

RESOLUTION NO. 2012-45

AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO AGREEMENTS, AS NECESSARY, FOR GCRTA TO INSTALL, OPERATE, AND MAINTAIN A HYDROGEN FUEL TANK FACILITY AND A LEASED HYDROGEN BUS (THE "PROJECT")

WHEREAS, NASA owns a hydrogen fuel electrolyzer and has agreed to loan it to GCRTA for the purpose of fueling a hydrogen bus; and

WHEREAS, Transit Leasing, Inc., a subsidiary of UTC Power (United Technologies Company) which leases vehicles to transit properties for testing and evaluation, has agreed to lease a hydrogen-fueled bus to GCRTA for a term not to exceed one (1) year at no cost to GCRTA; and

WHEREAS, Sierra Lobo, a subcontractor of NASA, will provide, at no cost to GCRTA, the remaining hydrogen fueling equipment which will comprise the hydrogen fuel tank; and

WHEREAS, the hydrogen fuel tank will be located at GCRTA's Hayden Garage, as this location provides the necessary resources for the operation of the fuel cell bus; and

WHEREAS, GCRTA will enter into agreements for completion of the Project, including but not limited to, a Space (Interagency) Agreement with NASA for the loan and installation of the fuel electrolyzer, a lease agreement for the hydrogen bus, and an agreement with Sierra Lobo for hydrogen fueling equipment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the General Manager/Secretary-Treasurer of the Greater Cleveland Regional Transit Authority be and he is hereby authorized to enter into agreements, including but not limited to an interagency agreement with NASA for the loan of the hydrogen fuel tank, a bus lease with Transit Leasing, Inc., and an agreement for the lease of other fuel cell equipment, as necessary for the completion of the Project.

Section 2. That the General Manager/Secretary-Treasurer is authorized to pay NASA fifty thousand and 00/100 dollars (\$50,000.00) for the lease and installation of hydrogen fuel cell equipment.

Section 3. That the agreements with NASA will be funded through the General Fund, Fleet Management Department budget.

Section 4. That this resolution shall take effect immediately upon its adoption.

Adopted: May 15, 2012



President

Attest: 

CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: HYDROGEN FUEL CELL AND BUS LEASE PROJECT VENDOR: NASA, TRANSIT LEASING, INC., AND OTHERS, AS NECESSARY AMOUNT: NOT TO EXCEED \$50,000.00	Resolution No.: 2012-45
	Date: May 10, 2012
	Initiator: Fleet Management Department
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

1.0 **PURPOSE/SCOPE:** This action will allow the Authority to enter into all agreements necessary to install a hydrogen fuel tank on GCRTA property and operate a leased hydrogen fuel bus (the "Project"). These agreements include, but are not limited to, an interagency agreement with NASA for the loan and installation of the hydrogen fuel electrolyzer and related equipment, a bus lease with Transit Leasing, Inc., and an agreement for additional fuel facility equipment.

2.0 **DESCRIPTION/JUSTIFICATION:** The Greater Cleveland Regional Transit Authority and the NASA Glenn Research Center support clean and renewable energy sources. In support of new technologies and clean energy, NASA proposed in 2011 that GCRTA and NASA partner to install and operate a hydrogen fueling station in Cleveland, OH. This project would be the first installation of a hydrogen fueling station using electrolysis (separating water into hydrogen and oxygen) in the state of Ohio and a great opportunity for NASA and GCRTA.

The goal of the project is to demonstrate the safety and reliability of hydrogen production using electrolysis. The hydrogen will be generated at RTA's Hayden Garage and used to fuel a hydrogen fuel cell bus leased to RTA by Transit Leasing, Inc. (TL). The fuel cell bus is powered by hydrogen and eliminates harmful emissions; the only byproduct is water. GCRTA will operate the fuel cell bus in revenue service to help promote and educate the public about the safety of hydrogen technology.

NASA's Enabling Technology Development and Demonstration Program has permitted NASA to purchase and fund the installation of the hydrogen fueling station and equipment. GCRTA will fund portions of the installation in addition to the operation and maintenance of the bus and fueling equipment. The GCRTA and NASA will enter into a Space Act Agreement for the collaboration of project tasks and funding.

3.0 **PROCUREMENT BACKGROUND:** N/A

4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** N/A

5.0 **POLICY IMPACT:** Entering into these agreements will enable GCRTA to operate a hydrogen fuel tank and a hydrogen-fueled bus.

