

**CONTRACT FOR ONE (1) ZERO-EMISSION BATTERY ELECTRIC BUS AND ONE (1)  
CHARGEPOINT DISPENSER**

This CONTRACT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2021, 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 (1) electric bus and one (1) Chargepoint dispenser.

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 Price Summary dated February 1, 2021 and Quote dated February 2, 2021 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 Fifty-Three Thousand Six Hundred Fifty-Two Dollars (\$1,053,652.00) for the faithful performance of this Contract in the sums due upon verified invoice within 30 days of receipt of invoice.

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 (bus and charging dispenser) shall be delivered and all work completed by no later than September 30, 2022.

5. The term of the Contract will commence upon execution and shall continue through September 30, 2022, 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

## EXHIBIT A FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

**Statement of Financial Assistance:** This purchase is funded in whole or in part by the U.S. Department of Transportation, Federal Transit Administration. The following requirements are applicable for this purchase. CONTRACTOR agrees to comply with the requirements applicable to third party contractors of FTA funding recipients:

a) No Government Obligation to Third Parties

The City of Gainesville, hereafter "City" 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 City, 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.

b) Program Fraud and False or Fraudulent Statements and Related Acts

*Refer to 49 U.S.C. § 5323(I)(1), 31 U.S.C. §§ 3801-3812, 18 U.S.C. § 1001, and 49 C.F.R. part 31.*

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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) 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.

c) Access to Records and Reports

*Refer to 49 U.S.C. § 5325(g), 2 C.F.R. § 200.333, and 49 C.F.R. part 633.*

1. **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, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. 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.
3. **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 as reasonably may be required.
4. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

d) Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

e) Civil Right Laws and Regulations

*Refer to 49 U.S.C. § 5332, 49 U.S. C. Chapter 53, 42 U.S.C. § 2000e, Executive Order No. 11246, 20 U.S.C. § 1681 et seq., 49 C.F.R. part 25, 42 U.S.C. § 6101 et seq., 45 C.F.R part 90, 29 U.S.C. 42 U.S.C. § 621 et seq., 29 C.F.R. part 1625, and 42 U.S.C. § 12101 et. Seq.*

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City 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 Agreement, 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.

f) Disadvantaged Business Enterprise (DBE)

*Refer to 49 C.F.R. part 26.*

The Contractor, subrecipient 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 City 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).

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 from the City. 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.

### Overview

It is the policy of the City 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. It is also the policy of the City to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The City shall make all determinations with regard to whether or not a Bidder is in compliance with the requirements stated herein. In assessing compliance, the City may consider during its review of the Bidder’s submission package, the Bidder’s documented history of non-compliance with DBE requirements on previous contracts with the City.

### Contract Assurance

The Contractor, subrecipient 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 City deems appropriate.

### DBE Participation

For the purpose of this Contract, the City will accept only DBE’s who are:

1. Certified, at the time of bid opening or proposal evaluation, by the Florida Department of Transportation or the Unified Certification Program (UCP); or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status; or
3. Certified by another agency approved by the City.

### DBE Participation Goal

The agency’s overall goal for DBE participation for the period October 1, 2019 through September 30, 2022 is 3%. **The City has not set a specific goal for this project.** Good Faith Efforts are encouraged, if possible.

#### g) Energy Conservation

*Refer to 42 U.S.C. 6321 et seq., and 49 C.F.R. part 622, subpart C.*

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.

#### h) Americans with Disabilities Act

*Refer to 49 C.F.R. part 37 and 49 C.F.R. part 38.*

1. *New Buses and Construction:* All design and construction must meet all federal regulations of 49 CFR Part 37 and Part 38.
2. *Used Buses:* Must meet all federal regulations of 49 CFR Part 38.
3. *Modification of Facilities:* Must meet all federal regulations of Appendix A to 49 CFR Part 37, the ADA Accessibility Guideline (ADAAG).

