS NO WARRANTY OF ANY KIND ON ANY PRODUCT OR PART SOLD OR SERVICES PROVIDED BY SUPPLIER. EXCEPT AS STATED IN THE WARRANTY BULLETIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, IN CONNECTION WITH THIS AGREEMENT, INCLUDING ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY ARISING UNDER COURSE OF DEALING OR USAGE OF TRADE.**

11. Indemnification. Buyer and Seller shall defend, indemnify, and hold each other, and each other's employees and agents harmless from and against all any claims, demands, suits, actions, litigation, investigations, damages, losses, costs, expenses and liabilities (including reasonable attorney's fees) (collectively "**Claims**"), arising out of, or resulting from personal injury, death, or property damage caused by: (a) a party's willful misconduct or gross negligence; or (b) a party's violation or alleged violation of any federal, state, county, or local laws or regulations. ;.

12. Limitations of Liability.

- A. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM OR ARISING IN CONNECTION WITH THIS AGREEMENT.
- B. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER'S AGGREGATE MAXIMUM LIABILITY SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED AN AMOUNT EQUAL TO THE VALUE OF THE AGGREGATE AMOUNTS PAID BY BUYER TO SELLER UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- C. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATION OF DAMAGES WAS NEGOTIATED BETWEEN TWO SOPHISTICATED COMPANIES AND IT WAS REVIEWED BY THEIR RESPECTIVE LEGAL REPRESENTATIVES AND THE PROVISIONS SET FORTH IN THIS SECTION SURVIVE BETWEEN BUYER AND SUPPLIER EVEN IF A REMEDY SET FORTH IN THIS AGREEMENT IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

13. Succession and Assignment. This Agreement, and the rights, benefits, duties, and obligations of the parties hereunder, shall inure to the benefit of and be binding upon the parties hereto and upon their respective assigns and successors in interest. Neither party may assign, delegate, or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld.

14. Governing Laws, Venues and Dispute Resolution. (a) Either Party may demand, in writing, that each Party's management representatives meet within fourteen (14) days at such place as the Parties may mutually agree to resolve any dispute arising under or related to the Agreement (the "Dispute"). If the Parties cannot reach agreement on a location, then the meeting shall be held in a neutral location in Orange County, Florida. No Third Party shall have authority to consider or resolve any Dispute that is not first the subject of informal Dispute resolution pursuant to this paragraph. The Parties or their representatives with full authority to settle the Dispute at issue shall attend all agreed-upon meetings. If the Parties do not resolve the Dispute within fourteen (14) Days of the date of the first meeting between said representatives (the "Informal Dispute Resolution Deadline"), the Parties agree to mediate the Dispute, at such time and place in Orange County Florida as the Parties may agree with a mutually agreed mediator, within a reasonable time of the Informal Dispute Resolution Deadline and shall equally share the costs of the mediation. (b) If the Parties are unable to resolve the Dispute by mediation either Party may institute litigation. If litigation is initiated, the Parties agree that venue and jurisdiction of any litigation between them will be vested solely in a court of competent jurisdiction sitting the state of Florida.

15. Entire Agreement. This Agreement along with any exhibits referenced within the Agreement constitute the entire agreement between the parties relating to the subject matter hereof and supersedes and cancels all other prior agreements (including, but not limited to, any proposals or oral agreements), representations and understandings of the parties in connection with such subject matter.

If this Agreement is modified at the request of either party, such modifications must be confirmed in writing and signed by both parties. Any Amendment shall be subject to the terms and conditions of this Agreement. No oral amendment or modification shall be binding on either party.

16. Severability. Any provision of this Agreement prohibited by, or unlawful or unenforceable under, any applicable law of any jurisdiction shall be ineffective as to such jurisdiction without invalidating the remaining provisions of this Agreement, provided, however, that where the provisions of any such applicable law may be waived, they are hereby waived by Buyer and Seller to the fullest extent permitted by law, and this shall be deemed to be a valid and binding Agreement enforceable in accordance with its terms. Except as otherwise expressly provided in this Agreement, all rights and remedies in this Agreement are cumulative and in addition to and not in lieu or limitation of any other remedies available to a Party at law or in equity.

IN WITNESS WHEREOF, each party has executed this Agreement on the date set forth under its signature below, but effective as of the date first set forth above.

SELLER: GILLIG LLC

BUYER: City of DeKalb

By: 

By: 

Name: WILLIAM F. FAY, JR.

Name: Bill Nicklas

Its: VICE PRESIDENT SALES

Its: City manager

Date: FEBRUARY 28, 2025

Date: 1/27/2025

**WASHINGTON STATE TRANSIT BUS COOPERATIVE**

**STATE COOPERATIVE PURCHASING SCHEDULE**

**MASTER CONTRACT**

**No. 06719-01**

**TRANSIT BUSES: HEAVY DUTY**

**30 FT DIESEL, 35 FT DIESEL, 40 FT DIESEL 35 FT HYBRID, 40 FT HYBRID, 30 FT CNG, 35 FT, CNG, 40 FT  
CNG, 35 FT ELECTRIC, 40 FT ELECTRIC CATEGORIES**

*For Use by Washington State Transit Bus Cooperative Participants*

By and Between

**STATE OF WASHINGTON**

**DEPARTMENT OF ENTERPRISE SERVICES**

and

**GILLIG LLC**

Dated April 1, 2021

**WASHINGTON STATE TRANSIT BUS COOPERATIVE**

**STATE COOPERATIVE PURCHASING SCHEDULE**

**MASTER CONTRACT**

**No. 06719**

**TRANSIT BUS – HEAVY DUTY**

**30 FT DIESEL, 35 FT DIESEL, 40 FT DIESEL 35 FT HYBRID, 40 FT HYBRID, 30 FT CNG, 35 FT, CNG, 40 FT CNG, 35 FT ELECTRIC, 40 FT ELECTRIC CATEGORIES**

This Master Contract (“Master Contract”) is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and Gillig LLC, a California company (“Contractor”) and is dated and effective as of April 1, 2021.

**RECITALS**

- A.** Whereas, pursuant to Legislative direction codified in RCW chapter 39.26, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods and/or services for general use by Washington state agencies and certain other entities (eligible Participants).
- B.** Whereas, pursuant to RCW 39.26.060, Enterprise Services may develop, solicit, and establish cooperative purchasing agreements for procurement of any goods or services with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state, in accordance with an agreement entered into between the participants.
- C.** Whereas, pursuant to Section 3019 of the FAST Act, the State of Washington acting by and through Enterprise Services, may enter into a cooperative procurement contract with one or more vendors if the vendors agree to provide an option to purchase rolling stock and related equipment to such State government and any other participant and such State government acts throughout the term of the contract as the lead procurement agency.
- D.** The State of Washington, acting by and through Enterprise Services is a member of and the lead procurement for the Washington State Transit Bus Cooperative. The Washington State Transit Bus Cooperative is a cooperative purchasing agreement for eligible participants to procure transit buses through a competitively solicited and awarded Cooperative Master Contract.
- E.** Whereas, on behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued a Competitive Solicitation No. 06719-01 dated March 4, 2020 regarding Heavy Duty Transit Buses.
- F.** Whereas, Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder.



- G.** Whereas, Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington and the Washington State Transit Bus Cooperative.
- H.** Whereas, the purpose of this Master Contract is to enable eligible Participants to purchase Transit Buses as set forth herein.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

**1. TERM.**

The term of this Master Contract is twenty-four (24) months, commencing April 1, 2021 and ending March 31, 2023; Provided, however, that Enterprise Services at its sole discretion may extend the term for three (3) subsequent twelve (12) month extensions if Contractor is not in default; and provided further, that in no event shall such term be extended if Contractor cannot meet the required certifications of this Contract. The maximum contract term is sixty (60) months, ending March 31, 2026.

**2. ELIGIBLE PARTICIPANTS.** This Master Contract may be utilized by any of the following types of entities ("Participants"):

- 2.1. **WASHINGTON STATE AGENCIES.** All Washington state agencies, departments, offices, divisions, boards, and commissions.
- 2.2. **WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES).** Any of the following institutions of higher education in Washington:
- State universities – i.e., University of Washington & Washington State University;
  - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
  - Evergreen State College;
  - Community colleges; and
  - Technical colleges.
- 2.3. **MCUA PARTIES.** Any of the following types of entities that have executed a Master Contract Usage Agreement with Enterprise Services:
- Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
  - Federal governmental agencies or entities;
  - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
  - Federally-recognized Indian Tribes located in the State of Washington.
- 2.4. **TRANSIT BUS COOPERATIVE PARTIES.** Any authorized entity that has executed a Washington State Transit Bus Cooperative Purchasing Agreement with Enterprise Services. The following types of entities are anticipated to execute a Washington State Transit Bus Cooperative Purchasing Agreement:

- State agencies, local governments, local government agencies, or political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) of any state or territory of the United States;
- Federal governmental agencies or entities located in any state or territory of the United States; and
- Federally-recognized Indian Tribes located in any state or territory of the United States

### 3. SCOPE – INCLUDED GOODS AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Master Contract, Contractor is authorized to sell only those Transit Buses within the scope of their authorized goods meeting the requirements set forth in *Exhibit A – Included Transit Buses* for the prices set forth in *Exhibit B – Prices*. Contractor shall not represent to any Participant under this Master Contract that Contractor has contractual authority to sell any Transit Buses beyond those meeting the requirements set forth in *Exhibit A – Included Transit Buses*.
- 3.2. STATE’S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the goods included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Contract. Enterprise Services may, at any time, without notice to Contractor by written order designated or indicated to be a change order, make changes within the general scope of the contract to adjust the quantities of Transit Buses purchased under this Master Contract.
- 3.3. PARTICIPANT CHANGE ORDERS.
  - (a) Participants may, at any time, by written order designated or indicated to be a change order, make changes in their Purchase Order within the general scope of this Master Contract, including changes: (1) In the specifications; (2) In the method or manner of performance of the work; (3) In the price sheet to include additional options within the scope of the contract; (4) In the delivery performance of the work; or (5) In additional requirements for compliance with state or federal law.
  - (b) Any other written or oral order (which includes direction, instruction, interpretation, or determination) from the Participant that causes a change shall be treated as a change order under this clause; provided, that Contractor gives the Participant written notice stating (1) the date, circumstances, and source of the order and (2) that Contractor regards the order as a change order.
  - (c) Except as provided in this clause, no order, statement, or conduct of the Participant shall be treated as a change under this clause or entitle Contractor to an equitable adjustment.
  - (d) If any change under this clause causes an increase or decrease in Contractor’s cost of, or the time required for, the performance of any part of the work under this Master Contract, whether or not changed by any such order, the Participant will make an equitable adjustment and modify the Purchase Order in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under this clause shall be made for any costs incurred more than twenty (20) days before Contractor gives written notice as required. In the case of defective specifications for which the Participant is responsible, the equitable adjustment shall include any increased cost

reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) Contractor will assist Participant in obtaining all of the requested cost details as may be required for FTA assisted purchases. Failure to respond or provide needed details may be grounds for the Participant to cancel the purchase without penalty.

(f) The Contractor must assert its right to an adjustment under this clause within 30 days after

1. receipt of a written change order under paragraph (a) of this clause or

2. the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Participant. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(g) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Master Contract.

(h) This clause does not supersede FTA Circular C 4220.1F.

3.4. ECONOMIC ADJUSTMENT. Beginning twelve (12) months after the effective date of this Master Contract and for every annual anniversary thereafter, the prices set forth in *Exhibit B* shall be adjusted, based upon the percent changes (whether up or down) in the United States Department of Labor, Bureau of Labor and Statistics (BLS) indices described below, for the most recent year. The Index is the Producer Price Index for Truck and Bus Bodies, Series No. WPU 1413, published by the United States Department of Labor, Bureau of Labor Statistics, or if such Index is no longer in use, then such replacement that is most comparable to the Index as may be designated by the Bureau of Labor Statistics, or as agreed by the parties. Economic adjustment will lag one (1) calendar quarter past the Master Contract commencement date to allow for publication of BLS data. All calculations for the index shall be based upon the latest version of data published as of April 1 each year. Prices shall be adjusted on June 1. If an index is recoded, that is the replacement is a direct substitute according to the BLS, this Master Contract will instead use the recode. If an index becomes unavailable, Enterprise Services shall substitute a proxy index. If there is not a direct substitute, the next higher aggregate index available will be used. The economic adjustment shall be calculated as follows:

$$\text{New Price} = \text{Old Price} \times (\text{Current Period Index} / \text{Base Period Index}).$$

3.5. PRICE CEILING. Although Contractor may offer lower prices to Participants, during the term of this Master Contract, Contractor guarantees to provide the Heavy Duty Transit Buses at no greater than the prices set forth in *Exhibit B – Prices for Heavy Duty Transit Buses* (subject to economic adjustment as set forth herein).

3.6. GOODS AND SERVICES ADDITION. Contractor may offer new goods and services within the scope of the authorized goods set forth in *Exhibit A – Included Transit Buses* to Participants to implement new technology solutions or meet specific Participant requirements. Goods and services added to purchase orders under the Master Contract must be commercially available at the time they are added and fall within the original scope of the Master Contract.

3.7. PRICING OF GOODS AND SERVICE ADDITIONS. Prices for additional Transit Bus goods and services performed under this Master Contract follow cost reimbursement rules under 4220.1F Ch VI,

2.c(1). Cost-reimbursement provides for payment of Contractor's allowable incurred costs, to the extent agreed to in the Contractor's agreement with the Participant. Participants are required to include FAR Part 31 cost principles in their cost reimbursement contracts for the purpose of determining allowable costs under the contract. Contract shall comply with Participants' requests in determining reasonable prices, including but not limited to providing a breakdown of relevant incurred costs or individual component pricing to Participant upon request. A dispute on the reimbursement costs will follow the dispute procedures of this Master Contract.

3.8. MASTER CONTRACT INFORMATION. Enterprise Services shall maintain and provide information regarding this Master Contract, including scope and pricing, to eligible Participants.

**4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Master Contract and at the time any order is placed pursuant to this Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

4.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington. Contractor represents and warrants that it is or will be qualified to do business in other applicable states for purchases under this Master Contract with each of the Washington State Transit Bus Cooperative member states, including but not limited to Alaska, Idaho, Oregon, Colorado, Montana, and Nevada.

4.2. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.

4.3. QUALITY OF GOODS OR SERVICES. Contractor represents and warrants that any Transit Bus sold pursuant to this Master Contract shall be merchantable, shall conform to this Master Contract and Participant's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered free of liens and encumbrances and that the same do not infringe any third party patent. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs. Whenever under the Master Contract or Purchase Order it is provided that Contractor shall furnish materials or manufactured components or shall do work for which no detailed specifications are set forth, the work performed shall be in full conformity and harmony with the intent to secure the best standards of manufacture in the work as a whole or in part. No advantage shall be taken by Contractor in the omission of any part or detail which goes to make the Transit Buses complete and ready for service, even though such part or detail is not mentioned in the specifications or in Contractor's approved design.