- 6.0 ECONOMIC IMPACT: The agreement with NASA will be funded through the General Fund, Fleet Management Department budget, at an amount not to exceed fifty thousand & 00/100 dollars (\$50,000.00) for a period not to exceed one (1) year.
- 7.0 ALTERNATIVES: Reject the agreements. Rejection of these agreements will prohibit the Authority from introducing a hydrogen-fueled bus into revenue service.
- 8.0 RECOMMENDATION: It is recommended that the General Manager/Secretary-Treasurer be authorized to execute all agreements necessary for the Project and the resolution passed.
- 9.0 ATTACHMENTS: Attachment A – Space Act (Interagency) Agreement with NASA
Attachment B – Fuel Cell Bus Agreement with Transit Leasing Inc.

Recommended and certified as appropriate
to the availability of funds, legal form and
conformance with the Procurement requirements.



CEO, General Manager/Secretary-Treasurer



SIMPLIFIED TECHNOLOGY TRANSFER AGREEMENT FORM

IDENTIFICATION NUMBER SAA3- _____



Amount of Agreement: \$50,000

PURPOSE AND AGENCY COMMITMENT

1. The primary purpose of this agreement is to collaborate with the Greater Cleveland Regional Transit Authority (GCRTA) on the installation and tasks leading up to the installation of a hydrogen fueling station on GCRTA's property. This fueling station will highlight NASA technology (hydrogen sensors) and serve as public outreach to demonstrate the benefits of fuel cell and electrolyzer technology for terrestrial use. The hydrogen fueling station will be used to generate hydrogen for consumption by a fuel cell-powered city bus operated by the GCRTA.

RESPONSIBILITIES

1. NASA Responsibilities: NASA and its subcontractor, Sierra Lobo, Inc. (SLI) shall:
 - a. Provide design and equipment installation services at GCRTA site
 - b. Work with the GCRTA to develop site-specific modification plans, including plans for a water line, electrical distribution, and fencing/barrier modifications, if necessary
 - c. Compile documentation and provide necessary permitting packages to the city of East Cleveland
 - d. Provide assistance for facility safety modifications, including ventilation and sensor systems, assist with implementation, and perform safety checkouts

1. Customer Responsibilities: GCRTA shall:
 - a. Provide site access to NASA and its subcontractor (SLI) as needed to design and install equipment
 - b. Provide direction and design assistance regarding site modifications, including water line installation, electrical distribution, and fencing/barrier modification, if necessary
 - c. Assist with documentation for permitting packages
 - d. Oversee facility safety modifications, including ventilation and sensors systems, and develop site-specific safety documentation

KEY PERSONNEL

NASA Glenn Research Center

Brianne Scheidegger
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Cleveland, OH 44135
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Greater Cleveland Regional Transit
Authority

Michael York
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SCHEDULE AND MILESTONES

This Agreement becomes effective upon the date of the last signature below and shall remain in effect until the completion of all obligations of both Parties hereto, or two (2) years from the date of the last signature, whichever comes first.

The Schedule and Milestones for this Agreement is as follows:

May 15, 2012: Proper facility retrofitting is complete to allow installation of fueling station equipment.

The Greater Cleveland Regional Transit Authority agrees to reimburse NASA GRC the estimated amount of \$50,000.00 upon execution of the Agreement.

See page 2 for the standard terms and conditions applicable to this agreement.

EXECUTION

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

CUSTOMER

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

Date: _____



SIMPLIFIED TECHNOLOGY TRANSFER AGREEMENT STANDARD TERMS AND CONDITIONS



1. Financial Obligations and Payment Terms

Payment in full is required prior to initiation of any work under this agreement. Payment shall be made via Pay.Gov, <https://www.Pay.Gov>. Or Payment shall be forwarded to : NASA Shared Services Center - FMD Accounts Receivable, Attn: Accounts for Glenn Research Center, Bldg 1111, Road C, Stennis Space Center, MS 39529.

Instructions as to processing a payment to NASA GRC via Pay.Gov are attached to this Agreement. Should the agreement cost less than the agreed-to amount, NASA shall be under no obligation to return any unspent funds to the customer.

