City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

Agreement between the City and County of San Francisco

and
Gillig LLC
TC71100
Contract 1000034037

AGREEMENT

This Agreement is made this 1st day of March 2025, in the City and County of San Francisco ("City"), State of California, by and between Gillig LLC, 451 Discovery Drive, Livermore, CA 94551 ("Contractor") and City.

Recitals

WHEREAS, the Office of Contract Administration ("OCA") for San Francisco International Airport ("SFO") wishes to procure Forty-Foot Electric Transit Buses from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to deliver the Goods required by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID 0000009491; and

WHEREAS, this Contract is primarily for Commodities and, as such, deemed exempt from the subcontracting participation requirements of Chapter 14B of the San Francisco Administrative Code; and

WHEREAS, the City's Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Commission action] in the amount of $69,417,760 for the period commencing March 1, 2025 and ending February 28, 2029; and

WHEREAS, the Department has filed Ethics Form 126f2 (Notice of Submission of Proposal) because this Agreement has a value of $100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement has a value of $100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

WHEREAS, the City's [Board of Supervisors] approved this Agreement by [insert resolution number] on [insert date of Commission or Board action] in the amount of $69,417,760 for the period commencing [Insert Start Date] and ending [Insert End Date]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and all City Departments authorized to utilize this Agreement for the purpose of securing the Goods described herein.

1.3 "City Data" means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 "CMD" means the Contract Monitoring Division of the City.

1.5 "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, article 1, section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M ("Chapter 12M"). Confidential Information includes, without limitation, City Data.

1.6 "Contractor" means Gillig LLC, 451 Discovery Drive, Livermore, CA 94551.

1.7 "Deliverables" means Contractor's or its subcontractors' work product or Goods, including any partially-completed work product, Goods and related materials, provided by Contractor to City during the course of Contractor's performance of the Agreement.

1.8 "Goods" or "Commodities" means the products, materials, equipment or supplies to be provided by Contractor under this Agreement.

1.9 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.10 "Party" and "Parties" means the City and Contractor either individually or collectively.

1.11 Reserved ("Services").

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on March 1, 2025 and expire on February 28, 2029, unless earlier terminated as otherwise provided herein.

2.2 **Reserved (Options).**

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty,

liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 **Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 **Compensation.**

3.3.1 **Calculation of Charges.** Contractor shall provide an invoice to the City for Goods delivered in accordance with Appendix B, "Calculation of Charges." Compensation shall be made for Goods identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered. In no event shall the amount of this Agreement exceed $69,417,760 (sixty-nine million four hundred seventeen thousand seven hundred sixty dollars). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges under this Agreement.

3.3.2 **Payment Limited to Satisfactory Delivery of Goods.** Contractor is not entitled to any payments from City until City approves the Goods delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Goods, even if the unsatisfactory character may have been apparent or detected at the time such payment was made. Goods delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 **Withhold Payments.** If Contractor fails to provide Goods in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured. Contractor shall not stop providing Goods as a result of City's withholding of payments, as provided herein.

3.3.4 **Invoice Format**. Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID, PeopleSoft Supplier Name and ID, complete description of the Goods delivered (including manufacturer name, manufacturer SKU, and product description), sales/use tax (if applicable), unit cost, unit of measure, quantities, extended cost, and contract payment terms. Where Contractor's pricing is based on a percentage mark-up or discount over

manufacturer's list price, invoices must also include the manufacturer list price and Contractor's percentage mark-up or discount over manufacturer's list price. Where Contractor's pricing is based on a percentage mark-up over cost, invoices must also include Contractor's cost and Contractor's percentage mark-up over Contractor's cost. Invoices that do not include all required information or contain inaccurate information may not be processed for payment.

3.3.5 **Reserved (LBE Payment and Utilization Tracking System).**

3.3.6 **Getting paid by the City for Goods.**

(a) The City and County of San Francisco utilizes the Paymode-X® service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to https://sfcitypartner.sfgov.org/pages/training.aspx for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.7 **Grant Funded Contracts.**

(a) **Disallowance**. If Contractor requests or receives payment from City for Goods, reimbursement for which is later disallowed by the State of California or United States Government, or due to Contractor's non-compliance with the Grants Terms (defined below), Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement between Contractor and City.

