

FORMAL COOPERATIVE PURCHASE AGREEMENT

THIS AGREEMENT (Agreement) is made and entered into EFFECTIVE _____, by and between CITY OF FRESNO, a California municipal corporation (City), and GILLIG LLC, a California Corporation (Vendor).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. The Charter for the City allows for cooperative purchase agreements for materials, supplies, equipment, and public work of improvement. The City is allowed to piggyback an existing government agency's agreement, under Fresno City Charter 1208. The parties agree the Vendor was the lowest responsive and responsible bidder for Invitation for Bid (IFB) issued by Washington State Transit Bus Cooperative #06719-01. The IFB is attached hereto as **Exhibit A** and is incorporated herein by reference. The Parties agree that the Vendor has entered a Cooperative Purchase Contract with Gillig LLC (Original Government Contract).

2. Vendor's Obligation. Vendor shall provide those services and carry out that work described in the Original Government Contract, which is attached hereto as **Exhibit B** and is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

3. City's Obligation. City shall make to the Vendor those payments described in **Exhibits A and B**, subject to all the terms and condition contained or incorporated herein

4. Notwithstanding the requirements that the Original Government Contract is fully binding on the Parties, the parties have agreed to modify certain non-material provisions of the Original Government Contract as applied to this Agreement between the Vendor and the City, as follows:

- a) City's Insurance and Indemnity provisions attached as **Exhibit C**.
- b) Address change for the City: Notwithstanding the address for contract information and the government entity as set out in **Exhibit B**, the Vendor agrees that notices and invoices will be sent to:

City of Fresno
Attention: Melissa Perales
2101 G Street, Bldg. A
Fresno, Ca 93706
Phone: (559) 621-1332
FAX: (559) 457-1564

c) Notwithstanding anything in **Exhibits A and B** to the contrary, this Agreement shall be governed by, and construed and enforced in accordance with , the

laws of the State of California, excluding however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

d) All other provisions in the Original Government Contract are fully binding on the parties and will represent the agreement between the City and the Vendor.

[Signatures follow on the next page.]

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

CITY OF FRESNO,
a California municipal corporation

GILLIG LLC,
a California Corporation

By: _____
Melissa Perales
Purchasing Manager
General Services Department

By: _____

Name: _____

Title: _____
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

No signature of City Attorney required.
Standard Document **#GSD-S Formal
Cooperative Purchase Agreement
(10-2022)** has been used without
modification, as certified by the
undersigned.

By: _____

Name: _____

Title: _____
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

By: _____
Tamra Torrence
Senior Procurement Specialist

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy _____ Date _____

Addresses:
CITY
City of Fresno
Attention: Melissa Perales
2101 G Street, Bldg. A
Fresno, Ca. 93706
Phone: (559) 621-1332
E-mail: Melissa.Perales@fresno.gov

Vendor:
Gillig LLC
Attention:
451 Discovery Dr
Livermore, CA 94551
Phone:
E-mail:

Attachments:
Exhibit A - Invitation For Bids
Exhibit B - Original Government Contract
Exhibit C - City's Insurance and Indemnity

EXHIBIT A

Original Solicitation



WASHINGTON STATE TRANSIT BUS COOPERATIVE

COMPETITIVE SOLICITATION – No. 06719-01

STATE COOPERATIVE PURCHASING SCHEDULE

TRANSIT BUSES

HEAVY DUTY

INTRODUCTION

The Washington State Department of Enterprise Services (Enterprise Services) is issuing this Competitive Solicitation pursuant to Section 3019 of the FAST Act (Pub. L. No. 114-94) and RCW chapter 39.26. Pursuant to this Competitive Solicitation, Enterprise Services intends to conduct a competitive procurement and establish and award a Master Contract, for eligible purchasers to purchase Heavy Duty Transit Buses ("Transit Buses"). This Master Contracts is considered a State Cooperative Purchasing Schedule under the FAST Act for use of federal funds.

This Competitive Solicitation is for newly built transit buses used for fixed route and commuter service. Heavy Duty Transit Buses purchased under this Competitive Solicitation will be 30 foot, 35 foot, 40 foot, 45 foot, and 60 foot articulated available with diesel power, hybrid drive, compressed natural gas ("CNG"), Hydrogen Fuel Cell, and electric propulsion systems. This Competitive Solicitation is further divided into categories based on the table in section 2.1. This Competitive Solicitation and all relevant categories for Transit Buses include the services, accessories, equipment, parts, pieces, consulting, training, etc. required for operation of the buses for their operational life.

This Competitive Solicitation is part of the Washington State Transit Bus Cooperative. The resulting Master Contract will be available for use by all eligible purchasers at their option, including any approved Participant of the Washington State Transit Bus Cooperative. These Participants can include purchasers from any state under section 3019 of the FAST Act through this Master Contract as a State Cooperative Purchasing Schedule. Many of these Participants will be purchasing with FTA funds for Transit Buses. This competitive Solicitation is one of multiple Competitive Solicitations for eligible purchasers to procure heavy duty, medium duty, light duty, double decker, and rebuilt transit buses; accessories; replacement components; replacement subsystems; replacement parts; and obtain services for refurbishing and repowering transit buses through the Washington State Transit Bus Cooperative.

This Competitive Solicitation is divided into six (6) sections:

- [Section 1](#) provides a summary table of relevant deadlines for responding to the Competitive Solicitation and identifies contact information for Enterprise Services' Procurement Coordinator.
- [Section 2](#) provides important information about the procurement that is designed to help interested bidders evaluate the potential opportunity, including the purpose of the

procurement and Master Contracts, the form of the resulting Master Contract, and potential contract sales.

- [Section 3](#) identifies how Enterprise Services will evaluate the bids.
- [Section 4](#) identifies how to prepare and submit a bid for this Competitive Solicitation, including detailed instructions regarding what to submit and how to submit your bid.
- [Section 5](#) details the applicable requirements to file a complaint, request a debrief conference, or file a protest regarding this Competitive Solicitation.
- [Section 6](#) provides information pertaining to doing business with the State of Washington.