2. Liability and Risk of Loss

With regard to activities undertaken under this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g. contractors, subcontractor, investigators, or their contractors or subcontractor's) or employees of the other's related entities for any injury to, or death of, its own employees or employees of its related entities, or for damage to, or loss of, its own property or that of its related entities whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

3. Rights in Data

(a) General

Data exchanged between NASA and Customer under this Agreement will be exchanged without restriction as to its disclosure, use, or duplication except as otherwise provided below in this provision. The term "data", as used herein, means recorded information, regardless of form, the media on which it may be recorded or the method of recording. The terms include, but are not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) Customer Produced Data

In the event it is necessary for the Customer to furnish NASA with data which either existed either prior to, was produced outside of, or is first produced by the Customer in carrying out the Customer's responsibilities under this Agreement, and provided such data embodies trade secrets or

comprises commercial or financial information which is privileged or confidential and is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this Agreement. Upon completion of activities under this Agreement, such data will be disposed of as requested by the Customer.

(c) Data First Produced by NASA

As to data first produced by NASA in carrying out NASA's responsibilities under this Agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the Customer, such data will, to the extent permitted by law, be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this Agreement. Upon completion of activities under this Agreement, such data will be disposed of as requested by Customer.

4. Patent Rights.

Title to inventions made (conceived or first actually reduced to practice) as a consequence of, or in direct relation to, the performance of activities under this Agreement will remain with the respective inventing parties (Customer or NASA), and no patent or invention rights are exchanged between or granted by such parties under this Agreement except that, NASA and the Customer agree to use reasonable efforts to identify and report to each other any invention which is believed to have been made jointly by employees of the Customer and employees of NASA (including employees of NASA contractors), and to consult and agree as to the responsibilities and costs of actions to be taken to establish and maintain patent protection (in any country) on such invention and on the terms and conditions of any license or other rights to be exchanged or granted by or between NASA and the Customer.

5. Right to Terminate

- a. The Customer has the right to terminate this agreement at any time.
- b. NASA's commitment under this agreement to make available Government property and services required by the Customer may be terminated by NASA in whole or in part, (a) upon a declaration of war by the Congress of the United States, or (b) upon a declaration of a national emergency by the President of the United States, or (c) upon Customer's failure to make payments as set forth above or (d) upon Customer's failure to meet its obligations under the agreement, or (e) upon a NASA determination in writing, that NASA is required to terminate such services for reasons beyond its control. For purposes of this article, reasons beyond NASA's control are reasons which make impractical or impossible NASA's or its contractors' or subcontractors' performance of this agreement. Such reasons include, but are not limited to acts of God or of the public enemy, acts of the U.S. Government other than NASA, in either its sovereign or contractual capacity (to include failure of Congress to appropriate sufficient funding), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather.
- c. This provision is not intended to limit or govern the right of NASA or the Customer in accordance with law, to terminate its performance under this agreement, in whole or in part, for Customer or NASA's breach of a provision in this agreement.

6. Anti-Deficiency Act

All activities under this agreement are subject to the availability of appropriated funds, and not provision shall be interpreted to require obligation or provision of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

7. Applicable Law

U.S. Federal Law governs this agreement for all purposes, including, but not limited to, determining the validity of the agreement, the meaning of its provisions, and the rights, obligations and remedies of the parties.

8. Disclaimer of Warranty

NASA does not warrant the information provided under this agreement for its availability or suitability for any particular use.

9. Dispute Resolution

The signatories will attempt to resolve all issues arising from the implementation of this agreement. If they are unable to come to agreement on any issue, then the dispute will be referred to the NASA and Other Party's managers one level higher, or their designated representatives, for joint resolution. If the Parties are unable to resolve the dispute, the Center Director will issue a written decision which shall be a final disposition for all purposes and not subject to further judicial review.

10. Data Subject to Export Control:

Technical data, whether or not specifically identified or marked, that is subject to the export control laws and regulations of the United States and that is provided to participants under this Agreement will be treated as such, and will not be further provided to any foreign persons without proper U.S. Government authorization, when required.

11. Authority

This agreement is entered into by the NASA Glenn Research Center, located at 21000 Brookpark Rd, Cleveland, OH 44135 pursuant to 42 U.S.C. 2473 et. seq. (5) and (6), section 203 (c) of the National Aeronautics and Space Act of 1958, as amended.