4.4. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, as previously certified in Contractor's bid submission, that Contractor

does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

- 4.5. OREGON REVISED STATUTE 279A.112. Contractor represents and warrants, as previously certified in Contractor's bid submission, that their firm has a written policy and practice preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class.
- 4.6. EMISSIONS INFORMATION. Contractor represents and warrants, as previously certified in Contractor's bid submission, that their firm has a written policy and practice to assess and provide accurate emission information on products to Participants.
- 4.7. SUSTAINABILITY POLICY. Contractor represents and warrants, as previously certified in Contractor's bid submission, that their firm has a written policy and practice, detailing own sustainability policies and programs in place and to provide services in line with the principles established therein.
- 4.8. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Participants' employees.
- 4.9. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Master Contract, Contractor shall maintain an accurate profile in WEBS.
- 4.10. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 4.11. COOPERATIVE MASTER CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Master Contract with eligible Participants and to ensure that those entities that utilize this Master Contract are eligible Participants. Contractor understands and acknowledges that neither Enterprise Services nor Participants are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Participant, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.12. MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract resulting from the Cooperative, is transitioned to another contractor (e.g., Master Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

- 4.13. VEHICLE TITLE & REGISTRATION. Contractor represents and warrants that upon payment in full, Contractor shall convey to Participant all necessary paperwork, including a "manufacturer's statement of origin" (MSO) and applicable state title application to register the Transit Bus with the Participant's applicable state licensing authority at the time of delivery.
- 4.14. WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.15. PAY EQUITY. Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Master Contract and any Participant hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Master Contract.

## **5. USING THE MASTER CONTRACT – PURCHASES.**

- 5.1. ORDERING REQUIREMENTS. Participants shall order Transit Buses from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Participant but, at a minimum, including the use of a purchase order. When practicable, Contractor and Participant also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively “Purchase Order”). All order documents must reference the Master Contract number. Consistent with Participant’s procurement authority, Participant may propose and negotiate additional terms with the applicable Contractor to meet Participant’s needs, subject to agreement with the applicable Contractor. Under no circumstances will Participant’s agreements change or modify the contract obligations of this Master Contract. The terms of this Master Contract shall apply to any Purchase Order and, in the event of any conflict, the terms of this Master Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any ‘click-agreement,’ software or web-based application terms and conditions, or other agreement modify the terms and conditions of this Master Contract.
- 5.2. APPROVAL OF PURCHASES. Enterprise Services and, if the Participant is using FTA funds, the Participant’s respective authorization authority for use of those FTA funds shall approve the Participant’s initial Purchase Order. Enterprise Services shall review the Purchase Order and approve that the purchase is within the Scope of the Master Contract. The Participant’s respective authorization authority for use of those FTA funds will approve the purchase according to their own policies and procedures. Participant and Contractor shall provide timely information as requested by Enterprise Services for the approval process.
- 5.3. CONTRACTOR COOPERATIVE USE APPROVAL. Pursuant to RCW 39.26.060, the intent of this Contract is to allow for cooperative procurement to the maximum extent possible. Accordingly, any authorized entity that has executed a Washington State Transit Bus Cooperative Purchasing Agreement with Enterprise Services may place orders under this Master Contract. Participation in the cooperative is voluntary. If agreed to by Contractor, this Contract may be used by any participant in the cooperative to procure the Transit Buses. Contractor has the right to refuse initial orders by cooperative participants on a capacity basis, if the Contractor cannot fulfill the complete order based on delivery deadlines. Orders under this Contract will be fulfilled on a first come, first serve basis of the initial order date. If Contractor rejects an order for capacity, Enterprise Services may request additional information from the Contract regarding Contractor’s capacity to fulfill orders.
- 5.4. FTA PRE-AWARD AND POST-DELIVERY CERTIFICATIONS. Contractor shall take all reasonable steps assist Participants in completing all required pre-award and post-delivery certifications required by federal or state law or policy for purchases under this Master Contract. Contractor shall provide all requested information to complete the certifications in a reasonable time to ensure certifications are completed in a timely manner.
- 5.5. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of Transit Buses will be made as required by this Master Contract, the Purchase Order used by Participants, or as otherwise mutually agreed in writing between the Participant and Contractor. The following apply to all deliveries:
  - (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order by the delivery date. The delivery date must be within 18 months of the initial order date, as stated in the Purchaser Order or agreement between Participant and

Contractor; provided however that the Participant and Contractor may amend the delivery date by mutual agreement. Deliveries shall occur during Participant's normal work hours and within the time period mutually agreed in writing between Participant and Contractor at the time of order placement.

- (b) Contractor shall deliver all buses with a full tank of fuel and clean inside and out. For any bus not meeting this requirement, Contractor will be assessed \$300. When Transit Buses are delivered, certificates or releases signed by Participant simply acknowledge receipt of the Transit Buses and do not constitute acceptance by the Participant of the condition of the Transit Buses, or its conformance with the terms of the Master Contract or Participant's Purchase Order. Acceptance by Participant occurs subsequent to final inspection when Participant provides Contractor with a written Notice of Acceptance.
- (c) Contractor shall ship or deliver all goods and/or services purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Participant's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the goods and/or services ordered hereunder that occurs prior to delivery, except loss or damage attributable to Participant's negligence. Contractor shall use a qualified and experienced common or contract carrier who is properly licensed and insured. Contractor shall make all arrangements for shipment.
- (d) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Master Contract shall be identified by the Master Contract number set forth on the cover of this Master Contract and the applicable Participant's Purchase Order number. Packing lists shall be included with each shipment and clearly identify all contents and any backorders.

- 5.6. **PROTOTYPE BUSES.** If requested by Participant, Contractor shall produce one prototype bus for each type of bus with respect to the Purchase Order for inspection and testing at the Participant's facilities. The prototype bus will demonstrate that the bus fully meets all requirements of the Purchase Order. Contractor shall produce and deliver the prototype bus to Participant for inspection and testing a minimum of one-hundred twenty (120) days prior to initiation of any production activities for the remaining buses unless otherwise authorized in writing by Participant. The cost of transporting the prototype bus to and from the Participant's facilities shall be at the expense of Contractor. Contractor shall schedule the prototype review with the Participant when a vehicle has been completed with all equipment and furnishings installed, but early enough so design changes resulting from the review will not delay production or cause scrapping of production material.

In the event of nonconformity Participant shall, to the extent practicable, notify Contractor of said nonconformity. No later than seven (7) days after the end of the fourteen (14) day test, Participant shall issue a written report to the Contractor that advises the Contractor of any noncompliance issues and/or any proposed modifications or changes required on the remaining vehicles. Any failure by Participant to detect any defects or omissions in this testing period will in no way relieve Contractor from fully complying with the specifications of the Master Contract and Participant Order. All prototype buses shall be brought up to the final production bus configuration in all respects at no additional cost to Participant, except as may be agreed by change orders.



- 5.7. NOTIFICATION OF DELAY. Contractor shall provide prompt notice to Participant and Enterprise Services for any delay in the manufacturing process that will affect the expected delivery date. Contractor will provide notice of the delay within fourteen (14) days of discovery of the potential delay. This notice of delay must include a reasonable expectation of when the delay will be resolved, the reason for the delay, whether the delay will cause the delivery to exceed the delivery date, and any other applicable information regarding the delay.
- Participant shall provide Contractor with notice of acceptance of the reasonable delay or notice that the delay is determined to be non-excusable within seven (7) days of receipt of the notice of delay.
  - If there is a dispute between Contractor and Participant as to whether the delay is reasonable, Contractor may appeal Participant's decision to Enterprise Services within seven (7) days of receipt of the notice that the delay is non-excusable. Enterprise Services will review the provided information and make a final determination as to whether the delay is reasonable or non-excusable. If a dispute remains after this procedure, parties shall follow the dispute resolution process of Section 16.
  - Contractor shall promptly comply with any request from Enterprise Services or Participant for additional information in making the delay determination. A request for more information from Enterprise Services or Participant tolls the time for required response until the time that Contractor responds to the request for more information.
  - Reasonable delay is a delay for which the Contractor is not responsible. A reasonable delay must arise from unforeseeable causes, be beyond the control of Contractor, and be without the fault of the Contractor. A reasonable delay will extend the delivery date by the agreed upon length of the delay.
  - Non-excusable delay is a delay for which Contractor is wholly or partially responsible. A non-excusable delay is a delay that arises from a foreseeable cause, is within the control of Contractor, or is due to the fault of Contractor. A non-excusable delay will not extend the agreed upon delivery date.
- 5.8. DELAY DAMAGES. Participant will be damaged by any failure on the part of Contractor to deliver the buses within the time specified in delivery date. The amount of damages for delay of beyond the delivery date is difficult if not impossible to ascertain. The amount of such damages Contractor shall pay to Participant is fixed at the amount of \$250.00 per day for each bus not delivered in substantially good condition as inspected by the Participant. Participant may elect to deduct the amount of the damages from the amount due to Contractor under the Purchase Order or may notify Contractor of the amount due based on the delay. If Participant requires Contractor to pay the delay damages, Contractor shall pay the entire amount within thirty (30) days after receipt of a written demand by Participant. The payment of damages will be in lieu of any damages for any loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind that may be suffered by Participant arising at any time from the failure of Contractor to fulfill the delivery obligations in a timely manner.
- 5.9. INSPECTION AND ACCEPTANCE OF TRANSIT BUSES. Transit Buses purchased under this Master Contract are subject to Participant's reasonable inspection, testing, and approval at Participant's destination for a period of fourteen (14) days from the date that the Transit Buses are received at the place of delivery. Participant reserves the right to reject and refuse acceptance of Transit Buses that are not in accordance with this Master Contract and the Participant's Purchase Order during this inspection period. Representatives of Contractor may witness acceptance inspections

and testing if so requested by Contractor. Participant retains the right to complete as thorough an inspection as it deems necessary to determine if each bus is in conformance with Master Contract and Purchase Orders requirements for configuration and performance parameters. Contractor shall coordinate and manage Contractor's post-delivery inspection process and notify the Participant of scheduling and availability of buses ready for pre-acceptance inspection. Acceptance by the Participant occurs when Participant provides Contractor with a written Notice of Acceptance, which will be subsequent to final inspection by responsible assigned employees of the Participant. All acceptances are subject to the warranty requirements of this Master Contract.

5.10. INSPECTION DEFECTS. If there are any apparent defects in the goods and/or services within the inspection period, Participant will promptly notify Contractor. At Participant's option, and without limiting any other rights, Participant may:

- Require Contractor to repair or replace, at Contractor's expense, any or all of the damaged goods; or
- Require Contractor to refund the price of any or all of the damaged goods; or
- Participant may note any damage to the goods on the receiving report, decline acceptance, and deduct the cost of rejected goods from final payment.

Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods. If Participant discovers defects during the inspection process, the requirement for timely delivery under 6.2(a) will continue to run until Contractor resolves the defects and provides Participant with the applicable goods free of defects. The period for the delivery date for the goods will be tolled for the length of time Participant was in the inspection period until the time that Participant provided notice of defect to Contractor.

5.11. POST-INSPECTION REPAIRS BY CONTRACTOR. In the event of non-acceptance of the bus, Contractor must begin Work within five (5) working days after receiving notification from Participant of failure of acceptance tests. Participant shall make the bus available to complete repairs timely with the Contractor repair schedule. If Contractor fails or refuses to begin the repairs within five (5) days, then the repair work may be done by Participant's personnel with reimbursement by Contractor. Contractor shall provide, at its own expense, all spare parts, tools and space required to complete the repairs. At Participant's option, Contractor may be required to remove the bus from Participant's property while repairs are being made. If the bus is removed from Participant's property, then repair procedures must be diligently pursued by Contractor's representatives, and Contractor shall assume risk of loss while the bus is under its control.

5.12. CONTRACTOR SERVICE AND PARTS SUPPORT. For each Participant Order, Contractor shall supply Participant with a completed *Exhibit D - Contractor Service and Parts Support Data* with contact information on the representatives responsible for assisting Participant, as well as the location of the nearest distribution center, which shall furnish a complete supply of parts and components for the repair and maintenance of the buses to be supplied. Contractor shall also submit its policy on transportation charges for parts other than those covered by warranty.

5.13. PARTS AVAILABILITY GUARANTEE. Contractor guarantees to provide the spare parts, software, and all equipment necessary to maintain and repair the buses supplied under this Master Contract for a period of at least twelve (12) years after the date of acceptance. Parts will be interchangeable with the original equipment and will be manufactured in accordance with the quality assurance

provisions of this Master Contract. Prices shall not exceed the Contractor's then-current published catalog prices.

Where the parts ordered by the Participant are not received within two (2) working days of the agreed-upon time and date and a bus procured under this Master Contract is out of service due to the lack of said ordered parts, then the Contractor shall provide the Participant, within eight (8) hours of the Participant's verbal or written request, the original suppliers' and/or manufacturers' parts numbers, company names, addresses, telephone numbers and contact persons' names for all of the specific parts not received by the Participant.

In the event Contractor fails to honor this parts guarantee or parts ordered by the Participant are not received within thirty (30) days of the agreed-upon delivery date, then Contractor shall provide to Participant, within seven (7) days of the Agency's verbal or written request, the design and manufacturing documentation for those parts manufactured by the Contractor and the original suppliers' and/or manufacturers' parts numbers, company names, addresses, telephone numbers and contact persons' names for all of the specific parts not received by the Participant. Contractor's design and manufacturing documentation provided to the Participant shall be for its sole use in regard to the buses procured under this Master Contract and for no other purpose.

- 5.14. **TERMINATION FOR WITHDRAWAL OF FUNDING.** If any Participant's expected or actual funding for purchases under this Master Contract are withdrawn, reduced, or limited in any way prior to the payment for the last bus accepted, Participant may, upon written notice to Contractor, terminate their Purchase Order for Transit Buses not yet accepted. If the Purchase Order is terminated as provided in this subsection: (1) Participant will be liable only for payment in accordance with the terms of this Contract for work performed satisfactorily up to the date of termination and materials on order that cannot be canceled; and (2) Contractor shall be released from any obligation to provide additional buses as are affected by the termination.
- 5.15. **FACILITY INSPECTIONS.** Contractor shall provide right of access to its facilities to Enterprise Services, any Enterprise Services agents, Participant, any of Participant's agents, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.
- 5.16. **ON SITE REQUIREMENTS.** While on Participant's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Participant's physical, fire, access, safety, or other security requirements.

## **6. INVOICING & PAYMENT.**

- 6.1. **CONTRACTOR INVOICE.** Contractor shall submit to Participant's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:
  - (a) Master Contract No. 06719
  - (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
  - (c) Contractor's Federal Tax Identification Number
  - (d) Date(s) of delivery
  - (e) Invoice amount; and
  - (f) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Master Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

- 6.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Participant. Payment is due within thirty (30) days of invoice. If Participant fails to make timely payment(s), Contractor may invoice Participant in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified. Contractor provides a prompt payment discount of 0.10% for payments within 20 days of receipt of the invoice. This discount will only be provided for Participant payments within the stated time.
- 6.3. **MILESTONE PAYMENTS.** Participant and Contractor may condition payment on the achievement of various agreed upon milestones for the Transit Buses. Milestone payments will be mutually agreed upon by Participant and Contractor in regard to timing of milestone, acceptance of milestone, and amounts for milestone payments. Payment for milestones will follow the procedure for invoice payment.
- 6.4. **OVERPAYMENTS.** Contractor promptly shall refund to Participant the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Participant shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Participant may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 6.5. **NO ADVANCE PAYMENT.** No advance payments shall be made for any goods or services furnished by Contractor pursuant to this Master Contract.
- 6.6. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.7. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Participant shall pay applicable sales tax imposed by the tax jurisdictions in which delivery occurs on purchased goods and/or services. Contractor, however, shall not make any charge for federal excise taxes and Participant agrees to furnish Contractor with an exemption certificate where appropriate.

