

CONTRACT FOR ONE (1) ZERO-EMISSION BATTERY ELECTRIC BUS

This CONTRACT is entered into this _____ day of _____ 2019, by and between the CITY OF GAINESVILLE, FLORIDA, a municipal corporation (“CITY”), and GILLIG LLC, a California limited liability company registered to do business in Florida (“CONTRACTOR”).

WHEREAS, the parties desire to enter into an agreement for the purchase of one electric bus.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The CONTRACTOR shall furnish the labor, services, materials, and equipment to perform the contract as provided by the following enumerated documents, whether attached to this Contract or incorporated by reference (collectively the ‘Contract Documents’):

- a. This Contract;
- b. Federal Transit Administration (FTA) Requirements, attached hereto and incorporated as Exhibit A; and
- c. Gillig LLC Quote dated **May 8, 2019** attached hereto and incorporated as Exhibit B.

The Contract Documents constitute the entire agreement between the City and Contractor. In the event of conflict or inconsistency between in the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above. Conflict or inconsistency within a particular contract document shall be resolved by having the more specific reference to the matter prevail. Any modification to the Contract Documents shall only become effective on signed written agreement between the parties.

2. The CITY shall pay to the CONTRACTOR One Million Thirty-Two Thousand One Hundred Sixty-Three Dollars (\$1,032,163.00) for the faithful performance of this Contract in the sums due upon verified invoice within 30 days of receipt in accordance with the Quote dated **May 8, 2019**.

3. The obligations of the CITY as to any funding required pursuant to this Contract shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential CITY services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the CITY shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the CITY pursuant to this Contract.

4. The CONTRACTOR and the CITY further agree that time is of the essence of the CONTRACT and that the deliverables (buses, charging equipment, and training) shall be delivered and all work completed by no later than December 31, 2021.

5. The term of the Contract will commence upon execution and shall continue through December 31, 2020, unless terminated earlier.

6. CONTRACTOR shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which CITY employees are or may be entitled to by reason of employment. Except as specifically noted in the Contract Documents, CONTRACTOR shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the CONTRACTOR in the full performance of the Contract Documents.

7. CONTRACTOR shall maintain the following insurance throughout the term of this Contract:

Worker's Compensation Insurance providing coverage in compliance with Chapter 440, Florida Statutes.

Public Liability Insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage in the amount of \$1,000,000 per occurrence written on an occurrence basis (combined single limit for bodily injury and property damage).

Automobile Liability Insurance Property Damage \$500,000 per occurrence (combined single limit for bodily injury and property damage).

The CITY shall be an additional insured on such Public Liability Insurance, and the CONTRACTOR shall provide copies of endorsements naming the CITY as additional insured. CONTRACTOR shall furnish the CITY a certificate of insurance in a form acceptable to the CITY for the insurance required. Such certificate or an endorsement must state that the CITY will be given thirty (30) days' written notice prior to cancellation or material change in coverage (but the CITY will accept 10 days' written notice of cancellation for non-payment).

8. CONTRACTOR agrees to indemnify and hold harmless the CITY, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the Contract.

9. Nothing in the Contract Documents shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28, Florida Statutes.

10. Termination.

a. Termination for Default. If the CONTRACTOR fails to observe or perform or is guilty of a substantial violation of any provision of the Contract, then the CITY, after serving at least ten (10) days' written notice to the CONTRACTOR of its intent to terminate and after such default shall continue unremedied for a period of ten days, may terminate the Contract without prejudice to any other rights or remedies it may have under this Contract. If, after default under this subsection, it is determined for any reason that CONTRACTOR was not in default, or that its default was excusable, or that CITY is not entitled to the remedies against CONTRACTOR provided

herein, then CONTRACTOR's remedies against CITY shall be the same as and limited to those afforded CONTRACTOR pursuant to the subsection title "Termination for Convenience" which appears below.

b. Termination for Convenience. City shall have the right to terminate this Contract, in whole or in part, without cause, upon seven (7) calendar days' written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against City shall be limited to that portion of the contract price earned through the date of termination, together with any retainage withheld and direct and immediate termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against City.

Termination of the contract or a portion thereof, for cause or convenience, shall neither relieve the Contractor of its responsibilities for the completed work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the work performed.

11. Any notice required under this Contract shall be addressed as follows and delivered via US Post or express mail:

CITY
City of Gainesville
PO Box 490, Station 5
Gainesville, FL 32627
Attn: Paul Starling

CONTRACTOR
Gillig LLC
451 Discovery Drive
Livermore, CA 94551
Attn: Joseph Policarpio

12. CONTRACTOR shall maintain records sufficient to document completion of the scope of services established by the Contract Documents. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the CITY. These records shall be kept for a minimum of three (3) years after termination of the Contract. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or claims.

13. Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into a contract with the CITY, CONTRACTOR must:

- a. Keep and maintain public records required by the CITY to perform the service.
- b. Upon request from the CITY's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if CONTRACTOR does not transfer the records to the CITY.
- d. Upon completion of the Contract, transfer, at no cost, to the CITY all public records in possession of CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If CONTRACTOR transfers all public records to the CITY upon completion of the Contract, CONTRACTOR shall destroy any duplicate public records that are exempt or

confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY’s custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS - PROJECT MANAGER, PAUL STARLING, 352-393-7840, STARLINGPK@CITYOFGAINESVILLE.ORG, P.O. BOX 490 MAIL STATION 5, GAINESVILLE, FL 32627.

14. The Contract and the legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of Florida, notwithstanding its conflict of laws provisions. Venue shall be in the courts of Alachua County, Florida.

IN WITNESS WHEREOF the parties have executed this Contract on the day first above written.

(SEAL) (If Corporation)

GILLIG LLC

_____/Date_____

Title: _____

CITY OF GAINESVILLE

_____/Date_____

Title: _____

APPROVED AS TO FORM AND LEGALITY

_____/Date_____

City Attorney