(b) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in Appendix A – Equipment Specifications, HVIP Applications, and Buy American; Appendix F – Federal Aviation Administration (FAA) Provisions for Grant Funded Contracts; and Appendix F-1 – Certification of Compliance with FAA Buy American Preference (collectively referred to as "Grant Terms"). To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

(c) **Subgrantees.** Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

3.3.8 **Payment Terms.**

(a) **Payment Due Date**: Unless City notifies the Contractor that a dispute exists, Payment shall be made within thirty (30) calendar days, measured from (1) the delivery of Goods or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) **Payment Discount Terms:** The Payment Discount Terms for this Agreement are as follows: Net 30. The Payment Discount period begins upon date of completion of delivery of the Goods on a Purchase Order for which payment is sought, or upon date of receipt of properly prepared invoices covering such items, whichever is later. Payment is deemed to be made, for the purpose of earning the discount, on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

3.4 **Audit and Inspection of Records**. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Goods. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Contractor in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims**. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code § 21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that Section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 **Reserved (Payment of Prevailing Wages).**

3.7 **Reserved (Displaced Worker Protection Act).**

Article 4 Goods

4.1 **Reserved (Primary and Secondary Contractors).**

4.2 **Term Agreement – Indefinite Quantities.** This is a term, indefinite quantities Agreement to supply the Goods identified in this Agreement. Unless otherwise specified herein, Goods will be required in quantities and at times as ordered during the period of the Agreement. Estimated quantities of Goods are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may also make purchases from other suppliers when

Purchasing determines, in its sole discretion, that the City has an immediate need for the Goods or that it is not practical to purchase against this Agreement. City will not honor minimum order charges under this Agreement.

4.3 **Reserved (Qualified Personnel).**

4.4 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed to be an independent contractor and is wholly responsible for the manner in which it delivers the Goods required by this Agreement.

4.5 **Goods.**

4.5.1 **Place of Manufacture.** No article furnished hereunder shall have been made in prison or by convict labor, except Goods purchased for use by City's detention facilities. The City may require Contractor to provide within seven (7) working business days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency agreements and authorizations from manufacturer(s) they claim to represent, lines of credit with financial institutions for manufacturer(s) they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references and any other information to determine the Contractor's fitness to supply the Agreement requirements.

4.5.2 **Electrical Products.** Goods must comply with all applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code.

4.5.3 **Condition of Goods.** Goods offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein. Contractor shall establish quality control measures, as applicable to department's operations, and promptly provide documented reports to City of any product defects or premature failures.

4.5.4 **Inspection.** All Goods supplied shall be subject to inspection and acceptance or rejection by Purchasing or any department official responsible for inspection. Non-conforming or rejected Goods may be subject to reasonable storage fees.

4.5.5 **F.O.B.** Goods shall be shipped Freight on Board, to any destination named in a purchase order issued by City against this Agreement. *The cost of shipment must be incorporated into the offered unit costs.*

4.5.6 **Failure to Deliver.** If Contractor fails to deliver Goods of the quality, in the manner or within the time called for by this Agreement, such Goods may be bought from any source by Purchasing. If City is required to pay a price that exceeds the price agreed upon by this Agreement, the excess price will be charged to and collected from Contractor (or sureties on its bond, if bond has been required); or, the City may terminate the Agreement for default; or, the City may return deliveries already made and receive a refund. Notwithstanding the foregoing, if the Contractor is delayed at any time during the performance of the work by the neglect or failure of the City or by delay or failure of the Contractor caused by an event beyond its control, including, but not limited to, natural disasters, floods, fires, epidemics, pandemics, acts of war or terrorism, labor shortages, strikes or lock-outs, or shortages or loss of transportation, then City

will extend time for completion of the work and/or the delivery dates by a reasonable period of time after such event of delay has ended to allow Contractor to complete the work or deliver the Goods.

4.5.7 **Safety Data Sheets.** Where required by law or by City, Contractor will include Safety Data Sheets (SDSs) with delivery for applicable items. Failure to include the SDSs for such items will constitute a material breach of contract and may result in refusal to accept delivery.

4.5.8 **Awarded Goods.** If during the term of the Agreement, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the Agreement without penalty to the City. The City's sole obligation to the supplier is payment of deliveries made prior to the cancellation date. City shall give the supplier ten (10) days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the Agreement price. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of City will constitute a default.

4.5.9 **Warranty.** Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

4.6 **Reserved (Services).**

4.7 **Assignment.** Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor, or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.8 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the delivery of the Goods is delayed beyond the scheduled milestones and timelines as provided in any authorization document issued pursuant to this Agreement, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sums listed below per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was

awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

Item No.	Milestone	Amount Per Day
1	Submittal of Management Work Plan	$100
2	Delivery of Lead Bus	$400
3	Submittal of Training Lesson Plans	$200
4	Submittal of Draft Operation, Maintenance, and Parts Manual	$200
5	Delivery of 1st Production Bus	$400
6	Delivery of last Production Bus	$400
7	Spare Parts Delivered >2 Days Late Without Direct Supplier Info Provided	$400
8	Delivery of Special Tools	$300
9	Submittal of Final Operation, Maintenance, and Parts Manuals	$400
~~10~~	~~Warranty Fleet Defect Correction (please see Attachment 8 – Equipment Specifications, Section 21 – Warranty Requirements)~~	~~$250 per bus~~
11	Contractor Supplied Parts	2%*

***2% per day of Contractor's list price for every day a part is past delivery time, starting after 2 days late, until direct supplier information is provided.**

4.9 **Reserved (Performance Bond).**

4.10 **Reserved (Fidelity Bond).**

4.11 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Goods procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver the Goods using all modes of transportation available. Contractor shall provide a twenty-four (24) hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for Goods ordered during an emergency and not covered under the awarded Agreement.