## **7. CONTRACT MANAGEMENT.**

- 7.1. **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Master Contract. Enterprise Services' contract administrator shall provide Master Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Master Contract. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

Attn: David Mgebroff  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Tel: (360) 407-8049  
Email: david.mgebroff@des.wa.gov

**Contractor**

Attn: Lee Petersen, Regional Sales Manager  
and Maribel Gonzalez-Becerra, Bid & Contract  
Specialist  
GILLIG LLC  
451 Discovery Drive  
Livermore, CA 94551  
Tel: (800) 785-1500  
Email: sales@gillig.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Participant issues pertaining to this Master Contract.
- 7.3. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

Attn: Legal Services Manager  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Email: greg.tolbert@des.wa.gov

**Contractor**

Attn: William F. Fay, Jr.  
Vice President Sales  
GILLIG LLC  
451 Discovery Drive  
Livermore, CA 94551  
Email: sales@gillig.com

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

**8. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.**

- 8.1. **MASTER CONTRACT SALES REPORTING.** Contractor shall report total Master Contract sales quarterly to Enterprise Services, as set forth below.
- (a) **Master Contract Sales Reporting System.** Contractor shall report quarterly Master Contract sales in Enterprise Services' Master Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Bidder Profile.
  - (b) **Data.** Each sales report must identify every authorized Participant by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Participants specified herein during the term of the

Master Contract. If there are no Master Contract sales during the reporting period, Contractor must report zero sales.

- (c) Due dates for Master Contract Sales Reporting. Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

FOR CALENDAR QUARTER ENDING	MASTER CONTRACT SALES REPORT DUE
March 31:	April 30
June 30:	July 31
September 30:	October 31
December 31:	January 31

- 8.2. **VENDOR MANAGEMENT FEE.** Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 0.15 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total Master Contract sales  
invoiced (not including sales tax) x .00150.

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on Master Contract sales reported by Contractor. Contractors are not to remit payment until they receive an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Master Contract number, work request number (if applicable), the year and quarter for which the VMF is being remitted, and the Contractor's name as set forth in this Master Contract, if not already included on the face of the check.
- (d) Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the VMF, may be cause for Master Contract suspension or termination or the exercise of other remedies provided by law. Without limiting any other available remedies, the Parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sum, the sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Master Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

- 8.3. ANNUAL MASTER CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Master Contract sales report. Such report shall include, at a minimum: Product description, part number or other Product identifier, per unit quantities sold, and Master Contract price. This report must be provided in an electronic format that can be read by MS Excel.

## **9. RECORDS RETENTION & AUDITS.**

- 9.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Contract and orders placed by Participants under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Participant against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 9.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly invoiced Participants and that Contractor has paid all applicable contract management fees. Accordingly, Contractor shall permit Enterprise Services, any Participant, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Contract or orders placed by a Participant under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Participant against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 9.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Participant, Contractor shall (a) reimburse Participants for any overpayments inconsistent with the terms of this Master Contract or orders, at a rate of 125% of such overpayments, found as a result of the examination of the Contractor's records; and (b) reimburse Enterprise Services for any underpayment of fees, at a rate of 125% of such fees found as a result of the examination of the Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by \$500, Contractor would be required to pay to Enterprise Services  $\$500 \times 1.25 = \$625$ ).

## **10. INSURANCE.**

- 10.1. REQUIRED INSURANCE. During the Term of this Master Contract, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.
- 10.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect

from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.

## **11. WARRANTY.**

- 11.1. **CONTRACTOR WARRANTY.** Warranties in this document are in addition to any statutory remedies or warranties imposed on Contractor. Consistent with this requirement, Contractor warrants and guarantees to Participant each complete Transit Bus and specific subsystems and components as follows.

Contractor warrants the Transit Buses are of good material and workmanship and agrees to promptly replace any part or parts, at no cost to the Participant, which by reason of defective materials or workmanship fail under normal use, free of negligence or accident during the applicable warranty period. Contractor warranties include the replacement of parts and services associated with the replacement and repair, including but not limited to any diagnostic, refurbishment, shipping, or travel costs.

Performance requirements based on design criteria will not be deemed a warranty item. Contractor shall insure in its procurement arrangements that the warranty requirements of this Master Contract are enforceable through and against the Contractor's suppliers, vendors, material men, and subcontractors. Any inconsistency or difference between the warranties extended to Participants by Contractor and those extended to Contractor by its suppliers, vendors, material men, and subcontractors, are at the risk and expense of Contractor. Such inconsistency or difference will not excuse Contractor's full compliance with its obligations under this Contract.

- 11.2. **WARRANTY INFORMATION.** Upon Participant's request, Contractor promptly shall provide complete copies of all written warranties or guarantees and documentation of any other arrangement relating to such warranties or guarantees extended by Contractor's suppliers, sub-suppliers, vendors, material men, and subcontractors covering parts, components, and systems utilized in the bus. Contractor shall ensure that such suppliers, sub-suppliers, vendors, material men, and subcontractors satisfactorily perform warranty related work when requested to do so by Participant.
- 11.3. **SYSTEM WARRANTIES.** The following systems are warranted to be free from defects and related defects for the years and mileage listed in the table below, whichever comes first. Each warranty is based on regular operation of the bus under the operating conditions prevailing in Participant's locale.



Warranty	Description	Years/Mileage
Complete Bus	Complete bus, propulsion system, components, major subsystems, and body and chassis structure	2 years, 100,000 miles; Class 1 or 2 Failures: 12 years, 500,000 miles
Body And Chassis Structure	Body, body structure, structural elements of the suspension and engine cradle	3 years, 150,000 miles
Body and Chassis Corrosion Failure or Fatigue Failure	Primary load-carrying members of the bus structure, including structural elements of the suspension	Class 1 or 2 Failures: 12 years, 500,000 miles
Propulsion System (Diesel, CNG, Hybrid)	engine, transmission or drive motors, and generators (for hybrid technology) and drive and non-drive axles	2 years, 100,000 miles
Propulsion System (Electric)	traction motors, traction motor controllers, transmission, drive motors, drive and non-drive axles, and any other propulsion system-related replacement component	3 years, 100,000 miles
Energy Storage System	traction battery, Battery Management System, and any other ESS-related replacement component	6 years, 300,000 miles
Emission Control System	complete exhaust system, including catalytic converter (if required), after treatment device, components identified as emission control devices	5 years, 100,000 miles

The ESS is warranted to remain within warrantable end of life during the warranty period. The ESS original specified energy storage capacity and warrantable end of life, as a percentage of the original specified energy capacity, must be clearly defined by the Contractor. Acceptable methods for measuring or obtaining ESS storage capacity with respect to its original specified capacity must be clearly identified by the manufacturer. The manufacturer will propose the test method, and certify the results are true and accurate. The test will be performed according to a documented test procedure. Participant may engage third-parties for capacity testing.

**11.4. SUBSYSTEMS WARRANTY.** The Contractor warrants the following subsystems to be free from defects and related defects for at least two years or 100,000 miles, whichever comes first.

- Brake system: Foundation brake components, including advancing mechanisms, as supplied with the axles, excluding friction surfaces.
- Destination signs: All destination sign equipment for the front, side and rear signs, power modules and operator control.
- Heating, ventilating: Roof and/or rear main unit only, excluding floor heaters and front defroster.
- AC unit and compressor: Roof and/or rear main unit only, excluding floor heaters and front defroster.
- Door systems: Door operating actuators and linkages. \*\* Warranty of One Year/Unlimited Miles
- Air compressor.
- Air dryer. \*\* Warranty of One Year/Unlimited Miles
- Wheelchair lift and ramp system: Lift and/or ramp parts and mechanical only.

- Starter.
- Alternator: Alternator only. Does not include the drive system.
- Charge air cooler: Charge air cooler including core, tanks and including related surrounding framework and fittings.
- Fire suppression: Fire suppression system including tank and extinguishing agent dispensing system.
- Hydraulic systems: Including radiator fan drive and power steering as applicable.
- Propulsion cooling systems: Radiator including core, tanks and related framework, including surge tank. Transmission cooler.
- Power electronics: DC/DC converters, inverters, if supplied
- Passenger seating excluding upholstery.
- Fuel storage and delivery system.
- Surveillance system including cameras and video recorders.

Contractor warrants the following subsystems to be free from defects and related defects for at least two years or 100,000 miles, whichever comes first:

- Low voltage and high voltage electrical wiring and harnesses

11.5. SERIAL NUMBERS. Prior to final delivery of each bus, Contractor shall provide a complete electronic list of serialized units installed on each bus to facilitate warranty tracking. The list will include, but is not limited to the following:

- |   |  |
|---|--|
| ▪ Engine                                      | ▪ Driver's seat                                |
| ▪ Transmission or Traction Motor              | ▪ Battery equalizer                            |
| ▪ Alternator                                  | ▪ Radiator package                             |
| ▪ Starter                                     | ▪ Exhaust emission components                  |
| ▪ Destination/Luminator (Major components)    | ▪ A/C compressor and condenser/evaporator unit |
| ▪ Drive axle and non-drive axle(s)            | ▪ Power steering unit                          |
| ▪ DVR unit, supporting electronics (Monitors) | ▪ Fuel cylinders (if applicable)               |
|   | ▪ Air compressor                               |
|   | ▪ Wheelchair ramp (if applicable)              |

Contractor shall provide updated serial numbers resulting from warranty campaigns. The format of the list will be approved by Participant prior to delivery of the first production bus.

11.6. EXTENSION OF WARRANTY. If, during the warranty period, repairs or modifications on any bus are made necessary by defective design, materials, or workmanship but are not completed due to lack of material or inability to provide the proper repair for thirty (30) calendar days, then the applicable warranty period shall be extended by the number of days equal to the delay period.

11.7. VOIDING OF WARRANTY. The warranty will not apply to the failure of any part or component of the bus that directly results from misuse, negligence, accident, or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The warranty will be void if Participant fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor's maintenance manuals and if that omission caused the part or component failure. Participant should maintain documentation, auditable by Contractor, verifying service activities in conformance with the Contractor's maintenance manuals.

11.8. EXCEPTIONS AND ADDITIONS TO WARRANTY. Warranties will not apply to the following items:

- scheduled maintenance items
- normal wear-out items, such as brake linings, filters, belts, and wiper blades
- items furnished by Participant

Should Participant require the use of a specific product and has rejected Contractor's request for an alternate product, then the standard supplier warranty for that product will be the only warranty provided to Participant. This product will not be eligible under "Fleet Defects," below.

11.9. PASS-THROUGH/SUPERIOR WARRANTY. If any vendor to the Contractor offers, at no additional cost, a warranty on a component that is longer or more comprehensive than the required warranties on this Contract, Contractor shall inform Participant of the additional warranty and pass it through to Participant at no additional cost.

Contractor shall state in writing that Participant's warranty reimbursements will not be impacted. Contractor also shall state in writing any exceptions and reimbursement including all costs incurred in transport of vehicles and/or components. At any time during the warranty period, Contractor may request approval from Participant to assign its warranty obligations to others, but only on a case-by-case basis approved in writing by Participant. Otherwise, Contractor shall be solely responsible for the administration of the warranty as specified. Warranty administration by others does not eliminate the warranty liability and responsibility of Contractor.

11.10. FLEET DEFECTS. "Fleet Defect" means cumulative failures of twenty five (25%) percent of the same components in the same or similar application in a minimum fleet size of twelve (12) or more buses where such items are covered by warranty. A Fleet Defect applies only to the base warranty period in for Complete Bus, Propulsion System, and Subsystems Warranty. When a Fleet Defect is declared, the remaining warranty period on that item/component is suspended. The warranty period does not resume until the Fleet Defect is corrected.

For the purpose of Fleet Defects, each order shall be treated as a separate bus fleet. In addition, if there is a change in a major component within the order, the buses containing the new major component will become a separate bus fleet for the purposes of determining Fleet Defects.

Contractor shall correct a Fleet Defect under the warranty provisions defined in Section 13 Repair Procedure. After correcting the Fleet Defect, Participant and Contractor shall mutually agree to and Contractor shall promptly undertake and complete a work program reasonably designed to prevent the occurrence of the same Fleet Defect in all other buses and spare parts purchased under the order. Where the specific Fleet Defect is solely attributed to particular identifiable parts, the work program will include redesign and/or replacement of only the defectively designed and/or manufactured parts. In all other cases, the work program will include inspection and/or correction of all the buses in the fleet via a mutually agreed-to arrangement. Contractor shall update, as necessary, technical support information (parts, service and operator's manuals) due to changes resulting from warranty repairs. Participant may immediately declare a defect in design resulting in a safety hazard to be a Fleet Defect. Contractor shall be responsible to furnish, install and replace all defective units.

The Fleet Defect warranty provisions do not apply to Participant-supplied items, such as radios, fare collection equipment, communication systems, and tires. In addition, Fleet Defects do not apply to interior and exterior finishes, hoses, fittings, and fabric.

## **12. REPAIR PROCEDURE.**

12.1. REPAIR PERFORMANCE. Contractor is responsible for all warranty-covered repair work, including diagnostics of warranty covered parts. To the extent practicable, Participant will allow Contractor or its designated representative to perform repair work. At its discretion, Participant may perform such repair work if it determines it needs to do so based on transit service or other requirements. Contractor shall reimburse Participant for any warranty-covered repair work it performs.

12.2. REPAIRS BY THE CONTRACTOR. Participant shall notify Contractor's designated representative within thirty (30) days if Participant detects a defect within the warranty periods defined in this Master Contract or the applicable Participant Order. Contractor or its designated representative shall, if requested, begin repair work on warranty-covered repairs within five (5) calendar days after receiving notification of a defect from Participant. Participant will make the bus available to complete repairs timely with the Contractor's repair schedule.

Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At Participant's option, Contractor may be required to remove the bus from Participant's property while repairs are made. If the bus is removed from Participant's property, then repair procedures must be diligently pursued by Contractor's representative.

12.3. REPAIRS BY PARTICIPANT. If Participant performs the warranty-covered repairs, then it must correct or repair the defect and any related defects utilizing parts supplied by Contractor specifically for this repair. At its discretion, Participant may use Contractor-specified parts available from its own stock if deemed in its best interests. Parts supplied by Contractor may be remanufactured but must have the same form, fit and function, and warranty. The parts will be shipped prepaid to Participant from any source selected by Contractor within fourteen (14) days of receipt of the request for said parts and shall not be subject to a handling charge.

12.4. DEFECTIVE COMPONENT RETURN. Contractor may request that parts covered by the warranty be returned to the manufacturing plant. Contractor will pay the freight costs for this action.

12.5. FAILURE ANALYSIS. Upon specific request of Participant, Contractor will provide a failure analysis of Fleet Defect or safety-related parts, or major components, removed from buses under the terms of the warranty that could affect fleet operation. Such reports will be delivered within 60 days of the receipt of failed parts.

12.6. REIMBURSEMENT FOR LABOR AND OTHER RELATED COSTS. Contractor shall reimburse Participant for repair labor. The amount is determined by Participant for a qualified mechanic at a straight time wage rate per hour, which includes fringe benefits and overhead adjusted for Participant's most recently published rate in effect at the time the repair work is performed, plus the cost of towing the bus if such action was necessary and if the bus was in the normal service area. These wage and fringe benefit rates shall not exceed the rates in effect in Participant's service garage at the time the defect correction is made.

12.7. REIMBURSEMENT FOR PARTS. Contractor shall reimburse Participant for defective parts and for parts that must be replaced to correct the defect. The reimbursement will be at the current price at the time of repair and include taxes where applicable, plus fifteen (15) percent handling costs. Handling costs will not be paid if parts are supplied by Contractor and shipped to Participant.