#### i) Privacy Acts

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal

penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

j) Safe Operation of Motor Vehicles

*Refer to 23 U.S.C. part 402, Executive Order No. 13043, Executive Order No. 13513, and U.S. DOT Order No. 3902.10.*

**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 City.

**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 agreement.

k) Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause City to be in violation of the FTA terms and conditions.

l) Termination - *If this solicitation or contract is valued in excess of \$10,000*

**Termination for Convenience (General Provision)**

The City of Gainesville may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the City of Gainesville’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 City of Gainesville to be paid the Contractor. If the Contractor has any property in its possession belonging to City of Gainesville, the Contractor will account for the same, and dispose of it in the manner City of Gainesville 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 City of Gainesville 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 City of Gainesville 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 City of Gainesville, 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 City of Gainesville, 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 City of Gainesville'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 City of Gainesville setting forth the nature of said breach or default, City of Gainesville 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 City of Gainesville 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 City of Gainesville elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by City of Gainesville shall not limit City of Gainesville's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

- m) Government Wide Debarment and Suspension - *If this solicitation or contract is valued at \$25,000 or more Refer to 2 C.F.R. part 180, 2 C.F.R. part 1200, 2 C.F.R. § 200.213, 2 C.F.R. part 200 Appendix II (I), Executive Order 12549, and Executive Order 12689.*

### **Debarment, Suspension, Ineligibility and Voluntary Exclusion**

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 City to be:

1. Debarred from participation in any federally assisted Award;
2. Suspended from participation in any federally assisted Award;
3. Proposed for debarment from participation in any federally assisted Award;
4. Declared ineligible to participate in any federally assisted Award;
5. Voluntarily excluded from participation in any federally assisted Award; or
6. Disqualified from participation in any federally assisted Award.

By signing this contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The contractor 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 contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- n) Buy America - *If this solicitation or contract exceeds \$150,000 (includes rolling stock and construction) Refer to 49 U.S.C. 5323(j) and 49 C.F.R. part 661.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

- o) Violation and Breach of Contract - *If this solicitation or contract exceeds \$150,000 Refer to 2 C.F.R. § 200.326 and 2 C.F.R. part 200, Appendix II (A).*

### **Rights and Remedies of the City**

The City shall have the following rights in the event that the City deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as City for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach

of this contract, entitling Contractor to cancel or rescind the contract (unless the City directs Contractor to do so) or to suspend or abandon performance.

#### **Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

#### **Disputes**

The City and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the City and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the contract, and in accordance with the City's direction or decisions made thereof.

#### **Performance during Dispute**

Unless otherwise directed by City, 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 its employees, agents or others for whose acts it is legally liable, a claim for damages therefor 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 City and the 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 City is located.

#### **Rights and Remedies**

The 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 City 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.

- p) Lobbying Restrictions - *If this contract is for \$100,000 or more:*  
*Refer to 31 U.S.C. § 1352, 2 C.F.R. § 200.450, 2 C.F.R. part 200, Appendix II (J), and 49 C.F.R. part 20.*

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352(b)(5), as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 City, 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 award covered by 31 U.S.C. 1352(b)(5). Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352(b)(5). Such disclosures are forwarded from tier to tier up to the City.

- q) Clean Air Act and Federal Water Pollution Control Act - *If this solicitation or contract exceeds \$150,000 in any year: Refer to 42 U.S.C. §§ 7401-7671q, 33 U.S.C. §§ 1251-1387, and 2 C.F.R. part 200, Appendix II (G).*

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

- r) Bus Testing - *If this solicitation or contract is for the purchase of rolling stock: Refer to 49 U.S.C. § 5318(e) and 49 C.F.R. part 665.*

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 City.

- s) Pre-Award and Post Delivery Audit of Rolling Stock Purchases - *If this solicitation or contract is for the purchase of rolling stock: Refer to 49 U.S.C. § 5323(m) and 49 C.F.R. part 663.*

**Pre-Award and Post-Delivery Audit Requirements**

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.

- t) E-Verify Requirement

The Contractor shall (1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the contract; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.