4.12 **Usage Reports by Contractor.**

4.12.1 Each year, no later than February 15, Contractor shall prepare and submit to City an electronic report of the total Goods delivered under this Agreement during the preceding calendar year (January 1 – December 31). The report must list by City department the

following: (1) all Goods ordered ("Order"); (2) all Goods delivered; (3) the date on which each Order was placed; (4) the date on which each Order was delivered; and (5) total quantity and unit price of the Goods contained within each Order. Contractor must also furnish a separate similar report for the total of all items ordered by City, which are not part of this Agreement. Contractor shall email reports to OCAVendor.Reports@sfgov.org.

4.12.2 Any report files larger than 10MB must be submitted in electronic format on USB drive and mailed to the address shown below with the term Agreement number and "Annual Supplier Reporting" clearly marked on the envelope/packaging. Contractor shall mail the reports to:

OCA Supplier Reporting
Re: Term Contract No. TC71100
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

4.12.3 City reserves the right to terminate this Agreement if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" Section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation Liability Insurance, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness.

(d) Reserved (Professional Liability Insurance).

(e) Reserved (Technology Errors and Omissions Liability Insurance).

(f) Reserved (Cyber and Privacy Insurance).

(g) Reserved (Pollution Liability Insurance).

(h) Evidence of Garagekeeper's Liability, Property of Others, or Bailee's/Custody and Care insurance with limits no less than $1,000,000 for each occurrence.

5.1.2 **Additional Insured.**

(a) The Commercial General Liability policy must include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved (Auto Pollution Additional Insured Endorsement).

5.1.3 **Waiver of Subrogation.** The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 **Primary Insurance.**

(a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved (Pollution Liability Insurance as Primary Insurance).

5.1.5 **Other Insurance Requirements.**

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before delivering any Goods, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as

required, with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide the Goods, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees, and the Contractor as additional insureds and waive subrogation in favor of City, where required.

5.2 **Indemnification.**

5.2.1 Contractor shall, to the extent permitted by law: (1) protect, indemnify, and save City and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses and suits, actions, or proceedings including reasonable expenses, costs, and attorneys' fees incurred by City and its officers, employees, and agents including consultants in the defense, settlement, or satisfaction thereof for any injury, death, loss, or damage to persons or property of any kind whatsoever, arising out of or resulting from the intentional misconduct or negligent acts, errors, or omissions of Contractor in the performance of the Agreement, including intentional misconduct, negligent acts, errors, or omissions of its officers, employees, servants, agents, subcontractors, and suppliers; and (2) upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against City and its officers, employees and agents, including consultants, relating to such injury, death, loss, or damage. Each Party shall promptly notify the other in writing of the notice or assertion of such claim, demand, lien, encumbrance, judgment, award, suit, action, or other proceeding hereunder. Contractor shall have sole charge and direction of the defense of such suit, action or proceeding, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. City shall not make any admission that might be materially prejudicial to Contractor unless Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. City shall at the request of Contractor furnish to Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. City shall have the right to be represented therein by advisory council of its own selection at its own expense.

5.2.1 The obligations of Contractor under the above paragraph shall not extend to circumstances where the injury, death, or damages are caused solely by the negligent acts or willful misconduct of City, its officers, employees, agents, or consultants including, without limitation, negligence in: (1) the preparation of the Agreement documents, or (2) the giving of

directions or instructions with respect to the requirements of the Agreement by written order. The obligations of Contractor shall not extend to circumstances where the injury, death or damages are caused, in whole or in part, by the negligence of any third-party operator, not including an assignee or subcontractor of Contractor, subject to the right of contribution. In case of joint or concurrent negligence of the parties giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

5.2.2 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Goods pursuant to this Agreement.

5.2.3 Under no circumstances will City indemnify or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR GOODS DELIVERED IN CONNECTION WITH THIS AGREEMENT.

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Goods delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply.

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (See, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience.

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination ("Notice of Termination"). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective ("Termination Date").

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all obligations under this Agreement on and after the Termination Date.