In addition, this Competitive Solicitation includes the following Exhibits:

- *Exhibit A – Required Bidder Information:* These exhibits identify information that bidders must provide to Enterprise Services to constitute a responsive bid. *See Section 4, below.*
 - *Exhibit A-1 – Bidder’s Certification*
 - *Exhibit A-2 – Bidder’s Profile*
 - *Exhibit A-3 – FTA Certifications*
- *Exhibit B-1 – Specifications:* This exhibit outlines the required specifications/qualifications for the Transit Buses that are the subject of this Competitive Solicitation.
- *Exhibit B-2 – Specification Modification Certification:* This exhibit provides the bidder with the opportunity to detail modification to the specifications.
- *Exhibit B-3 – Technical Information:* This exhibit has the bidder provide the technical information for their standard bus.
- *Exhibit C – Qualifications:* This exhibit provides the questions for evaluation of Technical, Company Information, and Warranty specifications.
- *Exhibit D-1 – Price Sheet Instructions:* This exhibit provides instructions and examples for completing Exhibit D-2 Price Sheet.
- *Exhibit D-2 – Price Sheet:* This exhibit provides the pricing information that bidders will complete as part of their bid and the price evaluation tool that Enterprise Services will use to evaluate and compare bids.
- *Exhibit E-1 – Master Contract:* This exhibit is a draft of the Master Contract that the successful bidder(s) will execute with Enterprise Services.
- *Exhibit E-2 – Master Contract Issues List:* This exhibit outlines bidder’s issues, if any, and bidder’s proposed resolution/solution if bidder has any business concerns with the form of the Master Contract (Exhibit E-1) to be awarded. Note, however, that Enterprise Services reserves the right not to modify the Master Contract and to award the Master Contract on the basis of a bidder’s willingness to agree to the Master Contract.

SECTION 1 – DEADLINES, QUESTIONS, PROCUREMENT COORDINATOR, AND MODIFICATION

This section identifies important deadlines for this Competitive Solicitation and where to direct questions regarding the Competitive Solicitation.

- 1.1. **COMPETITIVE SOLICITATION DEADLINES.** The following table identifies important dates for this Competitive Solicitation:

COMPETITIVE SOLICITATION DEADLINES		
ITEM	DATE	
Competitive Solicitation Posting Date:	March 4, 2020	
Pre-Bid Conference:	March 18, 2020 at 12:00 PM (Pacific Time)	
	<i>Attend in Person</i> Conf. Room: 2330 1500 Jefferson Street SE Olympia, WA 98501	<i>Attend via Phone</i> Join Zoom Meeting https://zoom.us/j/203203866 Meeting ID: 203 203 866 Phone: (669) 900-6833
Question & Answer Period:	March 18, 2020 – April 27, 2020	
Deadline for submitting Bids:	May 4, 2020	
Anticipated Announcement of Apparent Successful Bidder(s):	June 10, 2020	
Anticipated Award of Master Contract(s):	July 1, 2020	

- 1.2. **COMPETITIVE SOLICITATION QUESTIONS.** Questions or concerns regarding this Competitive Solicitation must be directed to the following Procurement Coordinator:

Procurement Coordinator	
Name:	David Mgebroff
Telephone:	360-407-8049
Email:	buspurchases@des.wa.gov

Questions raised at the pre-bid conference and during the Q&A period will be answered and responses posted to the Washington Electronic Business Solution (WEBS).

- 1.3. **COMPLAINTS, DEBRIEFS, & PROTESTS.** The Competitive Solicitation (and award of the Master Contract) is subject to complaints, debriefs, and protests as explained in Section 5, which may impact the dates set forth above.

- 1.4. **COMPETITIVE SOLICITATION – AMENDMENT & MODIFICATION.** Enterprise Services reserves the right to amend and modify this Competitive Solicitation. Only bidders who have properly registered and downloaded the original Competitive Solicitation directly via WEBS will receive notifications of amendments and other correspondence pertinent to this Competitive Solicitation. Bidders must be registered in WEBS to be awarded a Master Contract. Visit [WEBS](#) to register.

SECTION 2 – INFORMATION ABOUT THE PROCUREMENT

This section describes the purpose of the Competitive Solicitation and provides information about this procurement, including the potential scope of the opportunity.

- 2.1. **PURPOSE OF THE PROCUREMENT – AWARD A MASTER CONTRACT.** The purpose of this Competitive Solicitation is to receive competitive bids and pursuant to the Washington State Transit Bus Cooperative award a Master Contract for Transit Buses, as a Federal Transit Administration (FTA) compliant State Cooperative Purchasing Schedule under Section 3019 of the FAST Act. Enterprise Services intends to award Master Contracts to the top three (3) highest scoring responsive, responsible bidders in each category. Enterprise Services intends to award Master Contracts to the top four (4) highest scoring responsive, responsible bidders in categories with greater use and anticipated future use: 40-foot CNG, 35-foot Diesel, 40-foot Diesel, 40-foot Hybrid, 30-foot Electric, 35-foot Electric, and 40-foot Electric categories.

Awards for Transit Buses will be made for each of the categories listed in the table below. Bidders must submit required submittals for the applicable category to be considered for an award in that category. Bidders may only provide Transit Buses for the categories under the resultant Master Contract for which they are awarded.

Category	Length	Propulsion	Anticipated Master Contracts
1	30 ft.	Diesel	3
2	35 ft.	Diesel	4
3	40 ft.	Diesel	4
4	45 ft.	Diesel	3
5	60 ft.	Diesel	3
6	30 ft.	Hybrid	3
7	35 ft.	Hybrid	3
8	40 ft.	Hybrid	4
9	45 ft.	Hybrid	3
10	60 ft.	Hybrid	3
11	30 ft.	CNG	3
12	35 ft.	CNG	3
13	40 ft.	CNG	4
14	45 ft.	CNG	3
15	60 ft.	CNG	3
16	30 ft.	Electric	4
17	35 ft.	Electric	4
18	40 ft.	Electric	4
19	45 ft.	Electric	3
20	60 ft.	Electric	3
21	30 ft.	Hydrogen Fuel Cell	3

Category	Length	Propulsion	Anticipated Master Contracts
22	35 ft.	Hydrogen Fuel Cell	3
23	40 ft.	Hydrogen Fuel Cell	3
24	45 ft.	Hydrogen Fuel Cell	3
25	60 ft.	Hydrogen Fuel Cell	3

- a. **COOPERATIVE PURCHASING AGREEMENTS AND MASTER CONTRACTS.** Enterprise Services on behalf of the State of Washington is authorized to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods/services. Enterprise Services has established the Washington State Transit Bus Cooperative. This cooperative is available to eligible purchases as set forth herein. Pursuant to the Cooperative, Enterprise Services will develop a Cooperative Master Contract. A Master Contract is a contract for specific goods and/or services that is competitively solicited and established by Enterprise Services, on behalf of the State of Washington, for use by statutorily specified 'purchasers' (see below). Typically, purchasers use our Master Contracts through a purchase order, work order, or similar document. The Master Contract is designed to function as a 'procurement bridge' between innovative vendors who have bid and won a competitive solicitation to supply goods/services and eligible purchasers who wish to purchase such goods/services pursuant to pre-determined, clear, consistent, easy to use, value-added Master Contracts.
- b. **MASTER CONTRACT USERS – ELIGIBLE PURCHASERS.** The resulting Cooperative Master Contract from this Competitive Solicitation will be available for use by the following entities, each of whom is an eligible purchaser ("Participants"):
- **WASHINGTON STATE AGENCIES.** All Washington State agencies, departments, offices, divisions, boards, and commissions.
 - **WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES).** Any of the following specific 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.
 - **MCUA PARTIES.** The Master Contract also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) 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.