12.8. REIMBURSEMENT REQUIREMENTS. Contractor shall respond to parts warranty claims with an accept/reject decision including necessary failure analysis no later than sixty (60) days after

Participant submits the claim and defective part(s), when requested. Reimbursement for all accepted claims shall occur no later than sixty (60) days from the date of acceptance of a valid claim. Participant may dispute rejected claims or claims for which Contractor did not reimburse the full amount. Contractor and Participant will review disputed warranty claims during the following quarter to reach an equitable decision to permit the disputed claim to be resolved and closed. Contractor and Participant will review all claims at least once per quarter throughout the entire warranty period to ensure that open claims are being tracked and properly dispositioned.

- 12.9. **WARRANTY AFTER REPLACEMENT/REPAIRS.** If any component, unit, or subsystem is repaired, rebuilt, or replaced by Contractor or by Participant with the concurrence of Contractor, then the component, unit, or subsystem will have the unexpired warranty period of the original. Repairs will not be warranted if Contractor-provided or authorized parts are not used for the repair, unless Contractor has failed to respond within five days, in accordance with Section 13.2 Repairs by the Contractor.

If an item is declared to be a Fleet Defect, then the warranty stops with the declaration of the Fleet Defect. Once the Fleet Defect is corrected, the items shall have three (3) months or the remaining time and/or miles of the original warranty, whichever is greater. This remaining warranty period will begin on the repair/replacement date for corrected items on each bus if the repairs are completed by Contractor or on the date Contractor provides all parts to Participant if repairs are completed by Participant.

- 12.10. **WARRANTY PROCESSING PROCEDURES.** The following list represents information required by Contractor from the Participant for processing warranty claims. One failure per bus per claim is allowed.

- bus number and VIN
- total vehicle life mileage at time of repair
- date of failure/repair
- acceptance/in-service date
- Contractor part number and description
- component serial number
- description of failure
- all costs associated with each failure/repair (invoices may be required for third-party costs):
  - towing
  - road calls
  - labor
  - materials
  - parts
  - handling
  - troubleshooting time

The Participant's forms will be accepted by Contractor if all of the above information is included. Electronic submittal may be used if available between Contractor and Participant.

- 12.11. **RETURN OF PARTS.** When returning defective parts to Contractor, Participant will tag each part with the following:

- bus number and VIN
- claim number

- part number
- serial number (if available)

12.12. TIMEFRAME. Each claim must be submitted no more than thirty (30) days from the date of failure and/or repair, whichever is later. All defective parts must be returned to the Contractor, when requested, no more than forty-five (45) days from the date of repair.

### 13. QUALITY ASSURANCE

13.1. QUALITY ASSURANCE ORGANIZATION ESTABLISHMENT. Contractor shall establish and maintain an effective in-plant quality assurance organization.

13.2. QUALITY CONTROL. The quality assurance organization shall exercise quality control over all phases of production, from initiation of design through manufacture and preparation for delivery. The organization shall also control the quality of supplied articles.

13.3. AUTHORITY AND RESPONSIBILITY. The quality assurance organization shall have the authority and responsibility for reliability, quality control, inspection planning, establishment of the quality control system, and acceptance/rejection of materials and manufactured articles in the production of the transit buses.

13.4. MINIMUM FUNCTIONS. The quality assurance organization shall include the following minimum functions:

- Work instructions: The quality assurance organization shall verify inspection operation instructions to ascertain that the manufactured product meets all prescribed requirements.
- Records maintenance: The quality assurance organization shall maintain and use records and data essential to the effective operation of its program. These records and data shall be available for review by the resident inspectors. Inspection and test records for this procurement shall be available for a minimum of one year after inspections and tests are completed.
- Corrective action: The quality assurance organization shall detect and promptly ensure correction of any conditions that may result in the production of defective transit buses. These conditions may occur in designs, purchases, manufacture, tests or operations that culminate in defective supplies, services, facilities, technical data or standards.

13.5. BASIC STANDARDS AND FACILITIES. The following standards and facilities shall be basic in the quality assurance process:

- Configuration control: Contractor shall maintain drawings, assembly procedures and other documentation that completely describe a qualified bus that meets all of the options and special requirements of each Purchase Order. The quality assurance organization shall verify that each transit bus is manufactured in accordance with these controlled drawings, procedures and documentation.
- Measuring and testing facilities: Contractor shall provide and maintain the necessary gauges and other measuring and testing devices for use by the quality assurance organization to verify that the buses conform to all specification requirements. These devices shall be calibrated at established periods against certified measurement standards that have known, valid relationships to national standards.
- Production tooling as media of inspection: When production jigs, fixtures, tooling masters, templates, patterns and other devices are used as media of inspection, they shall

be proved for accuracy at formally established intervals and adjusted, replaced or repaired as required to maintain quality.

- Equipment use by resident inspectors: Contractor's gauges and other measuring and testing devices shall be made available for use by the resident inspectors to verify that the buses conform to all specification requirements. If necessary, the Contractor's personnel shall be made available to operate the devices and to verify their condition and accuracy.

13.6. MAINTENANCE OF CONTROL. Contractor shall maintain quality control of purchases:

- Supplier control: Contractor shall require each supplier to maintain a quality control program for the services and supplies that it provides. Contractor's quality assurance organization shall inspect and test materials provided by suppliers for conformance to specification requirements. Materials that have been inspected, tested and approved shall be identified as acceptable to the point of use in the manufacturing or assembly processes. Controls shall be established to prevent inadvertent use of nonconforming materials.
- Purchasing data: Contractor shall verify that all applicable specification requirements are properly included or referenced in purchase orders of articles to be used on transit buses.

13.7. MANUFACTURING CONTROL. Contractor shall maintain quality control of production:

- Controlled conditions: Contractor shall ensure that all basic production operations, as well as all other processing and fabricating, are performed under controlled conditions. Establishment of these controlled conditions shall be based on the documented work instructions, adequate production equipment and special working environments if necessary.
- Completed items: A system for final inspection and test of completed transit buses shall be provided by the quality assurance organization. It shall measure the overall quality of each completed bus.
- Nonconforming materials: The quality assurance organization shall monitor the Contractor's system for controlling nonconforming materials. The system shall include procedures for identification, segregation and disposition.
- Statistical techniques: Statistical analysis, tests and other quality control procedures may be used when appropriate in the quality assurance processes.
- Inspection status: A system shall be maintained by the quality assurance organization for identifying the inspection status of components and completed transit buses. Identification may include cards, tags or other normal quality control devices.

13.8. Inspection System. The quality assurance organization shall establish, maintain and periodically audit a fully documented inspection system. The system shall prescribe inspection and test of materials, Work in process and completed articles. At a minimum, it shall include the following controls:

- Inspection personnel: Sufficient trained inspectors shall be used to ensure that all materials, components and assemblies are inspected for conformance with the qualified bus design.
- Inspection records: Acceptance, rework or rejection identification shall be attached to inspected articles. Articles that have been accepted as a result of approved materials review actions shall be identified. Articles that have been reworked to specified drawing

configurations shall not require special identification. Articles rejected as unsuitable or scrap shall be plainly marked and controlled to prevent installation on the bus. Articles that become obsolete as a result of engineering changes or other actions shall be controlled to prevent unauthorized assembly or installation. Unusable articles shall be isolated and then scrapped. Discrepancies noted by the Contractor or resident inspectors during assembly shall be entered by the inspection personnel on a record that accompanies the major component, subassembly, assembly or bus from start of assembly through final inspection. Actions shall be taken to correct discrepancies or deficiencies in the manufacturing processes, procedures or other conditions that cause articles to be in nonconformity with the requirements of the Contract specifications. The inspection personnel shall verify the corrective actions and mark the discrepancy record. If discrepancies cannot be corrected by replacing the nonconforming materials, then the Agency shall approve the modification, repair or method of correction to the extent that the Contract specifications are affected.

- Quality assurance audits: The quality assurance organization shall establish and maintain a quality control audit program. Records of this program shall be subject to review by the Agency.

#### **14. CLAIMS.**

- 14.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees, and agents in connection with its operations under this Master Contract. Neither Enterprise Services nor any Participant has made any representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Participant's property resulting directly or indirectly from its acts or omissions under this Master Contract.
- 14.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Participant and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Master Contract, except claims caused solely by Enterprise Services or any Participants' negligence. Contractor shall take all steps needed to keep Participant's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

#### **15. DISPUTE RESOLUTION.**

- 15.1. DISPUTE PROCEDURE. The parties shall cooperate to resolve any dispute pertaining to this Master Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.



- 15.2. PERFORMANCE DURING DISPUTE. Unless otherwise directed by Enterprise Services, Contractor shall continue performance under this Master Contract while matters in dispute are being resolved.

## **16. SUSPENSION & TERMINATION.**

- 16.1. SUSPENSION & TERMINATION FOR DEFAULT. Enterprise Services may suspend Contractor's operations under this Master Contract immediately by written cure notice of any default. In such case, the notice of suspension will state the time period in which cure is permitted and other appropriate conditions. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Contract. All of Contractor's obligations to Enterprise Services and Participants survive termination of Contractor's rights under this Master Contract, until such obligations have been fulfilled.
- 16.2. DEFAULT. Each of the following events shall constitute default of this Master Contract by Contractor:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Master Contract including, but not limited to, Contractor's obligation to pay vendor management fees when due;
  - (b) Contractor breaches any representation or warranty provided herein; or
  - (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 16.3. REMEDIES FOR DEFAULT.
- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Contract are in addition to all other available remedies.
  - (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Participants replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price.
- 16.4. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Participant be liable to the other for exemplary or punitive damages.
- 16.5. GOVERNMENTAL TERMINATION.
- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Master Contract if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Contract; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participant from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event

of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participant shall have any obligation or liability to Contractor.

- (b) **TERMINATION FOR CHANGE OF AUTHORITY.** Enterprise Services may suspend or terminate this Master Contract if, during the term hereof, federal procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Contract as a State Cooperative Purchasing Schedule under applicable federal law; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participant from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participant shall have any obligation or liability to Contractor.
- (c) **TERMINATION FOR PUBLIC CONVENIENCE.** Enterprise Services, for public convenience, may terminate this Master Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Participant from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Participant shall have any obligation or liability to Contractor.

16.6. **TERMINATION PROCEDURE.** Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Participants all goods and/or services that are complete (or with approval from Enterprise Services, substantially complete) and Participants shall inspect, accept, and pay for the same in accordance with this Master Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

## **17. FTA ROLE IN DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.**

- 17.1. **FTA INTEREST.** The U.S. Federal Transit Administration ("FTA") has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the award, this Master Contract, and any amendments thereto including, but not limited to, a default, breach, major dispute, or litigation. Accordingly, FTA shall have the right to concur in such any settlement or compromise.
- 17.2. **NOTIFICATION TO FTA.** If a current or prospective legal matter that may affect the Federal Government emerges, Enterprise Services and Participant promptly shall notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which Enterprise Services and Participant are located.
  - 1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

2. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the award, this Master Contract, and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

3. If Enterprise Services or Participant have credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of Enterprise Services or Participant, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, Enterprise Services and Participant promptly shall notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Enterprise Services and Participant are located.

- 17.3. FEDERAL INTEREST IN RECOVERY. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for this Master Contract.

## **18. GENERAL PROVISIONS.**

- 18.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Contract.
- 18.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.
- 18.3. INTEGRATED AGREEMENT. This Master Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 18.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 18.5. AUTHORITY. Each party to this Master Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Master Contract and that its execution, delivery, and performance of this Master Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 18.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Master Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 18.7. ASSIGNMENT. Contractor may not assign its rights under this Master Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Master Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Master Contract notwithstanding any prior assignment of its rights.

- 18.8. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Master Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 18.9. **PUBLIC INFORMATION.** This Master Contract and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. The Purchase Order and all related documents are subject to the public disclosure requirements of the Participant's jurisdiction.
- 18.10. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, or any applicable Participant any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any Transit Buses provided in Washington for the purpose of carrying out the Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 18.11. **FEDERAL FUNDS.** To the extent that any Participant uses federal funds to purchase goods and/or services pursuant to this Master Contract, such Participant shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.
- 18.12. **SEVERABILITY.** If any provision of this Master Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Contract, and to this end the provisions of this Master Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Contract.
- 18.13. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Contract, nor shall any purported oral modification or rescission of this Master Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 18.14. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Contract shall survive and remain in effect following the expiration or termination of this Master Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 18.15. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Master Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules. The validity, construction, performance, and enforcement of Purchase Orders shall be governed by and construed in accordance with the laws of the Participant's jurisdiction.
- 18.16. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Master Contract, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia,


Washington. In the event that any action is brought to enforce any provision of a Purchase Order, the parties agree to submit to exclusive jurisdiction and venue in the Participant's jurisdiction.

- 18.17. **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Master Contract or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- 18.18. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Master Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Master Contract. Each party hereto and its counsel has reviewed and revised this Master Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Master Contract. Each term and provision of this Master Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 18.19. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Master Contract, the parties and any applicable Participant shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Contract.
- 18.20. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Master Contract in their entirety.
- 18.21. **CAPTIONS & HEADINGS.** The captions and headings in this Master Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Contract nor the meaning of any provisions hereof.
- 18.22. **ELECTRONIC SIGNATURES.** A signed copy of this Master Contract or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Master Contract or such other ancillary agreement for all purposes.

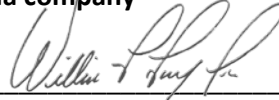
18.23. COUNTERPARTS. This Master Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Master Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Master Contract.

EXECUTED as of the date and year first above written.

**STATE OF WASHINGTON**  
**Department of Enterprise Services**

By:   
Elena McGrew  
Its: Enterprise Procurement Manager

**GILLIG LLC**  
**a California company**

By:   
William F Fay, Jr.  
Its: Vice President Sales

State of Washington Contracts & Procurement Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	<b>CONTRACT AMENDMENT</b>	
	Contract No.:	06719-01
Gillig LLC 451 Discovery Dr Livermore, CA 94551	Amendment No.:	4
	Effective Date:	April 1, 2024

**FOURTH AMENDMENT  
TO  
CONTRACT No. 06719-01  
TRANSIT BUSES**

This fourth Amendment ("Amendment") to Contract No. 06719-01 is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Gillig LLC., a California limited liability company ("Contractor") and is dated as of April 1, 2024.

**RECITALS**

- A. Enterprise Services and Contractor (collectively the "Parties") entered into that certain Contract No. 06719-01 for Transit Buses dated effective as of April 1, 2021 ("Contract").
- B. The Parties previously amended the Contract 06719-01 as follows:
  - a. First Amendment: to make an Economic Price Adjustment of 11.78% dated on June 1, 2022.
  - b. Second Amendment: to add goods and services for the Allison eGen Flex Hybrid Extended dated on February 1, 2023.
  - c. Third Amendment: to extend contract for an additional twelve (12) months, and to make an Economic price adjustment of 15% on April 1, 2023.
- C. The amendment set forth herein is within the scope of the Contract.
- D. The Parties now desire to amend the Contract as set forth herein.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract, as previously amended, as follows:

- 1. **CONTRACT TERM.** Pursuant to Section 1 Term of the Contract, this Contract has been extended for an addition twelve (12) months, this extension term is until March 31, 2025.