(b) Terminating all existing orders and subcontracts by Termination Date, and not placing any further orders or subcontracts for Goods, materials, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any obligations that City requires Contractor to complete prior to the Termination Date.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within thirty (30) days after the Termination Date, Contractor shall submit to City an invoice, which shall set forth the cost of all Goods delivered prior to City's Notice of Termination. City's payment obligation pursuant to this Subsection 8.1.3 shall be subject to Section 3.3.2 of this Agreement.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for the Goods delivered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding Subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Goods delivered by Contractor under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Goods, the difference between the invoiced amount and City's estimate of the reasonable cost of delivering the invoiced Goods in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.2 **Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.6	Assignment	10.13	Reserved (Working with Minors)

Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five (5) days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 **Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent in accordance with Article 11.

8.3 **Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Delivery of Goods		9.2	Works for Hire
3.3.7	Grant Funded Contracts		11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records		11.7	Agreement Made in California; Venue
3.5	Submitting False Claims		11.8	Construction
Article 5	Insurance and Indemnity		11.9	Entire Agreement
6.1	Liability of City		11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages		11.11	Severability
Article 7	Payment of Taxes		Article 12	Department Specific Terms
8.1.6	Payment Obligation		Article 13	Data and Security
8.2.2	Default Remedies			
9.1	Ownership of Results		Appendix D	Reserved (Business Associate Agreement)

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights in Deliverables

9.1 **Reserved (Ownership of Results).**

9.2 **Reserved (Works for Hire).**

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, article 4 of the California Government Code (section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In delivering the Goods, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary, or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at https://sfgov.org/olse/consideration-salary-history. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5 **Nondiscrimination Requirements.**

10.5.1 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of the San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Section 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses

and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Section 131.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 **Reserved (Minimum Compensation Ordinance).**

10.8 **Reserved (Health Care Accountability Ordinance).**

10.9 **First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

10.11 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Contractor; any subcontractor listed in the bid, proposal, or contract; and any committee that is sponsored or controlled by Contractor.

Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 **Reserved (Slavery Era Disclosure).**

10.13 **Reserved (Working with Minors).**

10.14 **Consideration of Criminal History in Hiring and Employment Decisions.**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at http://sfgov.org/olse/fco. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor's or subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 **Reserved (Public Access to Nonprofit Records and Meetings).**

10.16 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 **Reserved (Distribution of Beverages and Water).**

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this Agreement, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.19 **Preservative Treated Wood Products.** Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor

purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

10.20 **Reserved (Sweat Free Procurement).**

10.21 **Environment Code Chapter 5, Resource Conservation Ordinance.**

10.21.1 **Reserved (Printing Services and/or Writing Paper Products).**

10.21.2 **Reserved (Collection of Recyclable Materials).**

10.22 **Reserved (Prop J Approval).**

10.23 **Use of City Opinion.** Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this Agreement without prior written permission of Purchasing.

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:	Director of Purchasing City and County of San Francisco Office of Contract Administration Purchasing Division City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685 Email: OCA@sfgov.org Phone: (415) 554-6743 Fax: (415) 554-6717
To Contractor:	William F. Fay, Jr. Vice President, Sales Gillig LLC 451 Discovery Drive, Livermore, CA 94551 Email: sales@gillig.com Phone: 510-264-5000

Any notice of default must be sent by certified mail or other trackable written communication. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through an agent such as Contractor, must be accessible to people with disabilities. Contractor shall provide the Goods specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in providing Goods, benefits or activities under this Agreement and

further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's delivery of the Goods, and City's payment are subject to the California Public Records Act, (California Government Code § 7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the delivery of the Goods under this Agreement. Disputes will not be subject to binding arbitration. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code section 900, et seq.

11.6.3 **Reserved (Health and Human Service Contract Dispute Resolution Procedure).**

11.7 **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract including the Appendices sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

11.14 **Notification of Legal Requests.** Contractor shall, as soon as practicable, notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data received from, or collected on behalf of the City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than three (3) days after it receives the request. To the extent not prohibited by applicable law, Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.15 **Cooperative Agreement.** Contractor agrees that during the term of this Agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this Agreement to obtain

some or all of the Goods to be provided by Contractor under the same terms and conditions as the City.

Article 12 Department Specific Terms

12.1 **Third-Party Beneficiaries.** No third parties are intended by the Parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a party hereto.

12.2 **Exclusion Lists and Employee Verification.**

12.2.1 Contractor acknowledges that some or all of the Commodities that Contractor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Contractor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Contractor shall notify City, as provided in Section 11.1 ("Notices to the Parties"), within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement. Contractor agrees to indemnify and hold harmless City and City's officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Contractor and/or Contractor's workforce (including those who oversee Contractor's workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

12.3 **Airport Commission Rules and Regulations.** Contractor agrees to comply with the Airport Commission's Rules and Regulations for the San Francisco International Airport as amended from time to time. A copy of the current Rules and Regulations can be found at: http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations.