Enterprise Services maintains a list of eligible MCUA parties on the [MCUA Listing website](#).

- **TRANSIT BUS COOPERATIVE PARTICIPANTS.** The Master Contract also may be utilized by any 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 of the United States;
 - Federal governmental agencies.
 - Federally-recognized Indian Tribes located outside of the State of Washington.

While use of the Master Contract is optional for purchasers other than Washington State agencies, these entities' use of the Master Contract can increase Master Contract use significantly. All purchasers are subject to the same contract terms, conditions, and pricing as Washington State agencies.

- 2.2. **MASTER CONTRACT.** The form of the Master Contract that will be awarded as a result of this Competitive Solicitation is attached as Exhibit E-1 Master Contract
- 2.3. **CONTRACT TERM.** As set forth in the attached Master Contract for this Competitive Solicitation, the contract term is twenty-four (24) months, with three (3) subsequent twelve (12) month extensions to be executed at Enterprise Services' option. Provided, notwithstanding any provisions to the contract, the Master Contract will not be extended with any bidder who cannot meet the applicable certifications at the time of the extension. The maximum contract term is sixty (60) months. Bidders are to specify prices for the entire contract term, including any potential extensions. The Master Contract is subject to earlier termination.
- 2.4. **ESTIMATED SALES AND QUANTITY.** Total potential or estimated contract sales is not known. Enterprise Services cannot provide exact use by transit entities purchasing with FTA funds. The following is an estimate only and not a guarantee in any way of the quantity to be purchased from the resulting contract(s). It is estimated the Purchases may purchase Transit Buses in the quantities indicated below over the next five years:
 - State of Washington: up to 1,000 buses
 - State of Oregon: 35 buses
 - State of Idaho: 50 buses
 - State of Alaska: 10 buses
 - State of Colorado: 200 buses
 - State of Montana: 20 buses
 - State of Nevada: 20 buses
- 2.5. **PROCUREMENT PRIORITIES & PREFERENCES.** Enterprise Services will apply the following procurement priorities and preferences to this Competitive Solicitation:
 - a. EXECUTIVE ORDER 18-03 (10 Points)
 - b. OREGON REVISED STATUTE 279A.112 (10 Points)

- c. EMISSIONS INFORMATION (10 Points)
- d. SUSTAINABILITY POLICY (10 Points)
- e. PROMPT PAYMENT (10 Points)

SECTION 3 – BID EVALUATION

This section identifies how Enterprise Service will evaluate Competitive Solicitation bids.

3.1. **OVERVIEW.** Enterprise Services will evaluate bids for this Competitive Solicitation as described below.

- a. Bidder responsiveness, performance requirements, price factors, and responsibility, will be evaluated based on the process described herein.
- b. Any bidder whose bid is determined to be non-responsive will be rejected and will be notified of the reasons for this rejection.
- c. Enterprise Services reserves the right to: (1) Waive any informality; (2) Reject any or all bids, or portions thereof; (3) Accept any portion of the items bid unless the bidder stipulates all or nothing in their bid; (4) Request clarification of submitted bids, (5) Cancel the Competitive Solicitation and re-solicit bids; and/or (6) Negotiate with the lowest responsive and responsible bidder(s) to determine if such bid can be improved.
- d. Enterprise Services will use the following process and evaluation criteria for an award of a Master Contract:

STEP	ITEM	POINTS
1	Responsiveness	Pass/Fail
2	Performance Requirements Evaluation Exhibit B-2, Exhibit B-3	Pass/Fail
3	Bid Evaluation	
	Cost Factors	
	Cost Factor: Price of Standard Bus Exhibit D-2 – Price Sheet	200
	Cost Factor: Options Exhibit D-2 – Price Sheet	100
	Non-Cost Factors	
	Quality of Standard Bus Exhibit B-2 Specification Modification Certification, Exhibit B-3 Technical Information, Exhibit D-2 Price Sheet	150

STEP	ITEM	POINTS
	Quality and Number of Options Exhibit B-2 Specification Modification Certification, Exhibit B-3 Technical Information, Exhibit D-2 Price Sheet	50
	Technical Evaluation Exhibit C – Qualifications	250
	Company Information Exhibit C – Qualifications	100
	Warranties/Repair Exhibit C – Qualifications	100
	Procurement Priorities and Preferences	
	Executive Order 18-03	10
	Oregon Revised Statute 279A.112	10
	Emissions Information	10
	Sustainability Policy	10
	Prompt Payment	10
	Total:	1000
4	Responsible Bidder	
	Responsibility Analysis	Pass/Fail

- 3.2. **RESPONSIVENESS (STEP 1).** Enterprise Services will review bids – on a pass/fail basis – to determine whether the bid is ‘responsive’ to this Competitive Solicitation. This means that Enterprise Services will review each bid to determine whether the bid is complete – i.e., does the bid include each of the required bid submittals, are the submittals complete, signed, legible. Enterprise Services reserves the right – in its sole discretion – to determine whether a bid is responsive – i.e., to determine a bidder’s compliance with the requirements specified in this Competitive Solicitation and to waive informalities in a bid. An informality is an immaterial variation from the exact requirements of the Competitive Solicitation, having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the goods or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial, to bidders. Responsive bids will be evaluated as set forth herein.
- 3.3. **PERFORMANCE REQUIREMENTS EVALUATION (STEP 2).** Enterprise Services will evaluate each bid to ensure that each bidder’s product or service meets the performance requirements set forth in Exhibit B-1 Specifications. Enterprise Services will review Exhibit B-2 Specification Modification Certification and Exhibit B-3 Technical Information to determine whether performance requirements are met. Enterprise Services reserves the right to request additional information or perform tests and measurements before selecting the Apparent Successful Bidder. A bidder’s

failure to provide requested information to Enterprise Services within ten (10) business days may result in disqualification.

3.4. **BID PRICING EVALUATION (STEP 3).** Enterprise Services will evaluate bids – to identify the highest evaluation total – by reviewing and comparing the submitted bid prices provided in *Exhibit D-2 Price Sheet*.

- a. **PRICING OF A STANDARD BUS.** A total of 200 points are available for pricing of standard bus. The price score will be determined from the base price including all standard components from the respective price sheet. The lowest price for each category will receive the maximum allocation of points. All other scores will be evaluated by the dividing the lowest price by the total price of the bid being evaluated and the result multiplied by the relative weight.

Example: $\text{Lowest Bid Price} / \text{Bidder's Proposed Price} \times \text{Weight} = \text{Price Score}$.