Attachment B

**GREATER CLEVELAND REGIONAL TRANSIT AGENCY
FUEL CELL BUS AGREEMENT**

This Agreement (this "Agreement") is made as of April ____, 2012, by and between Greater Cleveland Regional Transit Agency, with a primary place of business at 1240 West 6th Street, Cleveland, OH 44113 (hereinafter known as the "GCRTA" or "Authority"), and Transit Leasing Inc. (hereinafter referred to as "TL") a Delaware corporation with a primary place of business at 195 Governor's Highway, South Windsor, CT 06074, and, together with GCRTA, individually referred to as a Party and collectively as the "Parties" and only to the extent specifically identified herein, UTC Power Corporation, a Delaware corporation, with a primary place of business at 195 Governor's Highway, South Windsor, CT 06524 (hereinafter referred to as "UTC Power").

WHEREAS, the Northeast Advanced Vehicle Consortium, a non-profit corporation ("NAVC"), has received an award from the U.S. Department of Transportation's Federal Transportation Authority ("DOT/FTA") to conduct research in response to the DOT/FTA solicitation for a "National Fuel Cell Bus Program" (the "Program") now enumerated in a Cooperative Agreement between DOT/FTA and NAVC ("Cooperative Agreement"); and

WHEREAS, UTC Power is a sub-recipient under the Cooperative Agreement and has entered into a Subcontract with NAVC pursuant to the Cooperative Agreement with respect to UTC Power's participation in the Program (as amended from time to time (the "Subcontract")); and

WHEREAS, in furtherance of its participation in the Program, UTC Power has acquired or is in the process of acquiring for evaluation purposes four hybrid buses through Alameda Contra Costa Transit District of Oakland, CA (hereinafter referred to as AC TRANSIT), and

WHEREAS, AC Transit acting as an intermediary on UTC Power's behalf has specified and procured the one or more buses that are more particularly described on Schedule 1 manufactured by Van Hool NV of Belgium (the "Manufacturer") and are equipped or are to be equipped with a PureMotion[®] Model 120 fuel cell power plant ("FCPP") manufactured by UTC Power (the "Buses"); and

WHEREAS, UTC Power and NAVC desire that the Buses be operated to gather data on durability and reliability under actual service operation conditions; and

WHEREAS, UTC Power has created a subsidiary, TL, and vested ownership of the Buses in TL for purposes of leasing them out to transit properties for testing and evaluation; and

WHEREAS GCRTA, in its own interest, desires to use one or more of the Buses in its revenue service operations and to assist in the evaluation of the Buses in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the Parties hereto do hereby agree as follows:

1. Term

(a) The term of this Agreement (“Term”) with respect to each Bus shall commence on the date a particular Bus is delivered to GCRTA in accordance with Section 2 below and shall continue for a period of **one (1)** year from such date or until the completion of the Program, whichever comes first, unless earlier terminated by either Party in accordance with the further provisions of this Agreement, including without limitation Section **13**.

2. Delivery

(a) Following delivery of each Bus from the Manufacturer to UTC Power, UTC Power will require GCRTA to provide a computer and personnel to activate the data collection system that is used with the instrumentation already installed on the Bus. UTC Power will provide technical training and software to assist in this data collection system which is essential for bus and powerplant diagnostics.

(b) GCRTA shall inspect each Bus upon such delivery and provide written confirmation to TL whether the Bus is acceptable for use by GCRTA in accordance with the terms of this Agreement. Upon acceptance by GCRTA, the Term shall be initiated and risk of loss for each Bus shall pass from TL to GCRTA in accordance with the provisions of this Agreement. GCRTA shall take delivery of each Bus FCA CTTransit facility located at 100 Liebert Road, Hartford, CT 06120.

(c) If any Bus is found by GCRTA to not be acceptable for use under this Agreement, i.e., reasonably deemed not safe for operation or unfit for transit service, GCRTA shall notify UTC Power of such determination and the Parties shall decide whether the problems identified by GCRTA can be rectified or whether this Agreement should be terminated with respect to such Bus.

3. Usage Charges

GCRTA shall pay an annual usage fee of One Dollar (\$1.00) for each Bus delivered to and accepted by GCRTA hereunder. Such fee shall be payable on the date of acceptance in accordance with Section 2 above and on the first anniversary of such date. Once paid, such fee shall be non-refundable, including without limitation in the event of an early termination of this Agreement with respect to such Bus.