12.4 **Airport Intellectual Property.** Under Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, Computer-Aided Design and Drafting (CADD) designs, and copyrighted publications. No proposers, bidders, contractors, tenants, permittees, and others doing business with or at SFO (including subcontractors and subtenants) may use SFO's intellectual property, or any intellectual property confusingly similar to SFO's intellectual property, without the SFO Director's prior written consent.

12.5 **Labor Peace/Card Check Rule.** Without limiting the generality of other provisions in this Agreement requiring Contractor to comply with all Airport Rules and Regulations, for all Covered Contracts, Contractor shall comply with the Airport's Labor Peace/Card Check Rule, a revised version of which was adopted as Rule 12.1 on February 7, 2023 by Airport Commission Resolution No. 23-0018 (as amended the "Labor Peace/Card Check Rule"). To comply with the Labor Peace/Card Check Rule, each Covered Employer shall comply with the Labor Peace/Card Check Rule, Section C, Covered Employer Duties, Items 1-13. If the Airport determines that Contractor violated the Labor Peace/Card Check Rule, the

Airport shall have the option to terminate this Agreement, in addition to exercising all other remedies available to the Airport. Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule.

12.6 **Federal Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 USC § 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

12.7 **Occupational Safety and Health Act of 1970.** This Agreement incorporates by reference the requirements of 29 CFR § 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Standards (29 CFR § 1910). Contractor must address any claims or disputes that pertain to the requirements referenced in this Section directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

12.8 **Federal Nondiscrimination Requirements.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as "Contractor") agrees as follows:

12.8.1 **Compliance with Regulations.** Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

12.8.2 **Nondiscrimination.** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 Code of Federal Regulations part 21.

12.8.3 **Solicitations for Subcontracts.** In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

12.8.4 **Information and Reports.** Contractor will provide all information and reports required by the applicable acts, regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFO or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses

to furnish the information, Contractor will so certify to SFO or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

12.8.5 **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the non-discrimination provisions of this Agreement, SFO will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a) Withholding payments to Contractor under this Agreement until Contractor complies; and/or

b) Cancelling, terminating, or suspending this Agreement, in whole or in part.

12.8.6 **Incorporation of Provisions.** Contractor will include the provisions of paragraphs 12.8.1 through 12.8.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the applicable acts, regulations, and directives issued pursuant thereto. Contractor will act with respect to any subcontract or procurement as SFO or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request SFO to enter into any litigation to protect the interests of SFO. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

12.8.7 **Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities including, but not limited to:

a) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252 [prohibits discrimination on the basis of race, color, national origin]);

b) 49 CFR Part 21 (Non-discrimination Federally-Assisted Programs of the Department of Transportation ("DOT")—Effectuation of Title VI of the Civil Rights Act of 1964);

c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601 [prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects]);

d) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*., as amended [prohibits discrimination on the basis of disability]); and 49 CFR Part 27;

e) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*. [prohibits discrimination on the basis of age]);

f) Airport and Airway Improvement Act of 1982 (49 USC 471, § 47123, as amended [prohibits discrimination based on race, creed, color, national origin, or sex]);

g) The Civil Rights Restoration Act of 1987 (102 Stat. 28 [broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age

Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not]);

h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 Code of Federal Regulations parts 37 and 38 and the Department of Justice regulations at 28 Code of Federal Regulations parts 35 and 36;

i) The Federal Aviation Administration's Non-discrimination statute (49 USC § 47123 [prohibits discrimination on the basis of race, color, national origin, and sex]);

j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed.Reg. 74087-74100);

l) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in any federally-funded education program or activity (20 USC § 1681 *et seq*.).

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in delivery of the Goods under this Agreement. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **City Data; Confidential Information.** In the delivery of the Goods, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved (Payment Card Industry ("PCI") Requirements).

13.3 **Business Associate Agreement.** The Parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act").

The Parties acknowledge that CONTRACTOR will:

1. ☐ Do **at least one** or more of the following:
A. Create, receive, maintain, or transmit PHI for or on behalf of City (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or

B. Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing a Goods to or for City including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or

C. Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

For purposes of this Agreement, Contractor is a Business Associate of CITY, as defined under HIPAA. Contractor must comply with and complete the Business Associate Agreement and attestations attached to this Agreement.

2. ☒ **NOT do any of the activities listed above in Subsection 1;**

Contractor is not a Business Associate of CITY. A Business Associate Agreement and Attestations are not required for the purposes of this Agreement.

13.4 **Protected Health Information.** Where applicable, Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information, if any, disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

13.5 **Management of City Data.**

13.5.1 **Use of City Data.** Contractor agrees to hold City Data received from, or created for, or collected on behalf of the City in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.6 **Disposition of City Data.** Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.7 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.7.1 **Access to Onboard Operational Data.** City grants Contractor the right to inspect, examine, download, and otherwise obtain any information or data available from components provided by Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable Contractor to perform reliability maintenance analysis, corrective action, and/or other engineering-type work for the Goods.