- b. **OPTIONS.** A total of 100 points are available for options pricing. The price score will be determined by the price of a set of pre-selected options, selected by Enterprise Services, in the options price sheet. The set of options will be determined by Enterprise Services based on common options requested by Participants. Enterprise Services will compare 10 of these pre-selected option prices to determine the option price score. The lowest price for each selected option, and any option that is listed as standard, will receive the maximum allocation of points for that option. Options that have no price listed, including those with quote or NA, will be scored 0. All other scores will be evaluated by the dividing the lowest price by the total price of the bid being evaluated and the result multiplied by the relative weight. The sum of individual option points will determine bidder's total for option price comparison.

Formula: $\text{Lowest Bid Price} / \text{Bidder's Proposed Price} \times \text{Weight} = \text{Price Score}$.

For example, Enterprise Service pre-selects "Sportworks Apex 3 – 3 position bike rack stainless steel" as an option to evaluate. Bidder A bids \$100, the lowest price for the selected option. Bidder B bids \$200. Bidder B's score is $100(\text{lowest bid price})/200 (\text{bidder's proposed price}) \times 10 (\text{weight}) = 5 \text{ points}$.

3.5. **NON-COST EVALUATION (STEP 3).** Enterprise Services will evaluate bids based on a variety of factors:

- a. **QUALITY OF STANDARD BUS.** A total of 150 points is available for Quality of Standard Bus. Evaluation team will determine the quality of the standard bus by scoring the components listed as standard in the bidder's price sheet and reviewing Exhibit B-2 Specification Modification Certification and Exhibit B-3 Technical Information.
- b. **QUALITY AND NUMBER OF OPTIONS.** A total of 50 points is available for Quality and Number of Options. Evaluation team will determine the quality and number of the options by evaluating the components listed as options in Exhibit D-2 Price Sheet. The evaluation team will only consider options that meet the specifications in determining the number of options bidders offered

- c. **TECHNICAL EVALUATION.** A total of 250 points are available for technical evaluation score. The points for Technical Evaluation are determined by responses in Exhibit C – Qualifications for process overview; reliability; original testing compliance; useful life; serviceability; training; comfort, features, and styling; delivery process; on-time performance and delivery; production capability; and nationwide capacity.
 - d. **COMPANY INFORMATION.** A total of 100 points are available for company information score. The points for Company Information are determined by responses in Exhibit C – Qualifications for organization, past performance, references, employee experience, and employee certifications.
 - e. **WARRANTY/REPAIR.** A total of 100 points are available for warranty/repair score. The points for warranty/repair are determined by responses in Exhibit C – Qualifications for quality of warranties, prior warranty claims, and warranty repair.
- 3.6. **PROCUREMENT PRIORITIES & PREFERENCES (STEP 3).** Enterprise Services will apply the following Washington State procurement priorities and preferences to this Competitive Solicitation
- a. **PROCUREMENT PREFERENCE FOR EXECUTIVE ORDER 18-03 (FIRMS WITHOUT MANDATORY INDIVIDUAL ARBITRATION FOR EMPLOYEES).** Pursuant to RCW 39.26.160(3) (best value criteria) and consistent with [Executive Order 18-03 – Supporting Workers’ Rights to Effectively Address Workplace Violations](#) (dated June 12, 2018), Enterprise Services will evaluate bids for best value and will provide a bid preference in the amount of 10 points to any bidder who certifies, pursuant to *Exhibit A-1 – Bidder Certification*, that their firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waiver.
 - b. **OREGON REVISED STATUTE 279A.112.** Enterprise Services will evaluate bids for best value and provide a bid preference in the amount of 10 points to any bidder who certifies pursuant to *Exhibit A-1 – Bidder Certification*, 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.
 - c. **EMISSIONS INFORMATION.** Enterprise Services will evaluate bids for best value and provide a bid preference in the amount of 10 points to any bidder who certifies pursuant to *Exhibit A-1 – Bidder Certification*, that their firm has a written policy and practice to assess and provide accurate emission information on products to Participants.
 - d. **SUSTAINABILITY POLICY.** Enterprise Services will evaluate bids for best value and provide a bid preference in the amount of 10 points to any bidder who certifies pursuant to the Bidder Certification attached at *Exhibit A-1 – Bidder Certification*, 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.
 - e. **PROMPT PAYMENT.** Enterprise Services will evaluate bids for best value and provide a bid preference in the amount of 10 points to any bidder who certifies pursuant to *Exhibit A-1 – Bidder Certification*, that their firm will offer a Prompt Payment

Discount. To be considered for this preference the Prompt Payment Discount must be for payments within 20 days and a minimum 0.1% discount.

3.7. **RESPONSIBILITY ANALYSIS (STEP 4).** For responsive bids, Enterprise Services will make reasonable inquiry to determine the responsibility of any bidder. Determination of responsibility will be made on a pass/fail basis. In determining responsibility, Enterprise Services will consider the following:

- The ability, capacity, and skill of the bidder to perform the contract or provide the service required
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- Whether the bidder can perform the contract within the time specified;
- The quality of performance of previous contracts or services;
- The previous and existing compliance by the bidder with laws relating to the contract or services;
- Whether, within the three-year period immediately preceding the date of the Competitive Solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the Washington State Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW;
- Whether the bidder is in compliance with applicable Disadvantaged Business Enterprise (DBE) requirements;
- Whether the bidder has been either debarred or suspended from Federal programs under DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. parts 180 and 1200, or under the FAR at 48 C.F.R. part 9, subpart 9.4; and
- Such other information as may be secured having a bearing on the decision to award the Master Contract.

In addition, Enterprise Services may consider the following:

- a. Financial Information: Enterprise Services may request financial statements, credit ratings, references, record of past performance, clarification of bidder's offer, on-site inspection of bidder's or subcontractor's facilities, or other information as necessary. Failure to respond to these requests may result in a bid being rejected as non-responsive.
- b. References: Enterprise Services reserves the right to use references to confirm satisfactory customer service, performance, satisfaction with service/product, knowledge of products/service/industry and timeliness. Any negative or unsatisfactory reference can be reason for rejecting a bidder as non-responsible.

3.8. **CONTRACT NEGOTIATIONS (STEP 5).** Enterprise Services may negotiate with the highest scored responsive, responsible bidder(s) (Top Bidder) to finalize the Master Contract and to determine if the bid may be improved. If, after a reasonable period of time, Enterprise Services, in its

judgement, cannot reach agreement on acceptable Master Contract terms with the Top Bidder, Enterprise Services may suspend negotiations and undertake negotiations with the next bidder as determined by the evaluations.