2. ECONOMIC PRICE ADJUSTMENT. Pursuant to section 3.4 of the Master Contract, Economic Price Adjustment using the Bureau of Labor Statistics Index for Truck and Bus Bodies, Series No. WPU 1413 to determine a price change, the price set forth in the in the Exhibit B – Prices are increased by 7.15%.
3. NONDISCRIMINATION. The following provision is added as a new subsection at the end of Section 18 of the Contract (General Provision):

18.24. NONDISCRIMINATION.

- (a) Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- (b) Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- (c) Default. Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- (d) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an

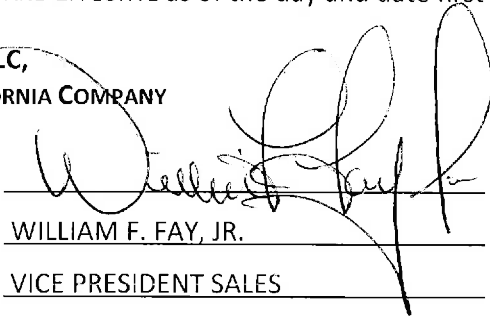


amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.


4. **NO CHANGE OTHER THAN AMENDMENT.** Except as amended herein, the Contract is unaffected and remains in full force and effect.
5. **INTEGRATED AGREEMENT; MODIFICATION.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
6. **AUTHORITY.** Each party to this Amendment, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
7. **ELECTRONIC SIGNATURES.** An electronic signature or electronic record of this Amendment or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
8. **COUNTERPARTS.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Amendment at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Amendment.

EXECUTED AND EFFECTIVE as of the day and date first above written.

**GILLIG LLC,  
A CALIFORNIA COMPANY**

By:   
Name: WILLIAM F. FAY, JR.  
Title: VICE PRESIDENT SALES  
Date: MARCH 14, 2024

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

By:   
Name: Kelli Carmony  
Title: Procurement Supervisor  
Date: 3/18/2024



December 12, 2024

Mr. Mike Neuenkirchen  
Transit Manager  
City of DeKalb  
1216 Market Street  
DeKalb, IL 60115

Thank you for the interest in purchasing five (5) 35' GILLIG Low Floor diesel buses and one (1) 35' Allison Egen Flex hybrid bus, using the State of Washington Contract (06719-01). The price summary is outlined below. Worksheets calculating the price, including application of the applicable producer price index (PPI) 1413, are attached.

GILLIG is pleased to quote the following:

<b><u>Five (5)</u></b>	<b><u>35' GILLIG Low Floor Diesel Buses</u></b>	<b><u>\$606,629.00 each</u></b>
<b><u>One (1)</u></b>	<b><u>35' GILLIG Low Floor Allison Egen Buses</u></b>	<b><u>\$972,239.00 each</u></b>

The pricing is valid for sixty (60) days. Prices exclude any applicable taxes, transaction fees of any kind, and/or license fees. The production of your buses can be scheduled within 13-15 months from receipt of purchase order.

Due to the current supply chain shortages and the runaway inflation, the bus price might need to be recalculated using the PPI 1413 at the time of the pre-production meeting.

We appreciate the opportunity to support City of Dekalb Transit. Should you have any questions, please do not hesitate to contact me.

Sincerely,

*Kevin Hardesty | Regional Sales Manager*

510-334-7806 | [Kevin.Hardesty@Gillig.com](mailto:Kevin.Hardesty@Gillig.com)

cc: Javier Hernandez Jr., Gillig  
Holly Piper, Gillig  
Alejandra Salgado, Gillig  
Lee Peterson, Gillig  
Steven Ng, Gillig

## EXHIBIT D - STATE OF ILLINOIS CONTRACT REQUIREMENTS

### D- 1. Interest of Members of in Congress

No member of or delegate to the Illinois General Assembly shall be admitted to any share or part of this contract or to any benefit arising therefrom.

### D- 2. Prohibited Interests

No member, or officer, or employee of the CDPT or a local public body with financial interest or control in this contract during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

### D- 3. Contract Changes

Any proposed change in this contract shall be submitted to the CDPT for its prior approval.

### D- 4. Escalation

The Department does not allow escalation clauses as part of specifications or contracts, with the following exceptions, subject to prior concurrence for each contract:

- Procurement for rail vehicles, where the contract price exceeds one year; and
- Procurements of metal product from a mill or manufacturer where quotations based on "price at time of shipment" have historically been used.

### D- 5. Equal Employment Opportunity

The Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act and Regulations of the Illinois Department of Human Rights (Department), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, the Contractor agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from the military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify such underutilization.
2. That, if it hires additional employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations)

of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organizations or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
5. That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
7. That it will include, verbatim or by reference, the provisions of this ITEM in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event the subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

D- 6. Financial Assistance Acknowledgement

Contracts resulting from procurement solicitations are subject to financial assistance agreements between the Buyer, the Illinois Department of Transportation, and/or the United States Department of Transportation.

D- 7. Access to Third Party Contract Records

The Contractor shall permit the authorized representatives of the Buyer(s), such as the Federal Transit Administration or the State of Illinois to inspect and audit all data and records of the Contractor relating to the Contractor's performance under any subsequent contract or agreement. This applies to all third party contract records (at any tier), as required. The Contractor and its subcontractors shall maintain books, records, and documents and shall

undertake such accounting procedures and practices as may be deemed necessary to assure proper accounting of all funds paid pursuant to any subsequent contract or agreement. All costs charged to items performed under any subsequent contract or agreement shall be supported by properly executed and clearly identified invoices, contracts, vouchers, or checks evidencing in detail the nature and propriety of the charges. These records shall be subject at all reasonable times of the normal business day to inspection, review, or audit by the Buyer, its authorized representative(s), the US Secretary of Transportation, Comptroller, the State Auditor, or other governmental officials authorized by law to monitor the contract or agreement and project site. The Contractor's fiscal management system shall include the capability to provide accurate, current, and complete disclosure of the financial status of any subsequent contract or agreement upon request.

D- 8. Assignments

The Contractor shall not assign its performance of any portion of the specified services under any subsequent contract or agreement without the advance written consent of the Buyer(s). It is hereby understood and agreed; that said consent must be sought in writing not less than ten (10) calendar days prior to the date of any proposed assignment. The Buyer(s) reserve the right to accept or reject any such assignment, although Buyer acceptance shall not be unreasonably withheld. Acceptance of subcontractor's is contingent upon each subcontractor's ability to comply with the applicable terms, conditions, and clauses, particularly the assurances, contained in any subsequent contract or agreement.

D- 9. Subcontracts

The Contractor shall not enter into any sub-contracts or agreements, or start any work by the work forces of a subcontractor, or use any materials from the stores of a subcontractor, with respect to this acquisition Project and any subsequent contracts, without the prior concurrence of the Buyer(s). All such subcontracts and agreements shall be approved by the Buyer(s).

D- 10. Retention of Records

The Contractor shall comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules. Contractor is to maintain verifiable records which include all Project eligible costs incurred while completing those tasks contained in any contracted Scope of Work. The Contractor shall retain all books, records, documents, and other material relevant to any subsequent contract or agreement for a period of five (5) calendar years following the Buyer's final payment and all other pending matters are closed. If any litigation, claim, negotiation, audit, or other action involving any contract or agreement for a Project's records has been initiated prior to the expiration of the five-year period, the Contractor shall retain the appropriate records of the Project for the five-year period immediately following completion of the action and resolution of all issues arising from it. The Contractor agrees that the Buyer or its designee shall have full access and the right to examine any of said records at all reasonable times during said period.

D- 11. Ownership of Records

The Contractor shall permit the authorized representatives of the Buyer(s), such as the Federal

Transit Administration or the State of Illinois to inspect and audit all data and records of the Contractor relating to the Contractor's performance under any subsequent contract or agreement. This applies to all third party contract records (at any tier), as required. The Contractor and its subcontractors shall maintain books, records, and documents and shall undertake such accounting procedures and practices as may be deemed necessary to assure proper accounting of all funds paid pursuant to any subsequent contract or agreement. All costs charged to items performed under any subsequent contract or agreement shall be supported by properly executed and clearly identified invoices, contracts, vouchers, or checks evidencing in detail the nature and propriety of the charges. These records shall be subject at all reasonable times of the normal business day to inspection, review, or audit by the Buyer, its authorized representative(s), the US Secretary of Transportation, Comptroller, the State Auditor, or other governmental officials authorized by law to monitor the contract or agreement and project site. The Contractor's fiscal management system shall include the capability to provide accurate, current, and complete disclosure of the financial status of any subsequent contract or agreement upon request..

D- 12. Performance Bonds

If applicable, performance bonds are required for construction projects costing in excess of One Hundred Thousand Dollars (\$100,000). The Contractor shall furnish a performance bond in an amount equal to one hundred percent (100%) of the contract price. Performance bonds may also be required in other instances, with the bond percentage to be determined in the contract award.

D- 13. Termination

The Buyer(s) may terminate this contract for convenience, in whole or in part, at any time by the provision of written notice to the Contractor. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid the Contractor. If the Contractor has any property in its possession belonging to the Buyer(s), the Contractor will account for the same, and dispose of it in the manner the Buyer(s) directs.

D- 14. Lobbying

Contractors that apply or bid for an award exceeding \$100,000 must file the required Byrd Anti-Lobbying Amendment certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other contract award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Pursuant to Federal regulations, the Contractors are required to have all subcontractors providing more than \$100,000.00 in services or materials to also complete this certification and include it with any Bid/Proposal submittal. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract,

grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

D- 15. Certified Payrolls

If applicable (normally construction and service contracts), the Buyers shall obtain from the Contractor, and each subcontractor, a certified copy of each weekly payroll within seven (7) days after the submission of an invoice for completed work. Following a review by the Buyers, or their designated agent, for compliance with state and federal labor laws, the payroll copy shall be retained by the Buyers, for later review by the authorized representatives of the appropriate State of Illinois or Federal agencies.

D- 16. Government (IL) Inspection

The Contractor shall permit the authorized representatives of the Buyer(s), such as the Federal Transit Administration or the State of Illinois to inspect and audit all data and records of the Contractor relating to the Contractor's performance under any subsequent contract or agreement. This applies to all third party contract records (at any tier), as required. The Contractor and its subcontractors shall maintain books, records, and documents and shall undertake such accounting procedures and practices as may be deemed necessary to assure proper accounting of all funds paid pursuant to any subsequent contract or agreement. All costs charged to items performed under any subsequent contract or agreement shall be supported by properly executed and clearly identified invoices, contracts, vouchers, or checks evidencing in detail the nature and propriety of the charges. These records shall be subject at all reasonable times of the normal business day to inspection, review, or audit by the Buyer, its authorized representative(s), the US Secretary of Transportation, Comptroller, the State Auditor, or other governmental officials authorized by law to monitor the contract or agreement and project site. The Contractor's fiscal management system shall include the capability to provide accurate, current, and complete disclosure of the financial status of any subsequent contract or agreement upon request.

D- 17. Vendor Registration with Illinois Department of Human Rights

Vendor must provide proof of Registration with the Illinois Department of Human Rights.

D- 18. Insurance Requirements

The Contractor and his subcontractors shall maintain Workmen's Compensation, Public Liability, Property Damage, and Vehicle Liability Insurance in amounts and on terms satisfactory to the Buyers and any specific insurance requirements noted in a procurement solicitation.

At a minimum, the following insurance requirements shall be met by the Contractor. When applicable, more stringent or revised insurance requirements may be required.

The selected Contractor shall obtain and keep in force, at its own expense, during the full term of any subsequent contract or agreement the following insurance coverage:

1. Statutory Workers' Compensation and Employer's Liability Insurance - All employees of the

Contractor performing work under any Contract or Agreement for this Project shall be insured in the statutory amount required to comply with the laws of the State of Illinois, or their respective State of incorporation, as appropriate.

2. Comprehensive Vehicle Liability Insurance - All vehicles used in conjunction with the performance of any Project Agreement, whether owned, non-owned, leased, or hired shall be insured; limits for bodily injury or death shall not be less than Five Hundred Thousand and Zero One-Hundredths Dollars (\$500,000.00) per person and One Million and Zero One-Hundredths Dollars (\$1,000,000.00) per occurrence, and property damage limits of not less than Five Hundred Thousand and Zero One-Hundredths Dollars (\$500,000.00); or as an alternative, not less than One Million and Zero One-Hundredths Dollars (\$1,000,000.00) combined single-limit coverage.
3. Comprehensive General Liability Insurance - When applicable, the Contractor shall maintain this insurance with limits for bodily injury or death of not less than Five Hundred Thousand and Zero One-hundredths Dollars (\$500,000.00) per incident, and One Million and Zero One-hundredths Dollars (\$1,000,000.00) aggregate. This insurance coverage must cover at least the following types of coverage:
  - A. Operations - Premises Liability;
  - B. Independent Contractor's Liability;
  - C. Broad Form Contractual Liability, covering the Contractor's obligations under any contract or agreement for the Project;
  - D. Products Liability;
  - E. Completed Operations Liability;
  - F. Personal Injury Liability, including claims arising from employees of the contractor; and
  - G. Broad Form Property Damage Liability.
4. Umbrella Liability Insurance of not-less-than One Million Dollars (\$1,000,000.00).

All such insurance, when required, shall be provided by insurance companies having a Best's rating of not less than A+XII, as shown in the most current issue of Best's Key Rating Guide, Property - Casualty.

The Contractor shall indemnify and hold the Buyer harmless against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the performance of the work described in any subsequent contract or agreement for this Project. Notwithstanding, the Buyer reserves all claims or rights of action against the Contractor as may be required in the best interests of the Buyer.

The Buyer shall be named specifically as an additionally insured party for that insurance coverage required for a given Project procurement. A Certificate of Insurance with the Buyer listed as an additionally insured party shall be provided within ten (10) calendar days following the execution of a contract or agreement. The Contractor's insurer shall agree to give the Buyer a minimum of ten (10) calendar days advance written notice of a cancellation of insurance or a reduction in coverage below the limits set forth in the contract or herein. Coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor from liabilities in excess of such coverage.

The Contractor and all of its insurers shall waive all rights of recovery or subrogation against the Buyer and their insurance companies.

Both parties agree to provide prompt notice in writing of the institution of any suit or



proceeding and permit defense of the same, and will provide all needed information and assistance to enable either party to do so. The Contractor shall give immediate notice to Buyer of any suit, claim, or action filed which arises out of the performance of any contract or agreement. Copies of all pertinent papers shall be supplied to the appropriate party immediately.

When applicable, the Contractor shall require its subcontractors to obtain an amount of insurance coverage which is deemed adequate by the Contractor, for their levels of Project participation. The Contractor shall be liable to the extent that any subcontractor insurance coverage is inadequate. Subcontractors shall submit insurance certificates evidencing coverage, prior to any commencement of work. The Buyer reserves the right to inspect Contractor and Subcontractor insurance policies, in regard to insurance requirements, prior to the commencement of any work.

D- 19. Prime Contractor Participation

If applicable, normally construction and service related contracts, the selected Contractor will be designated the prime contractor and shall normally perform, with his own staff, work equivalent to at least fifty percent (50%) of the total amount of work for the Project. Only non-equipment and materials pay items of a contract will be used in computing the total amount of work conducted by the prime contractor at the work site. The participation percentage of a prime contractor is normally negotiable until finalized in an awarded contract.

D- 20. Warranty of Construction

If applicable, a warranty of construction will normally be provided for construction projects. Construction warranties will normally be for a minimum period of one (1) calendar year, unless otherwise noted in the contract award, from the date of each Project completion, as evidenced by the date of final acceptance of the work. At a minimum, the Contractor warrants that work performed under any contract conforms to the contract requirements and is free of any defect of equipment, material, or workmanship performed by the Contractor or any of its subcontractors or suppliers. The Buyers shall be entitled to all warranties as provided by law.

Under this warranty condition, the Contractor shall remedy at its own expense any such failure to conform, or any such defect. Nothing in the above intends or implies that this warranty provision shall apply to work which has been abused or neglected by the Buyer.