13.8 **Loss or Unauthorized Access to City Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak")

within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties.

Article 14 MacBride And Signature

14.1 **MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY	**CONTRACTOR**
Recommended by:	**Gillig LLC**
_____ Abubaker Azam Director – Landside Operations San Francisco International Airport	_____ **William F. Fay, Jr.** **Vice President, Sales** **451 Discovery Drive** **Livermore, CA 94551**
Approved as to Form: David Chiu City Attorney	City Supplier Number: **0000041920**

By: _____
Andrew Angeles
Deputy City Attorney

Approved by:

_____
Ivar Satero
Director of San Francisco International Airport

A:	Equipment Specifications
B:	Calculation of Charges
C:	Regulatory and Compliance Requirements
D:	Reserved (Business Associate Agreement)
E:	Reserved (Sweat Free Ordinance Forms)
F:	FAA Provisions for Grant Funded Contracts
F-1:	Certification of Compliance with FAA Buy American Preference

Appendix A
Equipment Specifications

Appendix B
Calculation of Charges

1. Price List

Line	Description	Manufacturer	Model/SKU	Unit of Measure	Unit Price
1	Heavy-Duty, 40-Foot, Battery-Electric Low Floor Transit Buses in accordance to Attachment 8 - Equipment Specifications	Gillig LLC	40 ft Low Floor Plus Battery Electric Bus	EA	$1,136,799.00
2	Mandatory California Tire Tax is $1.75 per tire. One (1) lot consists of six (6) tires and two (2) spares for each vehicle. Therefore, the tire tax for a standard vehicle is $14.00 per lot, per vehicle.	[redacted]		LOT	$14.00

2. Price Adjustment

A. When to request a Price Adjustment:

1. Requests for Price Adjustments must be made in writing to City.
2. Contractor may request Price Adjustments no sooner than twelve (12) months from the Proposal Due Date of June 17, 2024.
3. Only (1) one Price Adjustment shall be approved in any twelve (12) month period.
4. If approved, Price Adjustments will be implemented with an Amendment to this Agreement and shall be effective upon execution of the Amendment.

B. How Price Adjustments will be Calculated:

Requests for price adjustments under this Agreement must be supported by the U.S. Department of Labor's most recently published, **non-preliminary** Producer Price Index (PPI) available at the time of Contractor's Price Adjustment request. The requested rate change shall be calculated from the last requested Price Adjustment or, if no Price Adjustment has previously been requested, from the Proposal Due Date.

Commodity Series ID:	WPU1413
Series Title:	Transportation equipment-Truck and bus bodies, not seasonally adjusted
Group:	Transportation equipment
Item:	Truck and bus bodies
Base Data:	198212
Website:	www.bls.gov/data/

Appendix C

Regulatory and Compliance Requirements

1. **Additional Goods.**

If, in the satisfaction of governmental interests it is necessary to purchase additional Goods from Contractor, additional Goods may be added to this Agreement by mutual agreement of the Parties in accordance with Chapter 21 of the San Francisco Administrative Code.

2. **Regulatory Requirements.**

Please see Appendix A – Equipment Specifications

3. **Delivery.**

Contractor must comply with the following delivery requirements.

A. **Notice of Delivery:** Prior to all deliveries, Contractor shall provide scheduled delivery dates to the ordering department. Any deliveries made without prior scheduling will be rejected by the department with no additional costs incurred.

B. **Hours of Delivery** All deliveries shall be made and accepted at the City location indicated by the ordering department between the hours of 8:00 A.M. and 5:00 P.M. or upon mutual written agreement with the Department.

4. **Price.**

Only prices that appear on Appendix B will be considered. No other pages with prices or attached price lists and/or catalog prices will be considered. Prices shall be exclusive of any Federal, State, local sales or use tax. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

5. **Other Requirements.**

A. **Hours of Operation:** Contractor must maintain normal business hours of at least 8:00 A.M. to 5:00 P.M., Monday through Friday throughout the term of the Agreement, and be open at all times during that period.

B. **Support:** Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this Agreement, to answer questions and offer any assistance required by City personnel, during City business hours (8:00 A.M. – 5:00 P.M.).