- 3.9. **ANNOUNCEMENT OF APPARENT SUCCESSFUL BIDDER.** Enterprise Services will determine the Apparent Successful Bidder (“ASB”). The ASB will be the responsive and responsible bidder(s) that best meet(s) the Competitive Solicitation requirements and presents the best total value, including price, as calculated consistent with the instructions set forth in Exhibit D-2 Price Sheet, and other factors as set forth in this Competitive Solicitation including any applicable state procurement priority or preference.
- a. Designation as an ASB does not imply that Enterprise Services will issue an award for a Master Contract to your firm. Rather, this designation allows Enterprise Services to perform further analysis and ask for additional documentation. The bidder must not construe this as an award, impending award, attempt to negotiate, etc. If a bidder acts or fails to act as a result of this notification, it does so at its own risk and expense.
 - b. Upon announcement of the ASB, bidders may request a debrief conference as specified in Section 5.
- 3.10. **AWARD OF MASTER CONTRACT.** Subject to protests, if any, Enterprise Services and the ASB will enter into a Master Contract as set forth in Exhibit E-1 – Master Contract. An award, in part or full, is made and a contract formed by signature of Enterprise Services and awarded bidder on the Master Contract. Enterprise Services reserves the right to award on an all-or-nothing consolidated basis. Following the award of the Master Contract, all bidders registered in WEBS will receive a Notice of Award delivered to the bidder’s email address provided in the bidder’s profile in WEBS.
- 3.11. **BID INFORMATION AVAILABILITY.** Upon Enterprise Services’ announcement of ASB, all bid submissions and all bid evaluations are subject to public disclosure pursuant to Washington’s Public Records Act. See RCW 39.26.030(2).
- 3.12. **ADDITIONAL AWARDS.** Enterprise Services reserves the right, during the resulting Master Contract term, to make additional Master Contract awards to responsive, responsible bidders who provided a bid but who are not awarded a Master Contract. Such awards would be on the same or substantially similar terms and conditions and would be designed to address a Contractor vacancy (e.g., a contractor is terminated or goes out of business), respond to Participants needs, or be in the best interest of the State of Washington.

SECTION 4 – HOW TO PREPARE AND SUBMIT A BID FOR THIS COMPETITIVE SOLICITATION

This section identifies how to prepare and submit your bid to Enterprise Services for this Competitive Solicitation. In addition, bidders will need to review and follow the Competitive Solicitation requirements including those set forth in the exhibits, which identifies the information that bidders must provide to Enterprise Services to constitute a responsive bid. By responding to this Competitive Solicitation and submitting a bid, bidders acknowledge having read and understood the entire Competitive Solicitation and accept all information contained within this Competitive Solicitation.

- 4.1. **PRE-BID CONFERENCE.** Enterprise Services will host a Competitive Solicitation pre-bid conference at the time and location indicated in Section 1.1 of this Competitive Solicitation. Attendance is not mandatory. Bidders, however, are encouraged to attend and participate. The purpose of the pre-bid conference is to clarify the Competitive Solicitation as needed and raise any issues or concerns that bidders may have. If changes to the Competitive Solicitation are required as a result of the pre-bid conference, the Procurement Coordinator will post an amendment to this Competitive Solicitation to WEBS. Assistance for disabled, blind, or hearing-impaired persons who wish to attend the pre-bid conference is available with prior arrangement by contacting the Procurement Coordinator.
- 4.2. **BIDDER COMMUNICATIONS REGARDING THIS COMPETITIVE SOLICITATION.** During the Competitive Solicitation process, all bidder communications regarding this Competitive Solicitation must be directed to the Procurement Coordinator for this Competitive Solicitation. See Section 1.2 of this Competitive Solicitation. Bidders should rely only on this Competitive Solicitation and written amendments to the Competitive Solicitation issued by the Procurement Coordinator. In no event will oral communications regarding the Competitive Solicitation be binding.
- a. Bidders are encouraged to make any inquiry regarding the Competitive Solicitation as early in the process as possible to allow Enterprise Services to consider and, if warranted, respond to the inquiry. If a bidder does not notify Enterprise Services of an issue, exception, addition, or omission, Enterprise Services may consider the matter waived by the bidder for protest purposes.
 - b. If bidder inquiries result in changes to the Competitive Solicitation, written amendments will be issued and posted on WEBS.
 - c. Unauthorized contact regarding this Competitive Solicitation with other state employees involved with the Competitive Solicitation may result in bidder disqualification.
- 4.3. **PRICING.** Bid prices must include all cost components needed for the delivery of the goods and/or services as described in this Competitive Solicitation. See *Exhibit D-2 – Price Sheet*. A bidder's failure to identify all costs in a manner consistent with the instructions in this Competitive Solicitation is sufficient grounds for disqualification.
- a. **Inclusive Pricing:** Bidders must identify and include all cost elements in their pricing. In the event that bidder is awarded a Master Contract, the total price for the goods and/or services shall be bidder's price as submitted. Except as provided in the Master Contract, there shall be no additional costs of any kind.
 - b. **Vendor Management Fee:** The resulting Master Contract from this Competitive Solicitation will include a Vendor Management Fee as specified in the Master Contract attached as *Exhibit E-1 – Master Contract*.
- 4.4. **BID SUBMITTAL CHECKLIST – REQUIRED BID SUBMITTALS.** This section identifies the bid submittals that must be provided to Enterprise Services to constitute a responsive bid. The submittals must be delivered as set forth below. Bids that do not include the submittals identified below may be rejected as nonresponsive. In addition, a bidder's failure to complete any submittal as instructed may result in the bid being rejected. Bidders must identify any supplemental materials with the bidder's name.

<p>BIDDER MAY SUBMIT A SINGLE DOCUMENT FOR EACH OF THE FOLLOWING THAT WILL APPLY TO ALL CATEGORIES.</p>
<p><input type="checkbox"/> EXHIBIT A-1 – BIDDER’S CERTIFICATION This document is the Bidder’s Certification. Complete the certification, attach it to the bid along with any exceptions or required explanations, and submit it to Enterprise Services. Note: the Certification must be complete. Where there are choices, Bidder must check a box. The certification must be signed and submitted by a duly authorized representative for the Bidder.</p>
<p><input type="checkbox"/> EXHIBIT A-2 – BIDDER’S PROFILE This document is required bidder information for Enterprise Services’ contract administration purposes. Complete as instructed and submit with the bid to Enterprise Services.</p>
<p><input type="checkbox"/> EXHIBIT A-3 – FTA CERTIFICATIONS Complete as instructed and submit with the bid to Enterprise Services.</p>
<p><input type="checkbox"/> EXHIBIT D-2 – PRICE SHEET Complete as instructed and submit with the bid to Enterprise Services</p>
<p><input type="checkbox"/> EXHIBIT E-2 MASTER CONTRACT ISSUES LIST Complete as instructed and submit with the bid to Enterprise Services</p>
<p>BIDDER MUST SUBMIT SEPARATE DOCUMENT FOR EACH OF THE FOLLOWING FOR EACH CATEGORY THEY ARE BIDDING ON.</p>
<p><input type="checkbox"/> EXHIBIT B-3 – TECHNICAL INFORMATION. Complete as instructed and submit with the bid to Enterprise Services.</p>
<p><input type="checkbox"/> EXHIBIT C – NON-COST EVALUATION RESPONSE Complete as instructed and submit with the bid to Enterprise Services.</p>