The Contractor shall not limit or exclude any implied warranties, and any attempt to do so shall render a contract voidable at the option of the Buyer. The Contractor warrants that the goods and equipment furnished will conform to the specifications, drawings, plans, descriptions or requirements noted in the solicitation or submittal packages, and any subsequent contract or agreement, as amended.

The Contractor warrants that any construction services, work, or materials purchased by the Buyer will conform to the standards promulgated by the U.S. Department of Labor, under the Occupational Safety and Health Act (OSHA) of 1970.

Construction warranties, if applicable, may be covered in further detail by the Construction Specifications of a given solicitation package.

## Exhibit E - Federal Clauses

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## **FEDERAL CLAUSES**

### ***ACCESS TO RECORDS AND REPORTS***

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

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

### ***AMERICANS WITH DISABILITIES ACT (ADA)***

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## ***BOND REQUIREMENTS***

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

**Performance Guarantee.** A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten

(10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**Payment Bonds.** A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

## ***BUS TESTING***

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

## ***BUY AMERICA REQUIREMENTS***

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

## ***CARGO PREFERENCE REQUIREMENTS***

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating



within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

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

### ***CHANGES TO FEDERAL REQUIREMENTS***

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

### ***CHARTER SERVICE***

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

## ***CIVIL RIGHTS LAWS AND REGULATIONS***

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act,” 49 C.F. R. Part 21 and any implementing requirement FTA may issue.

- 1 **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2 **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3 **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

- 4 **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

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

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations,

“Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## ***CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT***

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

## ***CONTRACT WORK HOURS AND SAFETY STANDARDS ACT***

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless

such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

### ***DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT***

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed

in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

## ***DEBARMENT AND SUSPENSION***

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## ***DISADVANTAGED BUSINESS ENTERPRISE (DBE)***

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

It is the policy of the Agency and the United States Department of Transportation (“DOT”) that

Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

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

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## ***ENERGY CONSERVATION***

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

## ***EQUAL EMPLOYMENT OPPORTUNITY***

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination;



rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or

vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## ***FLY AMERICA***

a) Definitions. As used in this clause—

- 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- 2) “United States” means the 50 States, the District of Columbia, and outlying areas.
- 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## ***INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS***

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## ***NO GOVERNMENT OBLIGATION TO THIRD PARTIES***

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

## ***NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS***

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal

laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## ***PATENT RIGHTS AND RIGHTS IN DATA***

### **Intellectual Property Rights**

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial

reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

### ***PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES***

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

### ***PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS***

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

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

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

## ***PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.***

- a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- 1) Procure or obtain;
  - 2) Extend or renew a contract to procure or obtain; or
  - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c) See Public Law 115-232, section 889 for additional information.
- d) See also § 200.471.

## ***PROMPT PAYMENT***

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

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

## ***PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS***

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.



## ***RESTRICTIONS ON LOBBYING***

### **Conditions on use of funds.**

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

### **Certification and disclosure.**

- (a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
  - (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
  - (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- (b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
  - (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
  - (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## ***SAFE OPERATION OF MOTOR VEHICLES***

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## ***SCHOOL BUS OPERATIONS***

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

## ***SEISMIC SAFETY***

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of

Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

### ***SIMPLIFIED ACQUISITION THRESHOLD***

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

### ***SOLID WASTES (RECOVERED MATERIALS)***

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### ***SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS***

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any

Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or

pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

### ***SPECIAL NOTIFICATION REQUIREMENTS FOR STATES***

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;

- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## ***SUBSTANCE ABUSE REQUIREMENTS***

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

## ***TERMINATION***

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the

control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

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

#### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for



default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## ***VETERANS HIRING PREFERENCE***

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## ***VIOLATION AND BREACH OF CONTRACT***

### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

### **Performance During Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

### **Claims for Damages:**

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **Remedies:**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

**Rights and Remedies:**

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**OTHER CONTRACT REQUIREMENTS*****CONFORMANCE WITH ITS NATIONAL ARCHITECTURE***

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

***FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS***

- (1) The contractor certifies that it:
  - (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

- (2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

### ***SEVERABILITY***

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

### ***TRAFFICKING IN PERSONS***

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

## **Certifications and Assurances Signature Page**

### **Affirmation of Proposer**

BY SIGNING BELOW on behalf of the Proposer, I declare that I am duly authorized to make these Certifications and Assurances and bind its compliance. Thus, the Proposer agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in the federal fiscal year, irrespective of whether the individual that acted on his or her behalf continues to represent it.

The Certifications and Assurances the Proposer selects apply to each Award for which it now seeks or may later seek federal assistance to be awarded by FTA during the federal fiscal year.

The Proposer affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute.

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Proposer are true and accurate:

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

Name of Authorized Representative: \_\_\_\_\_

## PRICE VARIANCE

12/13/2024

NO. ILLINOIS UNIV (DEKALB, IL) (PIGGYBACK STATE OF WASHINGTON RFP# 2020 06719-01)

(5) 35' DIESEL LOW FLOOR BUSES, SN: TBD

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
BRT STYLING	NOT INCLUDED	NOT REQUIRED	-
CUMMINS ENGINE	L9, 280 HP (DIESEL)	L9, 280 HP (DIESEL)	-
AUXILIARY ENGINE OIL FILTER	NOT INCLUDED	SPINNER II	1,391.00
COOLANT FILTER	STD FLEETGUARD	STD FLEETGUARD	-
ENGINE FUEL FILTER	STD FLEETGUARD	STD FLEETGUARD	-
STARTER	DELCO 42MT	DELCO 42MT	-
ALTERNATOR	NIEHOFF C803 (500 AMP)	NIEHOFF C803 (500 AMP)	-
ENGINE BLOCK HEATER	NOT INCLUDED	REQUIRED	193.00
AIR RESTRICTION INDICATOR	DONALDSON INFORMER	DONALDSON INFORMER	-
RADIATOR	MODINE E-FAN	MODINE E-FAN	-
E-COAT RAD/CAC	NOT INCLUDED	REQUIRED	1,245.00
RADIATOR TANK GUARD	NOT INCLUDED	REQUIRED	375.00
ENGINE OIL EXTRACTOR PORT	NOT INCLUDED	REQUIRED	90.00
ENGINE OIL DRAIN	MAGNETIC DRAIN PLUG	INTERNAL SQUARE DRIVE	-
CUMMINS COMPUCHECK FITTINGS FOR AIR, OIL, FUEL & COOLANT TESTING	NOT INCLUDED	REQUIRED	129.00
PERFORATED BELT GUARD	NOT INCLUDED	REQUIRED	100.00
TRANSMISSION	ALLISON B400R	ALLISON B400R	-
TRANSMISSION FUEL ECONOMY PACKAGE (FUELSENSE)	NOT INCLUDED	REQUIRED	551.00
TRANS OIL EXTRACTOR PORT	NOT INCLUDED	REQUIRED	47.00
BRAKES	DISC BRAKES	DISC BRAKES	-
AXLE HUB SEALS	GREASE SEALS	GREASE SEALS	-
MAGNETIC AXLE DRAIN PLUGS	INCLUDED	REQUIRED	-
AUTOMATIC TRACTION CONTROL	INCLUDED	NOT REQUIRED	(97.00)
HUBODOMETER	NOT INCLUDED	VEEDER ROOT	99.00
HUBODOMETER GUARD	NOT INCLUDED	NOT REQUIRED	-
MOBILE RECEIVER FOR S&A 392 HUBODOMETER	NOT INCLUDED	REQUIRED	601.00
WHEEL MOUNTING	HUB PILOTED	HUB PILOTED	-
WHEELS	(6) POWDER COATED STEEL WHEELS	(7) POWDER COATED STEEL WHEELS	325.00
DURAFLANGE WHEELS	NOT INCLUDED	NOT REQUIRED	-
TIRES	CUSTOMER SUPPLIED	GILLIG SUPPLIED (7) CONTINENTAL 12R 22.5 HSR3	6,903.00
ELECTRIC STEERING ASSIST	NOT INCLUDED	NOT REQUIRED	-
VIP TEXTURED STEERING WHEEL	NOT INCLUDED	NOT REQUIRED	-
DROP DOWN AUTOMATIC CHAINS	NOT INCLUDED	NOT REQUIRED	-
DIESEL FILL	EMCO WHEATON	GRAVITY FILL	(265.00)
DASH FUEL GAUGE	NOT INCLUDED	REQUIRED	185.00
OIL PRESSURE & COOLANT TEMP GAUGES IN ENGINE COMP'T	ELECTRIC	ELECTRIC	-
HVAC HOURMETER	NOT INCLUDED	REQUIRED	64.00
SWAT SWITCH	NOT INCLUDED	NOT REQUIRED	-
ELECTRICAL TOW CONNECTION	NOT INCLUDED	NOT REQUIRED	-
AIR DRYER	SKF HCT-2000	SKF HCT-2000	-
ENGINE SKID PROTECTION	NOT INCLUDED	REQUIRED W/ 2"X2" THICK SKID PLATES	519.00
A-POST SKID PLATES	NOT INCLUDED	REQUIRED - CS & SS	237.00
HORN SPLASH SHIELD	NOT INCLUDED	NOT REQUIRED	-
REAR HAND THROTTLE	NOT INCLUDED	REQUIRED	185.00
BATTERY TYPE	(2) DEKA 8D	(2) INTERSTATE 8D	159.00

## PRICE VARIANCE

12/13/2024

NO. ILLINOIS UNIV (DEKALB, IL) (PIGGYBACK STATE OF WASHINGTON RFP# 2020 06719-01)

(5) 35' DIESEL LOW FLOOR BUSES, SN: TBD

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
BATTERY JUMP START CONN	INCLUDED (REAR CONNECTION)	NOT REQUIRED	(140.00)
WHEELCHAIR RAMP	LIFT-U LU18	LIFT-U LU18	-
HVAC MOTORS (TK)	BRUSHLESS	BRUSHLESS	-
HVAC COMPRESSOR (TK)	S391	X426	(900.00)
REFRIGERANT	R134A	R134A	-
REFRIGERANT PRESSURE DISPLAY	NOT INCLUDED	NOT REQUIRED	-
DRIVERS HEATER MOTORS	BRUSHLESS	BRUSHLESS	-
FRESH AIR MAKE-UP	NOT INCLUDED	NOT REQUIRED	-
AUXILIARY COOLANT HEATER	NOT INCLUDED	NOT REQUIRED	-
FRONT STEP HEATER	NOT INCLUDED	REQUIRED	446.00
REAR FLOOR HEATER - CS	NOT INCLUDED	REQUIRED - FWD OF REAR DOOR	661.00
UNDERSEAT HEATER	NOT INCLUDED	NOT REQUIRED	-
WARM WELCOME MAT	NOT INCLUDED	REQUIRED	388.00
DASH FAN(S)	NOT INCLUDED	(1) REQUIRED	123.00
FRONT DOOR SENSITIVE EDGE	NOT INCLUDED	NOT REQUIRED	-
REAR DOOR	34" AIR OPEN/SPRING CLOSE	34" AIR OPEN/SPRING CLOSE	-
REAR DOOR CONTROLS	FULL DRIVER CONTROL	FULL DRIVER CONTROL	-
VAPOR ELECTRONIC DOOR CONTROL W/ BUTTONS	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR FRONT DOOR RELEASE	NOT INCLUDED	NOT REQUIRED	-
ELECTRICAL EQUIPMENT CABINET	44" W/(2) FANS	33" W/ OUT FANS	-
SS WHEELWELL STORAGE BOX (AFT ELECTRICAL BOX)	NOT INCLUDED	NOT REQUIRED	-
CS WHEELWELL STORAGE BOX	NOT INCLUDED	NOT REQUIRED	-
FRONT SS WHEELWELL PACKAGE RACK	NOT INCLUDED	NOT REQUIRED	-
PASSENGER INFO STATION	NOT INCLUDED	NOT REQUIRED	-
SCHEDULE RACKS	NOT INCLUDED	(3) INNOCOM 8.62" X 11" X 1"	149.00
INTERIOR AD FRAMES	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR AD FRAMES - REAR	NOT INCLUDED	REQUIRED - 21" X 72"	311.00
EXTERIOR AD FRAMES - SS	NOT INCLUDED	REQUIRED - 30" X 144"	461.00
EXTERIOR AD FRAMES - CS	NOT INCLUDED	REQUIRED - 30" X 88"	390.00
PASSENGER SEATS	AMSECO INSIGHT W/ A.R.M, Q'STRAIT RESTRAINTS	AMSECO INSIGHT W/ A.R.M, Q'STRAIT RESTRAINTS & HINGED REAR SETTEE & CLEARIDE ANITMICROBIAL TREAMENT	6,575.00
REAR SEAT RISERS FOR FWD FACING SEATS	NOT INCLUDED	NOT REQUIRED	-
FRONT WHEELWELL VERTICAL STANCHIONS	NOT INCLUDED	REQUIRED - SS MOUNTED TO WHEELWELL & CS MOUNTED TO PACKAGE RACK	250.00
DRIVERS SEAT	RECARO ERGO AM80 METRO W/ HEADREST & 2-PT BLACK BELT	RECARO ERGO AM80 METRO W/ HEADREST & 3-PT ORANGE BELT	362.00
SEAT BELT ALARM	NOT INCLUDED	NOT REQUIRED	-
SEAT CUSHION ALARM	NOT INCLUDED	NOT REQUIRED	-
SEAT ARMREST	NOT INCLUDED	NOT REQUIRED	-
PASSENGER SIGNALS	PULL CORDS	PULL CORDS	-
STOP REQUEST AT REAR DOOR STANCHION	NOT INCLUDED	NOT REQUIRED	-
STOP REQUEST LAMP AT DASH	NOT INCLUDED	NOT REQUIRED	-
DRIVERS BARRIER	WRAPAROUND W/ OUT SCHEDULE HOLDERS	WRAPAROUND W/ OUT SCHEDULE HOLDERS	-



## PRICE VARIANCE

12/13/2024

NO. ILLINOIS UNIV (DEKALB, IL) (PIGGIYBACK STATE OF WASHINGTON RFP# 2020 06719-01)