4. Title, Registration, Fees, and Taxes

(a) The Buses shall at all times remain the property of TL; and GCRTA’s only right or interest therein shall be as a permitted user in accordance with the terms of this Agreement. GCRTA shall not do anything which would cloud or encumber the title of TL of such Buses.

(b) During the Term with respect to each Bus, such Bus shall be registered to GCRTA in accordance with applicable Ohio law and regulation. The cost of such registration shall be solely borne by GCRTA.

(c) During the Term with respect to each Bus, any and all applicable taxes shall be solely borne by GCRTA. "Taxes" shall mean any and all federal, state, or local sales, use, consumption, gross receipt, utility user, real or personal property, franchise or other taxes, assessments, charges or fees imposed by any taxing or other government authority on any aspect of this Agreement or the services or products provided hereunder.

5. Use and Operation

(a) GCRTA will operate each Bus in normal revenue service during the Term. To the extent possible each Bus: (i) will be operated for at least 80 hours per week; and (ii) will be operated to evaluate its overall performance and reliability in GCRTA revenue service environment.

(b) GCRTA will be responsible for all costs of operation of the Buses during the Term, including, but not limited to, the costs of fuel, routine maintenance, insurance, and driver compensation and benefits.

(c) GCRTA agrees that during the Term for each Bus leased:

- (i) such Bus will not be operated illegally or improperly;
- (ii) it shall be driven in a safe and prudent manner by licensed commercial drivers, twenty-one (21) years of age or older, who have satisfied GCRTA's requirements for driver safety, who have completed TL Fuel Cell Bus Operation and Maintenance Training, and who are employees or contract drivers of GCRTA;
- (iii) Except as authorized and permitted for maintenance and diagnostic purposes, GCRTA shall ensure that no one modifies, disconnects, or otherwise interferes with the operation of the odometer, diagnostic equipment, drive system, FCPP or any other equipment or instrumentation on the Bus; and
- (iv) GCRTA shall be responsible for all fines, forfeitures and penalties incurred by reason of its use and operation of the Bus.

(d) Without limiting or altering any insurance or indemnification obligations contained in this Agreement, the Parties will cooperate in the defense of any claims or lawsuits related to GCRTA's use, operation or possession of any Bus.

(e) Failure of GCRTA to comply with the requirements of this Section 5 shall be considered a material breach of this Agreement.

6. Hydrogen Fueling

(a) GCRTA will arrange hydrogen fueling to support operation of the Buses, and at no cost to TL. Hydrogen fuel shall comply with the standards specified in Schedule 4.

(b) GCRTA shall provide TL with documentary evidence and certification that the refueling facility complies with applicable safety standards as well as the requirements provided herein under Schedule 4.

(c) GCRTA shall provide TL with documentary evidence and certification that the all refueling facility employees and operators have completed the required safety training and can ensure compliance with all safety standards as specified herein under Schedule 4.

(d) GCRTA will provide documentary evidence to TL of having arranged for fueling to support the contemplated operations, ahead of taking delivery of the Buses.

7. Evaluation and Reporting

(a) Each Bus will be evaluated throughout the Term for overall functionality and performance, and such additional criteria as suggested by TL, UTC Power, NAVC, and determined by GCRTA to be appropriate in a revenue service setting. Subject to reasonable security requirements, GCRTA will provide TL access to the Buses and in GCRTA's facilities at reasonable times for data collection and to permit UTC Power to perform diagnostic tests and evaluations.

(b) Under the Subcontract, TL and UTC Power are required to coordinate evaluation reports with NAVC during the course of the Program. GCRTA will provide the following inputs towards these reports:

(i) Operational Summary: GCRTA will provide a monthly summary on the operation of the Buses, including the following :

- Operating Miles and Fuel Consumption;
- Summary of Road Calls (categorized by type); and
- Summary of work orders associated with repair of the Buses.

(ii) Financial Summary: GCRTA will provide monthly financial reports regarding the expenses (operational and capital) specific to the operation of the Buses in the form set forth in Schedule 2. The expenses so reported will be submitted to NAVC (and thus DOT/FTA) as GCRTA's cost share of the Program in accordance with the terms of the Cooperative Agreement.

(iii) External reporting: GCRTA will also provide additional mutually agreeable Bus operation data to support reporting to NAVC. This data may include, but not be limited to Miles Between Road Calls (MBRC), Bus availability, Fuel Efficiency, as well as other

relevant data and parameters associated with Bus, FCPP, or Drive Train operation.