- 4.5. **BID FORMAT.** Bids must be complete, legible, signed, and follow all instructions stated in the Competitive Solicitation (including the exhibits). Unless otherwise specified in writing by Enterprise Services, documents included with an electronic bid must be prepared in MS Word, MS Excel, or Adobe PDF.
- 4.6. **SUBMITTING BIDS.** Your electronic bid must be emailed to buspurchases@des.wa.gov. Enterprise Services’ email boxes only can accept emails that total less than 30MB in size. Bidders are cautioned to keep email sizes to less than 25MB to ease delivery. Zipped files cannot be accepted. In the event that the submission uses multiple emails, the subject line should include the bidder’s name, the solicitation number 06719-01, the solicitation title Transit Buses: Heavy Duty, and an indication of multiple emails (e.g. 1 of 3, 3 of 3).

SECTION 5 –COMPLAINT, DEBRIEF, & PROTEST REQUIREMENTS

This section details the applicable requirements for complaints, debriefs, and protests.

- 5.1. **COMPLAINTS.** This Competitive Solicitation offers a complaint period for bidders wishing to voice objections to this solicitation. The complaint period ends five (5) business days before the bid due date. The complaint period is an opportunity to voice objections, raise concerns, or suggest changes that were not addressed during the Question & Answer Period or, if applicable, at the Pre-Bid Conference. Failure by the bidder to raise a complaint at this stage may waive its right for later consideration. Enterprise Services will consider all complaints but is not required to adopt a complaint, in part or in full. If bidder complaints result in changes to the Competitive Solicitation, written amendments will be issued and posted on WEBS.
- a. **CRITERIA FOR COMPLAINT.** A formal complaint may be based only on one or more of the following grounds: (a) The solicitation unnecessarily restricts competition; (b) The solicitation evaluation or scoring process is unfair or flawed; or (c) The solicitation requirements are inadequate or insufficient to prepare a response.
 - b. **INITIATING A COMPLAINT.** A complaint must: (a) Be submitted to and received by the Procurement Coordinator no less than five (5) business days prior to the deadline for bid submittal; and (b) Be in writing (see *Form and Substance, and Other* below). A complaint should clearly articulate the basis of the complaint and include a proposed remedy.
 - c. **RESPONSE.** When a complaint is received, the Procurement Coordinator (or designee) will consider all the facts available and respond in writing prior to the deadline for bid submittals, unless more time is needed. Enterprise Services is required to promptly post the response to a complaint on WEBS
 - d. **RESPONSE IS FINAL.** The Procurement Coordinator's response to the complaint is final and not subject to administrative appeal. Issues raised in a complaint may not be raised again during the protest period. Furthermore, any issue, exception, addition, or omission not brought to the attention of the Procurement Coordinator prior to bid submittal may be deemed waived for protest purposes.
- 5.2. **DEBRIEF CONFERENCES.** A Debrief Conference is an opportunity for a bidder and the Procurement Coordinator to meet and discuss the bidder's bid. A debrief is a required prerequisite for a bidder wishing to file a protest. Following the evaluation of the bids, Enterprise Services will issue an announcement of the ASB. That announcement may be made by any means, but Enterprise Services likely will use email to the bidder's email address provided in the Bidder's Profile. Bidders will have three (3) business days to request a Debrief Conference. Once a Debrief Conference is requested, Enterprise Services will offer the requesting bidder one meeting opportunity and notify the bidder of the Debrief Conference place, date, and time. Please note, because the debrief process must occur before making an award, Enterprise Services likely will schedule the Debrief Conference shortly after the announcement of the ASB and the bidder's request for a Debrief Conference. Enterprise Services will not allow the debrief process to delay the award. Therefore, bidders should plan for contingencies and alternate representatives; bidders who are unwilling or unable to attend the Debrief Conference will lose the opportunity to protest.
- a. **TIMING.** A Debrief Conference may be requested by a bidder following announcement of the Apparent Successful Bidder.

- b. **PURPOSE OF DEBRIEF CONFERENCE.** Any bidder who has submitted a timely bid response may request a Debrief Conference (see Form and Substance, and Other below). A Debrief Conference provides an opportunity for the bidder to meet with Enterprise Services to discuss its bid and evaluation.
 - c. **REQUESTING A DEBRIEF CONFERENCE.** The request for a Debrief Conference must be made in writing via email to the Procurement Coordinator and received within three (3) business days after the announcement of the Apparent Successful Bidder. Debrief conferences may be conducted either in person at the Enterprise Services offices in Olympia, Washington, or by telephone, as determined by Enterprise Services, and may be limited by Enterprise Services to a specified period of time. The failure of a bidder to request a debrief within the specified time and attend a debrief conference constitutes a waiver of the right to submit a protest. Any issue, exception, addition, or omission not brought to the attention of the procurement coordinator before or during the debrief conference may be deemed waived for protest purposes.
- 5.3. **PROTESTS.** Following a Debrief Conference, a bidder may protest the award of a Master Contract.
- a. **CRITERIA FOR A PROTEST.** A protest may be based only on one or more of the following: (a) Bias, discrimination, or conflict of interest on the part of an evaluator; (b) Error in computing evaluation scores; or (c) Non-compliance with any procedures described in the Competitive Solicitation.
 - b. **INITIATING A PROTEST.** Any bidder may protest an award to the ASB. A protest must: (a) Be submitted to and received by the Protest Officer, within five (5) business days after the protesting bidder's Debriefing Conference (see Form and Substance, and Other below); (b) Be in writing; (c) Include a specific and complete statement of facts forming the basis of the protest; and (d) Include a description of the relief or corrective action requested.
 - c. **PROTEST RESPONSE.** After reviewing the protest and available facts, Enterprise Services' Protest Officer will issue a written response within ten (10) business days from receipt of the protest, unless additional time is needed.
 - d. **DECISION IS FINAL.** The protest decision is final and not subject to administrative appeal. If the protesting bidder does not accept Enterprise Services' protest response, the bidder may seek relief in Thurston County Superior Court.
- 5.4. **COMMUNICATION DURING COMPLAINTS, DEBRIEFS, AND PROTESTS.** With the exception of protests, all communications about this Competitive Solicitation, including complaints and debriefs, must be addressed to the Procurement Coordinator unless otherwise directed. Protests must be addressed to the Protest Officer.
- a. **FORM, SUBSTANCE, & OTHER.** All complaints, requests for debrief, and protests must (a) Be in writing; (b) Be signed by the complaining or protesting bidder or an authorized agent, unless sent by email; (c) Be delivered within the time frame(s) outlined herein; (d) Identify the solicitation number; (e) Conspicuously state "Complaint," "Debrief" or "Protest" in any subject line of any correspondence or email, and (f) Be sent to the address identified.
 - b. **COMPLAINTS & PROTESTS.** All complaints and protests must (a) State all facts and arguments on which the complaining or protesting bidder is relying as the basis for its action; and (b) Include any relevant documentation or other supporting evidence.