(5) 35' DIESEL LOW FLOOR BUSES, SN: TBD

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
DRIVERS PROTECTION BARRIER	NOT INCLUDED	NOT REQUIRED	-
MODESTY PANEL FWD OF REAR DOOR	NOT INCLUDED	REQUIRED - HALF PANEL	303.00
OVERHEAD GRAB STRAPS	NOT INCLUDED	NOT REQUIRED	-
STANCHIONS	YELLOW POWDER COATED	YELLOW POWDER COATED	-
PASSENGER WINDOWS	AROW STD FRAME / UPPER TRANSOM	AROW STD FRAME / UPPER TRANSOM, QUICK CHANGE	1,694.00
GLAZING GUARDS	NOT INCLUDED	NOT REQUIRED	-
HEAD LAMPS	LED LOW & HIGH BEAMS	HALOGEN LOW & HIGH BEAMS	(500.00)
STOP/TAIL/TURN/BACK UP LAMPS	4" ROUND DIALIGHT LED	7" ROUND DIALIGHT LED	-
REAR CAP GRILLE LOWER CENTER STOP LAMPS	(2) 4" RED LED LAMPS	(2) 4" RED LED LAMPS	-
YIELD SIGN	NOT INCLUDED	NOT REQUIRED	-
BATTERY COMPARTMENT LAMPS	NOT INCLUDED	NOT REQUIRED	-
INTERIOR LAMPS	LED I/O CONTROLS	LED I/O CONTROLS	-
PLEASURE RADIO	NOT INCLUDED	NOT REQUIRED	-
2-WAY RADIO & ANTENNA	PRE-WIRE W/ANTENNA	PRE-WIRE W/ANTENNA	-
PA SYSTEM/VOICE ANNUNCIATOR	STD REI	REI 750040 AMPLIFIER	-
INTERIOR SPEAKERS	(6) INCLUDED	(8) REQUIRED	165.00
CAD / AVL ITS SYSTEM	NOT INCLUDED	NOT REQUIRED	-
DRIVERS SPEAKER	NOT INCLUDED	NOT REQUIRED	-
HAND HELD MIC	INCLUDED	REQUIRED	-
BOOM MIC	INCLUDED	NOT REQUIRED	(50.00)
HEATED FRONT GLAZING	NOT INCLUDED	NOT REQUIRED	-
DESTINATION SIGNS - FRONT, CURBSIDE & REAR	TWIN VISION AMBER	TWIN VISION AMBER	-
FRONT RUN SIGN	NOT INCLUDED	NOT REQUIRED	-
FAREBOX	PRE-WIRE ONLY	PRE-WIRE ONLY	-
FAREBOX GUARD	INCLUDED	REQUIRED	-
CEILING MTD FAREBOX LAMP	NOT INCLUDED	NOT REQUIRED	-
TRANSFER CUTTER	NOT INCLUDED	NOT REQUIRED	-
PASSENGER COUNTER (APC)	NOT INCLUDED	UTA STAND ALONE APC W/ HELL SENSORS FOR FRONT & REAR DOORS (DOES NOT INCL ANNUAL APC SOFTWARE - SAAS)	8,441.00
FULL COMPOSITE FLOOR	NOT INCLUDED	NOT REQUIRED	-
FLOORING MATERIAL	ALTRO	ALTRO	-
ROOF HATCHES	(1) REAR MANUAL	(2) FRONT & REAR MANUAL	437.00
EXTERIOR MIRRORS	8" X 8" 1-PC, NON-HEATED W/ REMOTE	8" X 15" 2-PC, W/ CONVEX HEATED W/ REMOTE	394.00
EXTERIOR MIRROR TURN SIGNAL	NOT INCLUDED	NOT REQUIRED	-
FIRE SUPPRESSION	AMEREX V-25	AMEREX V-25	-
TRAFFIC LIGHT PREEMPTION	NOT INCLUDED	NOT REQUIRED	-
VIDEO SURVEILLANCE	NOT INCLUDED	NOT REQUIRED	-
BACK UP CAMERA W/ DASH MOUNTED MONITOR	NOT INCLUDED	NOT REQUIRED	-
BIKE RACK	SPORTWORKS MOUNTING BRACKETS ONLY	SPORTWORKS MOUNTING BRACKETS ONLY	-
BIKE RACK MIRROR	NOT INCLUDED	NOT REQUIRED	-
BIKE RACK DEPLOYED LAMP	NOT INCLUDED	NOT REQUIRED	-
MEDICAL AID KIT	NOT INCLUDED	REQUIRED	95.00
BLOODBORN PATHOGEN KIT	NOT INCLUDED	NOT REQUIRED	-

## PRICE VARIANCE

12/13/2024

NO. ILLINOIS UNIV (DEKALB, IL) (PIGGYBACK STATE OF WASHINGTON RFP# 2020 06719-01)

(5) 35' DIESEL LOW FLOOR BUSES, SN: TBD

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
BIO-HAZARD KIT	NOT INCLUDED	NOT REQUIRED	-
WEB CUTTER	NOT INCLUDED	REQUIRED	38.00
WHEEL CHOCKS (SET)	NOT INCLUDED	REQUIRED	48.00
DRIVERS DASH GAUGES	AIR PRESSURE & SPEEDOMETER	AIR PRESSURE, SPEEDOMETER, OIL PRESSURE & COOLANT TEMP	138.00
12V POWER PORT AT DASH	NOT INCLUDED	NOT REQUIRED	125.00
CUP HOLDER	NOT INCLUDED	NOT REQUIRED	-
WASTE CONTAINER	NOT INCLUDED	REQUIRED	234.00
I/O PROGRAM MODULE	NOT INCLUDED	NOT REQUIRED	-
ADJUSTABLE PEDALS	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR PAINT	1-COLOR	1-COLOR	-
CLEAR COAT	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR GRAPHICS	BUS NUMBERS ONLY	BUS NUMBERS ONLY	-
ROOF NUMBERS	NOT INCLUDED	NOT REQUIRED	-
WARRANTY (BASIC BUS)	24 MONTHS / 100,000 MILES	12 MONTHS / 50,000 MILES	(500.00)
WARRANTY (STRUCTURAL INTEGRITY CORROSION)	144 MONTHS / 500,000 MILES	60 MONTHS / 150,000 MILES	(300.00)
WARRANTY (ENGINE L9)	24 MONTHS / UNL MILES	24 MONTHS / UNL MILES	-
WARRANTY (TRANSMISSION - ALLISON)	60 MONTHS / 300,000 MILES	24 MONTHS / UNL MILES	(2,943.00)
WARRANTY (ALL OTHERS)	BASE COVERAGE PER STATE OF WASHINGTON CONTRACT	BASE COVERAGE PER STATE OF WASHINGTON CONTRACT	-
TRAINING	NOT INCLUDED	NOT REQUIRED	-

TOTAL NO. ILLINOIS UNIV (DEKALB, IL) VARIANCES	29,931.00
STATE OF WASHINGTON, WA 35' DIESEL LOW FLOOR BASE UNIT PRICE (APRIL 2021)	410,601.00
DELIVERY	5,510.00
NO. ILLINOIS UNIV (DEKALB, IL) 35' DIESEL LOW FLOOR BASE UNIT PRICE	446,042.00
PPI 1413 ADJUSTMENT PER WA CONTRACT AMENDMENT #1 (6/1/2022) = 11.78%	48,369.00
PPI 1413 ADJUSTMENT PER WA STATE CONTRACT AMENDMENT #3 = (15%)	68,846.00
PPI 1413 ADJUSTMENT PER WA STATE CONTRACT AMENDMENT #4 = 7.15%	37,739.00
SPARE / TOOLING BUDGET (1%)	5,633.00
<b>NO. ILLINOIS UNIV (DEKALB, IL) 35' DIESEL LOW FLOOR ADJUSTED CURRENT PRICE (12/13/2024)</b>	<b>606,629.00</b>

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## PRICE VARIANCE

12/13/2024

NO. ILLINOIS UNIV (DEKALB, IL) (PIGGYBACK STATE OF WASHINGTON RFP# 2020 06719-01)

(1) 35' ALLISON EGEN FLEX HYBRID LOW FLOOR BUSES, SN: TBD

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
BRT STYLING	NOT INCLUDED	NOT REQUIRED	-
CUMMINS ENGINE	B6.7, 280 HP (DIESEL)	B6.7, 280 HP (DIESEL)	-
AUXILIARY ENGINE OIL FILTER	NOT INCLUDED	SPINNER II	1,391.00
COOLANT FILTER	STD FLEETGUARD	STD FLEETGUARD	-
ENGINE FUEL FILTER	STD FLEETGUARD	STD FLEETGUARD	-
STARTER	DELCO 42MT	DELCO 42MT	-
ALTERNATOR	VANNER® HYBRID BELTLESS ALTERNATOR® (HBA®)	VANNER® HYBRID BELTLESS ALTERNATOR® (HBA®)	-
ENGINE BLOCK HEATER	NOT INCLUDED	REQUIRED	193.00
AIR RESTRICTION INDICATOR	DONALDSON INFORMER	DONALDSON INFORMER	-
RADIATOR	MODINE E-FAN	MODINE E-FAN	-
E-COAT RAD/CAC (HYBRID)	NOT INCLUDED	REQUIRED	2,045.00
RADIATOR TANK GUARD	NOT INCLUDED	REQUIRED	375.00
ENGINE OIL EXTRACTOR PORT	NOT INCLUDED	REQUIRED	90.00
ENGINE OIL DRAIN	MAGNETIC DRAIN PLUG	INTERNAL SQUARE DRIVE	-
CUMMINS COMPUCHECK FITTINGS FOR AIR, OIL, FUEL & COOLANT TESTING	NOT INCLUDED	REQUIRED	129.00
PERFORATED BELT GUARD	NOT INCLUDED	REQUIRED	100.00
TRANSMISSION	ALLISON eGen Flex™ 40 Max	ALLISON eGen Flex™ 40 Max	-
TRANSMISSION FUEL ECONOMY PACKAGE (FUELSense)	NOT INCLUDED	NOT REQUIRED	-
TRANS OIL EXTRACTOR PORT	NOT INCLUDED	REQUIRED	47.00
DEPOT MODE & START STOP	INCLUDED W/ ALLISON EGEN FLEX HYBRID	INCLUDED W/ ALLISON EGEN FLEX HYBRID	-
ELECTRIC AIR COMPRESSOR & ELECTRIC HYDRAULIC PUMP	NOT INCLUDED	REQUIRED	24,016.00
ALLISON HYBRID GEO-FENCE PROGRAMMING	NOT INCLUDED	VIRICITI TELEMATICS (FOR EV MODE IN GREEN ZONES) W/ 2 YEAR SUBSCRIPTION (BUDGETARY ONLY)	3,500.00
BRAKES	DISC BRAKES	DISC BRAKES	-
AXLE HUB SEALS	GREASE SEALS	GREASE SEALS	-
MAGNETIC AXLE DRAIN PLUGS	INCLUDED	REQUIRED	-
AUTOMATIC TRACTION CONTROL	INCLUDED	NOT REQUIRED	(97.00)
HUBODOMETER	NOT INCLUDED	VEEDER ROOT	99.00
HUBODOMETER GUARD	NOT INCLUDED	NOT REQUIRED	-
MOBILE RECEIVER FOR S&A 392 HUBODOMETER	NOT INCLUDED	REQUIRED	601.00
WHEEL MOUNTING	HUB PILOTED	HUB PILOTED	-
WHEELS	(6) POWDER COATED STEEL WHEELS	(7) ALUMINUM CLEAN & BUFF WHEELS	3,765.00
DURAFLANGE WHEELS	NOT INCLUDED	NOT REQUIRED	-
TIRES	CUSTOMER SUPPLIED	GILLIG SUPPLIED (7) CONTINENTAL 12R 22.5 HSR3	6,903.00
ELECTRIC STEERING ASSIST	NOT INCLUDED	NOT REQUIRED	-
VIP TEXTURED STEERING WHEEL	NOT INCLUDED	NOT REQUIRED	-
DROP DOWN AUTOMATIC CHAINS	NOT INCLUDED	NOT REQUIRED	-
DIESEL FILL	EMCO WHEATON	GRAVITY FILL	(265.00)
DASH FUEL GAUGE	NOT INCLUDED	REQUIRED	185.00
OIL PRESSURE & COOLANT TEMP GAUGES IN ENGINE COMP'T	ELECTRIC	ELECTRIC	-
HVAC HOURMETER	NOT INCLUDED	REQUIRED	65.00
SWAT SWITCH	NOT INCLUDED	NOT REQUIRED	-
ELECTRICAL TOW CONNECTION	NOT INCLUDED	NOT REQUIRED	-
AIR DRYER	SKF HCT-2000	SKF HCT-2000	-

## PRICE VARIANCE

12/13/2024

NO. ILLINOIS UNIV (DEKALB, IL) (PIGGYBACK STATE OF WASHINGTON RFP# 2020 06719-01)

(1) 35' ALLISON EGEN FLEX HYBRID LOW FLOOR BUSES, SN: TBD

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
ENGINE SKID PROTECTION	NOT INCLUDED	REQUIRED W/ 2"X2" THICK SKID PLATES	519.00
A-POST SKID PLATES	NOT INCLUDED	REQUIRED - CS & SS	237.00
HORN SPLASH SHIELD	NOT INCLUDED	NOT REQUIRED	-
REAR HAND THROTTLE	NOT INCLUDED	REQUIRED	185.00
BATTERY TYPE	(2) DEKA GROUP 31	(2) DEKA GROUP 31	-
BATTERY JUMP START CONN	INCLUDED (REAR CONNECTION)	NOT REQUIRED	(140.00)
WHEELCHAIR RAMP	LIFT-U LU18	LIFT-U LU18	-
HVAC MOTORS (TK)	BRUSHLESS	TK TEA 14 ELECTRIC HVAC	3,436.00
HVAC COMPRESSOR (TK)	S391	ENCLOSED	-
REFRIGERANT	R134A	R407C	-
REFRIGERANT PRESSURE DISPLAY	NOT INCLUDED	NOT REQUIRED	-
DRIVERS HEATER MOTORS	BRUSHLESS	BRUSHLESS	-
FRESH AIR MAKE-UP	NOT INCLUDED	NOT REQUIRED	-
AUXILIARY COOLANT HEATER	NOT INCLUDED	NOT REQUIRED	-
FRONT STEP HEATER	NOT INCLUDED	REQUIRED	446.00
REAR FLOOR HEATER - CS	NOT INCLUDED	REQUIRED - FWD OF REAR DOOR	661.00
UNDERSEAT HEATER	NOT INCLUDED	NOT REQUIRED	-
WARM WELCOME MAT	NOT INCLUDED	REQUIRED	388.00
DASH FAN(S)	NOT INCLUDED	(1) REQUIRED	123.00
FRONT DOOR SENSITIVE EDGE	NOT INCLUDED	NOT REQUIRED	-
REAR DOOR	34" AIR OPEN/SPRING CLOSE	34" AIR OPEN/SPRING CLOSE	-
REAR DOOR CONTROLS	FULL DRIVER CONTROL	FULL DRIVER CONTROL	-
VAPOR ELECTRONIC DOOR CONTROL W/ BUTTONS	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR FRONT DOOR RELEASE	NOT INCLUDED	NOT REQUIRED	-
ELECTRICAL EQUIPMENT CABINET	44" W/(2) FANS	33" W/ OUT FANS	-
SS WHEELWELL STORAGE BOX (AFT ELECTRICAL BOX)	NOT INCLUDED	NOT REQUIRED	-
CS WHEELWELL STORAGE BOX	NOT INCLUDED	NOT REQUIRED	-
FRONT SS WHEELWELL PACKAGE RACK	NOT INCLUDED	NOT REQUIRED	-
PASSENGER INFO STATION	NOT INCLUDED	NOT REQUIRED	-
SCHEDULE RACKS	NOT INCLUDED	(3) INNOCOM 8.62" X 11" X 1"	149.00
INTERIOR AD FRAMES	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR AD FRAMES - REAR	NOT INCLUDED	REQUIRED - 21" X 72"	311.00
EXTERIOR AD FRAMES - SS	NOT INCLUDED	REQUIRED - 30" X 144"	461.00
EXTERIOR AD FRAMES - CS	NOT INCLUDED	REQUIRED - 30" X 88"	390.00
PASSENGER SEATS	AMSECO INSIGHT W/ A.R.M, Q'STRAIT RESTRAINTS	AMSECO INSIGHT W/ A.R.M, Q'STRAIT RESTRAINTS & HINGED REAR SETTEE & CLEARRIIDE ANITMICROBIAL TREATMENT	6,575.00
REAR SEAT RISERS FOR FWD FACING SEATS	NOT INCLUDED	NOT REQUIRED	-
FRONT WHEELWELL VERTICAL STANCHIONS	NOT INCLUDED	REQUIRED - SS MOUNTED TO WHEELWELL & CS MOUNTED TO PACKAGE RACK	250.00
DRIVERS SEAT	RECARO ERGO AM80 METRO W/ HEADREST & 2-PT BLACK BELT	RECARO ERGO AM80 METRO W/ HEADREST & 3-PT ORANGE BELT	362.00
SEAT BELT ALARM	NOT INCLUDED	NOT REQUIRED	-
SEAT CUSHION ALARM	NOT INCLUDED	NOT REQUIRED	-
SEAT ARMREST	NOT INCLUDED	NOT REQUIRED	-
PASSENGER SIGNALS	PULL CORDS	PULL CORDS	-