C. **ADA Compliance:** Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding handicapped persons' accessibility.

D. **Infectious Disease Terms:** Contractors required to perform physical activities on City property that places Contractor or its employees in proximity to medical patients, including but not limited to San Francisco Department of Public Health facilities where patient care or counseling is performed, shall be subject to the following requirements, as applicable:

1. **Infection Control, Health and Safety:**
   a. Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan for its employees, agents and subcontractors as defined in the California Code of Regulations, Title 8, section 5193, Bloodborne Pathogens (http://www.dir.ca.gov/title8/5193.html), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.
   b. Contractor must demonstrate personnel policies/procedures for protection of its employees, agents, subcontractors and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.
   c. Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.
   d. Contractor must demonstrate personnel policies/procedures for COVID-19 exposure control consistent with CDC recommendations, Cal/OSHA regulations, SF DPH Health Orders, Directives, and Guidance. The Contractor's attention is directed to Cal/OSHA's new 8 CCR 3205 COVID-19 Prevention Emergency Temporary Standard and/or any successor regulations.
   e. Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.
   f. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure

medical management as required by State workers' compensation laws and regulations.

g. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

h. Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents and subcontractors, including safe needle devices, and provides and documents all appropriate training.

i. Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

2. **Aerosol Transmissible Disease Program, Health and Safety:**

a. Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, section 5199, Aerosol Transmissible Diseases (http://www.dir.ca.gov/Title8/5199.html), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.

b. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible Disease and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

c. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

d. Contractor assumes responsibility for procuring all medical equipment and supplies for use by their employees, agents, subcontractors including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.

e. If/when Contractor determines that they do not fall under the requirements of 8 CCR 5199 Contractor is directed to Cal/OSHA's Emergency Temporary Standard for COVID-19, 8 CCR 3205, which applies to all employers who do not fall under 8 CCR 5199 but for who's employees have potential for exposure to COVID-19.

Appendix D

Reserved (Business Associate Agreement)

Appendix E
Reserved (Sweat Free Ordinance Forms)

Appendix F

Federal Aviation Administration (FAA) Provisions for Grant Funded Contracts

The following Grant Terms are incorporated into this Agreement and are included to comply with relevant Federal funding requirements.

1. ACCESS TO RECORDS AND REPORTS

Contractor must maintain an acceptable cost accounting system. Contractor agrees to provide City, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of Contractor, which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Contractor agrees to maintain all books, records, and reports required under this Agreement for a period of not less than three years after final payment is made and all pending matters are closed.

2. BREACH OF CONTRACT TERMS

A. Any violation or breach of terms of this Agreement on the part of Contractor or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement.

B. City will provide Contractor written notice that describes the nature of the breach and corrective actions Contractor must undertake to avoid termination of this Agreement. City reserves the right to withhold payments to Contractor until such time Contractor corrects the breach or City elects to terminate this Agreement. City's notice will identify a specific date by which Contractor must correct the breach. City may proceed with termination of this Agreement if Contractor fails to correct the breach by the deadline indicated in City's notice.

C. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

3. FAA BUY AMERICAN PREFERENCE

A. Contractor certifies that its bid/offer complies with 49 USC § 50101, Build America, Buy America (BABA) and other related Made in America Laws[1], U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel, and manufactured goods used in Airport Improvement Program (AIP) funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an

[1] Per Executive Order 14005, "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

excepted article, material, or supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

B. Contractor must complete and submit the certification of compliance with FAA's Buy American Preference, BABA, and Made in America laws included herein with their bid or offer. City will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

C. The bidder or offeror certifies that all construction materials defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, or drywall used in the project are manufactured in the U.S.

4. GENERAL CIVIL RIGHTS PROVISIONS

A. In all its activities within the scope of its airport program, Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

B. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

C. The above provision binds Contractor and subcontractors from the bid Solicitation period through the completion of the contract.

5. CIVIL RIGHTS – TITLE VI ASSURANCE

A. Title VI Solicitation Notice:
City and County of San Francisco, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d-2000d–4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises, or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities:

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply

with the following non-discrimination statutes and authorities including, but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252 [prohibits discrimination on the basis of race, color, national origin]);
2. 49 CFR Part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601 [prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects]);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq., as amended [prohibits discrimination on the basis of disability]); and 49 CFR Part 27, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq. [prohibits discrimination on the basis of age]);
6. Airport and Airway Improvement Act of 1982 (49 USC § 47123, as amended [prohibits discrimination based on race, creed, color, national origin, or sex]);
7. The Civil Rights Restoration Act of 1987 (102 Stat. 28 [broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not]);
8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq. [prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities]) as implemented by U.S. Department of Transportation regulations at 49 Code of Federal Regulations parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123 [prohibits discrimination on the basis of race, color, national origin, and sex]);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure

compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed.Reg. 74087 (2005)];

12. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in any federally-funded education program or activity (20 USC § 1681, et seq.).