5.5. HOW TO CONTACT ENTERPRISE SERVICES.

- a. **TO SUBMIT A COMPLAINT.** Send an email message to the Procurement Coordinator listed in this Competitive Solicitation. The email message must include “Complaint” in the subject line of the email message. Alternatively, mail the complaint to the Procurement Coordinator listed in this Competitive Solicitation at the following address:

Attn: Procurement Coordinator – Complaint
Contracts & Procurement Division
Washington State Department of Enterprise Services
P.O. Box 41411
Olympia, WA 98504-1411

- b. **TO REQUEST A DEBRIEF CONFERENCE.** Send an email message to the Procurement Coordinator listed in this Competitive Solicitation. The email message must include “Debrief” in the subject line of the email message.

- c. **TO SUBMIT A PROTEST.** Send an email message to the Protest Officer, DES_DLProcurementProtest@des.wa.gov. The email message must include “Protest” in the subject line of the email message. Alternatively, mail the protest to the Protest Officer at the following address:

Attn: Protest Officer
Contracts & Procurement Division
Washington State Department of Enterprise Services
P.O. Box 41411
Olympia, WA 98504-1411

SECTION 6 –DOING BUSINESS WITH THE STATE OF WASHINGTON

This section provides information regarding how to contract with and do business with the State of Washington.

6.1. WASHINGTON’S PUBLIC RECORDS ACT – PUBLIC RECORDS DISCLOSURE REQUESTS.

- All documents (written and electronic) submitted to Enterprise Services as part of this procurement are public records. Unless statutorily exempt from disclosure, such records are subject to disclosure *if* requested. See RCW chapter 42.56, Public Records Act. Enterprise Services strongly discourages bidders from unnecessarily submitting sensitive information (e.g., information that you might categorize as ‘confidential,’ ‘proprietary,’ ‘sensitive,’ ‘trade secret,’ etc.).
 - If, in your judgment, there is an applicable statutory exemption from disclosure for certain portions of your bid, please mark the precise portion(s) of the relevant page(s) of your bid that you believe are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure.
 - In addition, if, in your judgment, certain portions of your bid are not statutorily exempt from disclosure but are sensitive because these particular portions of your bid (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that your firm protects through the regular

use of confidentiality or similar agreements and routine enforcements through court enforcement actions, please mark the precise portion(s) of the relevant page(s) of your bid that include such sensitive information.

- In the event that Enterprise Services receives a public records disclosure request pertaining to information that you have submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive, Enterprise Services, prior to disclosure, will do the following:
 - Enterprise Services' Public Records Officer will review any records marked as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, Enterprise Services will redact or withhold the document(s) as appropriate.
 - For documents marked 'sensitive' or for documents where Enterprise Services either determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, Enterprise Services will notify the bidder at the address provided in the bid submittal of the public records disclosure request and identify the date that Enterprise Services intends to release the document(s) (including documents marked 'sensitive' or exempt from disclosure) to the requester unless the bidder, at bidder's sole expense, timely obtains a court order enjoining Enterprise Services from such disclosure. In the event Bidder fails to timely file a motion for a court order enjoining such disclosure, Enterprise Services will release the requested document(s) on the date specified. Bidder's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Bidder of any claim that such materials are exempt or protected from disclosure.

6.2. ECONOMIC GOALS. In support of the state's economic goals, bidders are encouraged to consider the following in responding to this Competitive Solicitation:

- Support for a diverse supplier pool, including, veteran-owned, minority-owned and women-owned business enterprises. Results Washington has established the following voluntary numerical goals for this Competitive Solicitation:
 - Ten (10) percent minority-owned businesses (MBE);
 - Six (6) percent women-owned businesses (WBE);
 - Five (5) percent veteran-owned businesses (VB).

Achievement of these goals is encouraged whether directly or through subcontractors. Bidders may contact the [Office of Minority and Women's Business Enterprises](#) for information on certified firms or to become certified

- Veterans and U.S. active duty, reserve or National Guard service-members are eligible for the registry. The veteran or service-member must control and own at least fifty-one (51) percent of the business and the business must be legally operating in the State of Washington. Control means the authority or ability to direct, regulate or influence day-to-day operations.

6.3. PCB STATEMENT. Polychlorinated biphenyls, commonly known as PCBs, have adverse effects on human health and the environment. Accordingly, the State of Washington through its

procurements of goods is trying to minimize the purchase of products with PCBS and to incentive its vendors to sell products and products in packaging without them.

6.4. RESOURCES.

- Register for competitive solicitation notices at the Washington Electronic Business Solution (WEBS) [WEBS Registration](#). Note: There is no cost to register on WEBS.
- If you qualify as a Washington small business, identify yourself in WEBS. Call WEBS Customer Service at 360-902-7400.
- Contact the Washington State Office of Minority and Women's Business Enterprises about state and federal certification programs at Phone 866-208-1064 or [OMWBE](#).
- Contact the Washington State Department of Veterans' Affairs about veteran-owned businesses certification at (360) 725-2169 or [DVA](#).
- Contact Enterprise Services about small and diverse business inclusion.

EXHIBIT B

Original Government Contract

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.

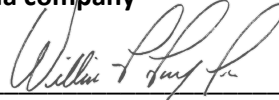
18.23. COUNTERPARTS. This Master Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Master Contract at different 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

Included Transit Buses

Contractor is authorized to sell Heavy Duty Transit Buses [categories awarded], including applicable accessories, components, subsystems, and replacement parts necessary for operation of the transit buses for its operational life. Transit buses offered under this Master Contract will comply with the specifications listed in [specification document title].

[insert specification document and modifications from solicitation at time of contract award]

Prices for Heavy Duty Transit Buses

Prices for Heavy Duty Transit Buses as listed in the attached Heavy Duty Price Sheet.

[Insert Price Sheet at time of contract award]

Insurance Requirements

1. **INSURANCE OBLIGATION.** During the Term of this Master Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury and property damage, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE & EMPLOYER'S LIABILITY (STOP GAP).** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits to statutory limits, including Employer's or Stop-Gap Liability with a minimum limit of \$1,000,000 per accident/bodily injury by disease; \$1,000,000 policy limit/Bodily injury by disease; and \$1,000,000 each employee.
 - c. **PRODUCTS-COMPLETED OPERATIONS LIABILITY INSURANCE.** Products-completed operations liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence, \$4,000,000 general annual aggregate for a period of five (5) years after acceptance of the last bus delivered under this Contract. Products Liability coverage may be effected through one or more excess liability policies.
 - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per accident shall not be less than \$2,000,000.
 - e. **PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) INSURANCE.** Professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence, \$4,000,000 general annual aggregate.
 - f. **UMBRELLA INSURANCE.** Umbrella coverage in the sum of \$_____ shall be provided and shall apply over all liability policies, without exception, including but not limited to Commercial General Liability, Employers' Liability, Products-Completed Operations Liability, Automobile Liability, and Professional Liability.