(c) The reports required by this Section 7 shall be provided by GCRTA to TL by the 10th day following the end of each calendar month.

8. Loss, Damage or Destruction & Insurance

(a) GCRTA will report all physical damage, losses, or incidents/crashes resulting in any significant damage to a Bus (all damage in excess of \$10,000) to TL and will coordinate with TL with respect to the repair or disposition of the Bus.

(b) Except to the extent any loss or damage to the Bus directly results from a defect in the design or manufacture of either the Bus or the FCPP, or UTC Power's installation of the FCPP into the Bus, for which all costs to repair, restore or replace the Bus shall be the responsibility of TL, if a Bus is physically damaged or destroyed while in GCRTA's possession by reason of GCRTA's negligence in the possession, use, maintenance or operation of any of the Bus or by reason of a third-party's direct or indirect negligence, GCRTA shall be liable for such loss of the Bus to TL hereunder, including all repair and restoration costs up to \$1,000,000 per Bus. In the event GCRTA is not negligent and a bus is physically damaged or destroyed by a third party, GCRTA shall undertake responsibility to pursue such third party either directly or through an insurance claim to recover such amounts owed to TL under this section. No part of this section shall constitute an admission by GCRTA of any liability to a third party arising out of damage or destruction to a Bus. In the event of any partial or total loss, as defined below, or destruction of a Bus, the Parties shall confer as to a reasonable course of action with respect to that Bus to determine whether to (1) terminate the Term with respect to the Bus, or (2) continue the Term with a repaired or replacement Bus in light of the purposes of this Agreement. A "total loss" is defined as 75% or more of the \$1,000,000.00 value of a Bus using the highest repair estimate. Otherwise, a Bus is deemed a partial loss.

(c) GCRTA enjoys regulated self-insurer status in Ohio for Workers' Compensation coverage. GCRTA is also self-insured for both General Liability and Auto Liability for bodily injury and property damage arising out of GCRTA activities. GCRTA maintains an annual reserve in the approximate amount of \$2,000,000 for current claims. GCRTA also maintains its own claims and legal staff for investigation and disposition of claims arising out of its activities. GCRTA also purchases Excess Liability Insurance coverage for catastrophic losses (in excess of \$5,000,000). GCRTA agrees that UTC Power and TL shall be additional insured for bodily injury and property damage liabilities accepted in this Agreement, to the same extent as if GCRTA had purchased insurance rather than being self-insured.

(d) GCRTA shall promptly notify TL of any accident involving the Buses and each claim, notice or demand for any injury, loss or damage arising from the operation of the Buses.

(e) Both UTC Power and TL agree to maintain the following insurance during the term of the Agreement with the following limits: (a) Comprehensive General Liability Insurance covering bodily injury and property damage with a limit of \$5,000,000.00 per occurrence and \$5,000,000 general aggregate, (b) Statutory Workers' Compensation and

Employer's Liability Insurance for a limit of \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy aggregate. A certificate of insurance shall be provided to GCRTA by UTC Power and TL upon execution of this Agreement. UTC and TL agree to name GCRTA as an "additional insured" under Comprehensive General Liability Insurance, as stated above, with regard to liabilities accepted under this Agreement.

9. Return

(a) Unless otherwise agreed to in writing, upon completion of the Term with respect to any Bus, GCRTA shall return the Bus to TL at 195 Governor's Highway, South Windsor, CT 06074.

(b) Upon return, each Bus shall be in good operating condition and good state of repair equal to that when GCRTA received it, ordinary wear and tear excepted. TL shall inspect each Bus upon such delivery and provide written confirmation to GCRTA of acceptance and thereby release GCRTA of any further responsibility with respect to such Bus.

(c) If any Bus is found by TL to not be in good operating condition and good state of repair, ordinary wear and tear excepted, TL shall notify GCRTA within 10 business days of any damage and deficiencies. The Parties shall reasonably cooperate and decide how to rectify the deficiencies identified. GCRTA shall complete all identified repairs within 30 days.

10. Maintenance

(a) GCRTA will be responsible for all costs associated with operation of the Bus(es), routine maintenance, normal wear and tear, and repairs. Except as otherwise provided herein, maintenance on each Bus required as the result of normal wear and tear will be conducted by GCRTA during the Term. The costs associated with such maintenance will be reported as GCRTA's cost share to the Program in accordance with Section 7(b).