C. Compliance with Nondiscrimination Requirements: During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. Compliance with Regulations: Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 Code of Federal Regulations part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: Contractor will provide all information and reports required by the applicable Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this Agreement, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to Contractor under this Agreement until Contractor complies; and/or
b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: Contractor will include the provisions of paragraphs one through six of this Section 5(C) of this Appendix F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the applicable Acts, Regulations, and directives issued pursuant thereto. Contractor will act with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

6. CLEAN AIR AND WATER POLLUTION CONTROL

A. Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). Contractor agrees to report any violation to City immediately upon discovery. City assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

B. Contractor must include this requirement in all subcontracts that exceed $150,000.

7. CERTIFICATION REGARDING DEBARMENT

Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

Contractor, by administering each lower tier subcontract that exceeds $25,000 as a "covered transaction", must confirm each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. Contractor will accomplish this by:

A. Checking the system for award management at website: http://www.sam.gov.

B. Collecting a certification statement similar to the Certification of Offeror/Bidder Regarding Debarment, above.

C. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

8. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (49 CFR § 26.13) – Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 Code of Federal Regulations part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

A. Withholding monthly progress payments;

B. Assessing sanctions;

C. Liquidated damages; and/or

D. Disqualifying Contractor from future bidding as non-responsible.

1. Prompt Payment (49 CFR § 26.29) – Contractor agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment Contractor receives from City. Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of City. This clause applies to both DBE and non-DBE subcontractors.

9. TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, City encourages Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. Contractor must include the substance of this clause in all sub-tier contracts exceeding $10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

10. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor and subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889].

11. CERTIFICATION REGARDING LOBBYING

Contractor certifies by signing and submitting a bid or proposal for this Agreement, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

1. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352 of title 31 of the United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

12. PROCUREMENT OF COVERED MATERIALS

Contractor and subcontractor agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 Code of Federal Regulations part 247. In the performance of this Agreement and to the extent practicable, Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 Code of Federal Regulations part 247 whenever:

A. The contract requires procurement of $10,000 or more of a designated item during the fiscal year; or

B. Contractor has procured $10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at:

www.epa.gov/smm/comprehensiveprocurement-guidelines-construction-products.

C. Section 6002(c) of the Solid Waste Disposal Act establishes exceptions to the preference for recovery of EPA-designated products if Contractor can demonstrate the item is:

1. Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
2. Fails to meet reasonable contract performance requirements; or
3. Is only available at an unreasonable price.

13. CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (□) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

A. Certifications

1. The applicant represents that it is (□) is not (X) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. The applicant represents that it is (□) is not (X) a corporation that was convicted of a criminal violation under any Federal law within the preceding twenty-four (24) months.

   Note: If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless City has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the government's interests. The applicant therefore must provide information to City about its tax liability or conviction to City, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

B. Term Definitions

1. **Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under section 3559 of title 18 of the United States Code.

2. **Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

14. TRADE RESTRICTION CERTIFICATION

By execution of this Agreement, Contractor certifies that with respect to this Agreement, Contractor:

A. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);

B. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and

C. has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001 of title 18 of the United States Code.

Contractor must provide immediate written notice to City if Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Contractor must require subcontractors provide immediate written notice to Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 Code of Federal Regulations section 30.17, no contract shall be awarded to an offeror or subcontractor:

1. who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
2. whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
3. who incorporates in the public works project any product of a foreign country on such USTR list.

D. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Contractor agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless Contractor has knowledge that the certification is erroneous.

1. This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through City the cancellation of the Agreement or subcontract for default at no cost to City or the FAA.

Appendix F-1

Certification of Compliance with FAA Buy American Preference

Sourcing Event 0000009491
Attachment 10
Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects

As a matter of bid responsiveness, Contractor must complete, sign, date, and submit this certification statement with their proposal. Contractor must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one of the following certification statements. These statements are mutually exclusive. Contractor must select one or the other (not both) by inserting a checkmark ( ) or the letter "X".

☐ **Contractor hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:**

(a) Only installing steel and manufactured products produced in the United States;

(b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.

(c) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or

(d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

(a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.

(b) To faithfully comply with providing U.S. domestic product.

(c) To furnish U.S. domestic product for any waiver request that the FAA rejects.

(d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☑ **The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:**

(a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.

(b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.

(c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.

(d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 2 Waiver (Nonavailability) - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

(a) Completed Content Percentage Worksheet and Final Assembly Questionnaire

(b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;

(c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

Type 3 Waiver – The cost of the item components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the "item". The required documentation for a Type 3 waiver is:

(a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;

(b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety)

(c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.

(d) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

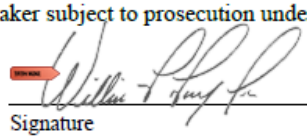
Type 4 Waiver (Unreasonable Costs) - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

(a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from at minimum two comparable equal bidders and/or offerors;

(b) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;

(c) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

JUNE 17, 2024	
Date	Signature
GILLIG LLC	VICE PRESIDENT, SALES
Company Name	Title