Claims Made Policies (applicable only to professional liability). If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Except for Workers' Compensation, Commercial Automobile Liability, and Professional Liability (Errors and Omissions), all required insurance shall include the State of Washington (and its agents, officers, and employees) and the applicable Participant as an Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Master Contract, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. All policies and certificates of insurance shall include the Master Contract number stated on the cover of this Master Contract.
5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Participant. All insurance or self-insurance of the State of Washington and/or Participants shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Participant for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Contract number stated on the cover of this Master Contract.

Federal Transit Administration Clauses

1.1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.

(a) Participant 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 Participant, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

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

1.2. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD.

(a) 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, 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, 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 Contractor to the extent the Federal Government deems appropriate.

(b) 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 Contractor, to the extent the Federal Government deems appropriate.

(c) 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.

1.3. ACCESS TO THIRD PARTY CONTRACT RECORDS.

(a) Where the Participant is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Participant, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his

authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) Where the Participant is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Participant, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

(c) Where the Participant enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Participant, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(d) Where any Participant which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Participant, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(e) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(f) Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Participant, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

(g) FTA does not require the inclusion of these requirements in subcontracts.

- 1.4. CHANGES TO FEDERAL REQUIREMENTS. 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 Participant 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.
- 1.5. TERMINATION. See Section 16 Suspension & Termination and Section 18.13 Waiver.
- 1.6. CIVIL RIGHTS.

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. 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. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
2. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- 1.7. DISADVANTAGED BUSINESS ENTERPRISES. The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and USDOT's official interpretations (i.e., Questions & Answers) apply to this Contract. As such, the requirements of this Contract are to make affirmative efforts to solicit DBEs, provide information on who submitted a Bid or quote and to report DBE participation. No

preference will be included in the evaluation of Bids/Proposals, no minimum level of DBE participation shall be required as a Condition of Award and Bids/Proposals may not be rejected or considered non-responsive on that basis.

Transit Vehicle Manufacturer Compliance with DBE Requirements. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 C.F.R. § 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements.

- 1.8. ADA ACCESS. Contractor shall comply with the requirements of 49 CFR FTA C 4710.1 as applicable to this Contract. Equal access and the opportunity should be given to individuals with disabilities to fully participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations.

Contractor must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, and Joint Access Board/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38.

- 1.9. 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. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

- 1.10. DEBARMENT AND SUSPENSION. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. 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 Enterprise Services. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Enterprise Services, 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 49 CFR 29, Subpart C 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.

- 1.11. BUY AMERICA. 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 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. Rolling stock must be assembled in the United States and have at least a 65 percent

domestic stock content for rolling stock procurements with the first vehicle scheduled for delivery in fiscal years 2018 and 2019 and at least 70 percent domestic content for rolling stock procurements with the first vehicle scheduled for delivery in 2020 or thereafter.

Contractor must submit to Participants the appropriate Buy America Certification with all offers on FTA-funded contracts, except those subject to a general waiver. Proposals that are not accompanied by a properly completed Buy America certification are subject to the provisions of 49 CFR 661.13 and will be rejected as nonresponsive.

Pursuant to Appendix A to §661.7(b), a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

1.12. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION. See Section 15.

1.13. LOBBYING. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, 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 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 award covered by 31 U.S.C. 1352. 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. Such disclosures are forwarded from tier to tier up to the recipient.

1.14. CLEAN AIR. 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. Contractor agrees to report each violation to the Participant and understands and agrees that the Participant will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.15. CLEAN WATER. 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. Contractor agrees to report each violation to the Participant and understands and agrees that the Participant will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.16. CARGO PREFERENCE - Use of United States-Flag Vessels. Contractor agrees to:

- (a) 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) 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 leading 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.)
 - (c) 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.
- 1.17. ENERGY CONSERVATION. 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.
- 1.18. BUS TESTING. Contractor agrees to comply with the Bus Testing requirements under 49 U.S.C. A 5318(e) and FTA's implementing regulation at 49 CFR 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, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report publicly available prior to final acceptance of the first vehicle by the recipient.
- 1.19. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS. Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. 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. Contractor shall submit manufacturer's FMVSS self-certification, Federal Motor Bus Safety Standards, that the bus complies with relevant FMVSS or manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.
- 1.20. FLY AMERICA. Contractor agrees to comply with 49 USC 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of federal funds and their Contractors are required to use U.S. flag air carriers for U.S. government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S.-flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
- 1.21. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the

Department of Labor regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, 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. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, 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. Liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause 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 this clause.

The Participant will 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 this section.

Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

Federal Transit Administration Certifications

[inserted from Solicitation Exhibit A-3]

EXHIBIT C

City's Insurance and Indemnity

Exhibit C

Insurance and Indemnity

INDEMNIFICATION

To the furthest extent allowed by law, VENDOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, VENDOR or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Contract. VENDOR'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If VENDOR should subcontract all or any portion of the work to be performed under this Contract, VENDOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, VENDOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, VENDOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to VENDOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve VENDOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an

insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by VENDOR shall not be deemed to release or diminish the liability of VENDOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by VENDOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of VENDOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

1. PRODUCTS LIABILITY INSURANCE: VENDOR shall maintain, and provide the City of Fresno with verification of, manufacturer's products liability insurance policy in excess of \$1,000,000 by providing a certificate of insurance on said Bid Item(s) equipment. Certificates shall be issued by an insurance company meeting the requirements to conduct business in the state of California. City of Fresno is required to be an additional insured with primary and non-contributory coverage in favor of the City on this General Liability Policy.

If the scope of work includes delivery and/or installation, the requirements below apply in addition to the above requirements.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

VENDOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and

volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event VENDOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

VENDOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and VENDOR shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. VENDOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, VENDOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, VENDOR shall provide a new certificate, and applicable

endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured all ongoing and completed operations. Additional Insured endorsements under the General Liability policy must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that VENDOR'S insurance shall be primary to and require no contribution from the City. Primary and Non Contributory language under the General Liability policy must be as broad as that contained in ISO Form CG 20 01 04 13. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vi) All insurance policies required herein shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS

VENDOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, VENDOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of VENDOR shall also be required to provide all documents noted herein.

SUBCONTRACTORS

If VENDOR subcontracts any or all of the services to be performed under this Agreement, VENDOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, VENDOR will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.