## PRICE VARIANCE

12/13/2024

NO. ILLINOIS UNIV (DEKALB, IL) (PIGGYBACK STATE OF WASHINGTON RFP# 2020 06719-01)

(1) 35' ALLISON EGEN FLEX HYBRID LOW FLOOR BUSES, SN: TBD

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
STOP REQUEST AT REAR DOOR STANCHION	NOT INCLUDED	NOT REQUIRED	-
STOP REQUEST LAMP AT DASH	NOT INCLUDED	NOT REQUIRED	-
DRIVERS BARRIER	WRAPAROUND W/ OUT SCHEDULE HOLDERS	WRAPAROUND W/ OUT SCHEDULE HOLDERS	-
DRIVERS PROTECTION BARRIER	NOT INCLUDED	NOT REQUIRED	-
MODESTY PANEL FWD OF REAR DOOR	NOT INCLUDED	REQUIRED - HALF PANEL	303.00
OVERHEAD GRAB STRAPS	NOT INCLUDED	NOT REQUIRED	-
STANCHIONS	YELLOW POWDER COATED	YELLOW POWDER COATED	-
PASSENGER WINDOWS	AROW STD FRAME / UPPER TRANSOM	AROW STD FRAME / UPPER TRANSOM, QUICK CHANGE	1,694.00
GLAZING GUARDS	NOT INCLUDED	NOT REQUIRED	-
HEAD LAMPS	LED LOW & HIGH BEAMS	HALOGEN LOW & HIGH BEAMS	(500.00)
STOP/TAIL/TURN/BACK UP LAMPS	4" ROUND DIALIGHT LED	7" ROUND DIALIGHT LED	-
REAR CAP GRILLE LOWER CENTER STOP LAMPS	(2) 4" RED LED LAMPS	(2) 4" RED LED LAMPS	-
YIELD SIGN	NOT INCLUDED	NOT REQUIRED	-
BATTERY COMPARTMENT LAMPS	NOT INCLUDED	NOT REQUIRED	-
INTERIOR LAMPS	LED I/O CONTROLS	LED I/O CONTROLS	-
PLEASURE RADIO	NOT INCLUDED	NOT REQUIRED	-
2-WAY RADIO & ANTENNA	PRE-WIRE W/ANTENNA	PRE-WIRE W/ANTENNA	-
PA SYSTEM/VOICE ANNUNCIATOR	STD REI	REI 750040 AMPLIFIER	-
INTERIOR SPEAKERS	(6) INCLUDED	(8) REQUIRED	165.00
CAD / AVL ITS SYSTEM	NOT INCLUDED	NOT REQUIRED	-
DRIVERS SPEAKER	NOT INCLUDED	NOT REQUIRED	-
HAND HELD MIC	INCLUDED	REQUIRED	-
BOOM MIC	INCLUDED	NOT REQUIRED	(50.00)
HEATED FRONT GLAZING	NOT INCLUDED	NOT REQUIRED	-
DESTINATION SIGNS - FRONT, CURBSIDE & REAR	TWIN VISION AMBER	TWIN VISION AMBER	-
FRONT RUN SIGN	NOT INCLUDED	NOT REQUIRED	-
FAREBOX	PRE-WIRE ONLY	PRE-WIRE ONLY	-
FAREBOX GUARD	INCLUDED	REQUIRED	-
CEILING MTD FAREBOX LAMP	NOT INCLUDED	NOT REQUIRED	-
TRANSFER CUTTER	NOT INCLUDED	NOT REQUIRED	-
PASSENGER COUNTER (APC)	NOT INCLUDED	UTA STAND ALONE APC W/ HELL SENSORS FOR FRONT & REAR DOORS (DOES NOT INCL ANNUAL APC SOFTWARE - SAAS)	8,441.00
FULL COMPOSITE FLOOR	NOT INCLUDED	NOT REQUIRED	-
FLOORING MATERIAL	ALTRO	ALTRO	-
ROOF HATCHES	(1) REAR MANUAL	(2) FRONT & REAR MANUAL	437.00
EXTERIOR MIRRORS	8" X 8" 1-PC, NON-HEATED W/ REMOTE	8" X 15" 2-PC, W/ CONVEX HEATED W/ REMOTE	394.00
EXTERIOR MIRROR TURN SIGNAL	NOT INCLUDED	NOT REQUIRED	-
FIRE SUPPRESSION	AMEREX V-25	AMEREX V-25	-
TRAFFIC LIGHT PREEMPTION	NOT INCLUDED	NOT REQUIRED	-
VIDEO SURVEILLANCE	NOT INCLUDED	NOT REQUIRED	-
BACK UP CAMERA W/ DASH MOUNTED MONITOR	NOT INCLUDED	NOT REQUIRED	-
BIKE RACK	SPORTWORKS MOUNTING BRACKETS ONLY	SPORTWORKS MOUNTING BRACKETS ONLY	-
BIKE RACK MIRROR	NOT INCLUDED	NOT REQUIRED	-
BIKE RACK DEPLOYED LAMP	NOT INCLUDED	NOT REQUIRED	-

**PRICE VARIANCE****12/13/2024****NO. ILLINOIS UNIV (DEKALB, IL) (PIGGIYBACK STATE OF WASHINGTON RFP# 2020 06719-01)****(1) 35' ALLISON EGEN FLEX HYBRID LOW FLOOR BUSES, SN: TBD**

ITEM	STATE OF WASHINGTON, WA	NO. ILLINOIS UNIV (DEKALB, IL)	VARIANCE
MEDICAL AID KIT	NOT INCLUDED	REQUIRED	95.00
BLOODBORN PATHOGEN KIT	NOT INCLUDED	NOT REQUIRED	-
BIO-HAZARD KIT	NOT INCLUDED	NOT REQUIRED	-
WEB CUTTER	NOT INCLUDED	REQUIRED	38.00
WHEEL CHOCKS (SET)	NOT INCLUDED	REQUIRED	48.00
DRIVERS DASH GAUGES	AIR PRESSURE & SPEEDOMETER	AIR PRESSURE, SPEEDOMETER, OIL PRESSURE & COOLANT TEMP	138.00
12V POWER PORT AT DASH	NOT INCLUDED	NOT REQUIRED	-
CUP HOLDER	NOT INCLUDED	NOT REQUIRED	-
WASTE CONTAINER	NOT INCLUDED	REQUIRED	234.00
I/O PROGRAM MODULE	NOT INCLUDED	NOT REQUIRED	-
ADJUSTABLE PEDALS	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR PAINT	1-COLOR	1-COLOR	-
CLEAR COAT	NOT INCLUDED	NOT REQUIRED	-
EXTERIOR GRAPHICS	BUS NUMBERS ONLY	BUS NUMBERS ONLY	-
ROOF NUMBERS	NOT INCLUDED	NOT REQUIRED	-
WARRANTY (BASIC BUS)	24 MONTHS / 100,000 MILES	12 MONTHS / 50,000 MILES	(500.00)
WARRANTY (STRUCTURAL INTEGRITY CORROSION)	144 MONTHS / 500,000 MILES	60 MONTHS / 150,000 MILES	(300.00)
WARRANTY (ENGINE B6.7)	24 MONTHS / UNL MILES	24 MONTHS / UNL MILES	-
WARRANTY - HYBRID DRIVE	24 MONTHS / UNL MILES	24 MONTHS / UNL MILES	-
WARRANTY (ALL OTHERS)	BASE COVERAGE PER STATE OF WASHINGTON CONTRACT	BASE COVERAGE PER STATE OF WASHINGTON CONTRACT	-
TRAINING	NOT INCLUDED	NOT REQUIRED	-

TOTAL NO. ILLINOIS UNIV (DEKALB, IL) VARIANCES	68,132.00
STATE OF WASHINGTON, WA 35' ALLISON EGEN FLEX HYBRID LOW FLOOR BASE UNIT PRICE (APRIL 2021)	645,834.00
DELIVERY	5,510.00
NO. ILLINOIS UNIV (DEKALB, IL) 35' ALLISON EGEN FLEX HYBRID BASE UNIT PRICE	719,476.00
PPI 1413 ADJUSTMENT PER WA CONTRACT AMENDMENT #1 (6/1/2022) = 11.78%	76,079.00
PPI 1413 ADJUSTMENT PER WA STATE CONTRACT AMENDMENT #3 = (15%)	108,287.00
PPI 1413 ADJUSTMENT PER WA STATE CONTRACT AMENDMENT #4 = 7.15%	59,359.00
SPARE / TOOLING BUDGET (1%)	9,038.00
<b>NO. ILLINOIS UNIV (DEKALB, IL) 35' ALLISON EGEN FLEX HYBRID ADJUSTED CURRENT PRICE (12/13/2024)</b>	<b>972,239.00</b>

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December 12, 2024

Mr. Mike Neuenkirchen  
Transit Manager  
City of DeKalb  
1216 Market Street  
DeKalb, IL 60115

Thank you for the interest in purchasing five (5) 35' GILLIG Low Floor diesel buses and one (1) 35' Allison Egen Flex hybrid bus, using the State of Washington Contract (06719-01). The price summary is outlined below. Worksheets calculating the price, including application of the applicable producer price index (PPI) 1413, are attached.

GILLIG is pleased to quote the following:

<b><u>Five (5)</u></b>	<b><u>35' GILLIG Low Floor Diesel Buses</u></b>	<b><u>\$606,629.00 each</u></b>
<b><u>One (1)</u></b>	<b><u>35' GILLIG Low Floor Allison Egen Buses</u></b>	<b><u>\$972,239.00 each</u></b>

The pricing is valid for sixty (60) days. Prices exclude any applicable taxes, transaction fees of any kind, and/or license fees. The production of your buses can be scheduled within 13-15 months from receipt of purchase order.

Due to the current supply chain shortages and the runaway inflation, the bus price might need to be recalculated using the PPI 1413 at the time of the pre-production meeting.

We appreciate the opportunity to support City of Dekalb Transit. Should you have any questions, please do not hesitate to contact me.

Sincerely,

*Kevin Hardesty | Regional Sales Manager*

510-334-7806 | [Kevin.Hardesty@Gillig.com](mailto:Kevin.Hardesty@Gillig.com)

cc: Javier Hernandez Jr., Gillig  
Holly Piper, Gillig  
Alejandra Salgado, Gillig  
Lee Peterson, Gillig  
Steven Ng, Gillig



# Illinois Department of Transportation

69 West Washington Street / Suite 2100 / Chicago, Illinois 60602

December 2, 2024

Michael Neuenkirchen  
City Of Dekalb  
164 E. Lincoln Highway  
Dekalb, Illinois 60115

RE: CAP-23-1261-ILL  
Pre-Award Bus Purchase

Dear Mr. Neuenkirchen,

The Illinois Department of Transportation received City of Dekalb request for pre award concurrence to award Gillig LLC in the amount of \$4,118,400 for the purchase of two (2) 35' Gillig Low Floor Transit Allison Hybrid Buses in the amount of \$1,826,964 and four (4) 35' Gillig Low Floor Transit Diesel Buses in the amount of \$2,291,436 utilizing capital grant CAP-23-1261.

CoD submitted the necessary items needed to request concurrence for the award. The Office of Intermodal Project Implementation (OIPI) reviewed CoD documents for concurrence and finds it complies with the requirements outlined by OIPI.

Please contact Dangrell Frazier at (312) 793-3307, or [Dangrell.Frazier@illinois.gov](mailto:Dangrell.Frazier@illinois.gov), if you have any questions or need further assistance.

Sincerely,

*Dangrell S. Frazier*

Dangrell Frazier, Project Manager  
Office of Intermodal Project Implementation



## Neuenkirchen, Michael

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**From:** Frazier, Dangrell S. <Dangrell.Frazier@Illinois.gov>  
**Sent:** Thursday, December 12, 2024 11:16 AM  
**To:** Neuenkirchen, Michael  
**Cc:** Kriese, Wendy; Van Hine, Brian  
**Subject:** RE: Approval letter for 6 buses from Gillig Washington State Contract

[NOTICE: This message originated outside of the City Of DeKalb mail system -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

Hi Mike,

I just confirmed we are good to go, long as its 6 buses the combination will not be an issue.

Best Regards,

Dangrell (Danny) Frazier Sr.  
Project Manager  
Bureau of Transit Capital  
Illinois Department of Transportation  
Office of Intermodal Project Implementation  
69 W. Washington Street Suite 2100  
Chicago, IL 60602  
[Dangrell.Frazier@illinois.gov](mailto:Dangrell.Frazier@illinois.gov)  
(312) 793-3307

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**From:** Neuenkirchen, Michael <Michael.Neuenkirchen@cityofdekalb.com>  
**Sent:** Thursday, December 12, 2024 11:11 AM  
**To:** Frazier, Dangrell S. <Dangrell.Frazier@Illinois.gov>  
**Cc:** Kriese, Wendy <Wendy.Kriese@cityofdekalb.com>; Van Hine, Brian <Brian.VanHine@cityofdekalb.com>  
**Subject:** [External] RE: Approval letter for 6 buses from Gillig Washington State Contract

Hi Danny,

Following up on our phone call earlier, the IDOT approved an expenditure of \$4,118,400.00 based on six (6) 35-ft. Gillig transit buses. That quote was based on the CoD ordering two (2) hybrid-electric buses and four (4) diesel buses (see table below):

Quantity	Description	Quote Each Price	Total
2	35' Gillig Low Floor Transit Allison Hybrid Buses	\$913,482.00	\$1,826,964.00
4	35' Gillig Low Floor Transit Diesel Buses	\$572,859.00	\$2,291,436.00
			\$4,118,400.00

**Total Buses: 6**

Due to production moving into the 2026 production year, Gillig informed us that the company will have to add a 7% PPI increase to the purchase, adding an additional \$288,288.00 to the price quoted for a total of \$4,406,688.00.

To avoid cost overruns on the approved purchase price of \$4,118,400.00, the City of DeKalb is planning to change the mix of vehicles we are purchasing to one (1) hybrid electric bus and five (5) diesel buses for a total cost of \$4,042,221.39. Note the 7% increase is reflected in the "Quote Each Price" column:

**After PPI and Revision of Quantities**

Dec 2024 for 2026  
build

Quantity	Description	Quote Each Price	Total
1	35' Gillig Low Floor Transit Allison Hybrid Buses	\$977,425.74	\$977,425.74
5	35' Gillig Low Floor Transit Diesel Buses	\$612,959.13	\$3,064,795.65
			\$4,042,221.39

**Total Buses: 6**

The revised cost is still within the scope of CAP-23-1261-ILL for purchase of six (6) transit buses, and below the 12/2/24 approved purchase amount of \$4,118,400.00

The City of DeKalb requests clarification on whether we may proceed with this purchase on the revised terms as illustrated in the "After PPI and Revision of quantities Table".

Mike Neuenkirchen | Transit Manager

City of DeKalb | 1216 Market Street | DeKalb, IL 60115

Phone: 815-748-2370 | Fax: 815-748-2024

Email: [michael.neuenkirchen@cityofdekalb.com](mailto:michael.neuenkirchen@cityofdekalb.com) | Website: [cityofdekalb.com](http://cityofdekalb.com)