(b) GCRTA will ensure that a sufficient spare parts inventory to support normal Bus operation is maintained. Any downtime issues due to spare parts unavailability will be managed by GCRTA to ensure the specified usage and availability.

(c) TL will coordinate support activity for the operation of the Bus(es). Such activity will include, but not be limited to, non-routine maintenance and all diagnostics for the hybrid drive system and FCPP, including data acquisition and analysis to correlate fuel cell and hybrid drive operation and performance with duty cycles, telephone support, preventive maintenance, trouble shooting activity in the event of unanticipated results, and contribution to DOT/FTA reports as set forth in Section 7(b).

(d) Subject to reasonable security requirements, GCRTA will provide TL access to the Buses in GCRTA's facilities at reasonable times to permit TL to perform the activities specified above in this Section 10.

11. Warranties

(a) Warranties for each Bus, its systems, and components as well the warranty administration are as set forth in Schedule 3.

(b) TL shall provide the full benefit of any and all applicable warranties to GCRTA and hereby does assign such warranties to GCRTA for the Term for each Bus. If, and so long as, no default exists under this Agreement, GCRTA may assert and enforce, at GCRTA's sole cost and expense, from time to time during the Term with respect to any Bus, in the name of and for the account of TL and/or GCRTA, as their interests may appear, whatever claims and rights TL may have against Van Hool and/or Manufacturer, or Manufacturer's suppliers with respect to such Bus.

(c) In the unlikely event of the failure of a large cost item such as a complete Bus, propulsion system, major component, major subsystem, body or chassis during the Term which is determined not to be covered by warranty, GCRTA shall notify TL of such failure and determination. The Parties shall discuss in good faith and agree whether the failure identified by GCRTA can be reasonably rectified or whether this Agreement should be terminated with respect to such Bus. However, notwithstanding the foregoing, it shall be TL's sole discretion whether to (1) terminate the Term with respect to the Bus, or (2) continue the Term with a repaired or replacement Bus that meets the requirements of this Agreement.

(d) TL warrant that the Bus meets all applicable FMVSS121 test requirements and complies with all applicable safety laws and regulations as set forth in the certification by AC Transit.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, TL AND UTC POWER DO NOT MAKE, HAVE NOT MADE, NOR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE BUSES PROVIDED TO GCRTA HEREUNDER OR ANY COMPONENT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OR TITLE.

12. Liability and Indemnification

a. UTC Power and TL shall be liable for any loss or damage to the extent such loss or damage directly or indirectly results from a design or manufacturing defect in the Bus and/or the FCPP, and/or the installation of the FCPP into the Bus, except to the extent that any liability, loss or damage is caused directly or indirectly by GCRTA's acts in relation to its possession, use, maintenance or operation of the Bus.

b. UTC Power and TL shall indemnify and defend GCRTA and each of its directors, officers, employees and agents against, and hold them free and harmless from and against all claims, suits, demands, loss, cost or expense related to damage of property or injury (including death) to persons to the extent such claims, suits, demands, loss, cost or expense directly or indirectly results from a design or manufacturing defect in the Bus or the FCPP or

the installation of the FCPP in the Bus. Such indemnity and defense shall not apply to the extent that any liability, loss or damage is caused directly or indirectly by GCRTA's negligent possession, use, maintenance or operation of the Bus.

c. UTC Power shall be liable and responsible for any claims made against GCRTA for any infringements of patents, copyrights, or other proprietary rights by reason of GCRTA's use, test or evaluation of the Bus and/or the FCPP. UTC Power shall save harmless and indemnify the GCRTA from and against all cost, expenses and damages which it shall incur or be obligated to pay by reason of any such infringement or claim of infringement or the like and shall, at the election of the GCRTA, defend at its sole expense all such claims.

d. Neither party shall be liable to the other for any interruption of service, loss of business or anticipated profits or consequential damages.

e. The indemnity provided for under this Section 12 shall survive the termination of this Agreement.

13. Termination

(a) Either GCRTA or TL may at any time terminate this Agreement with respect to any Bus for its convenience, thereby ending the Term with respect to such Bus upon thirty (30) days notice to the other Party. However, termination of this Agreement will not affect the rights and obligations of a Party accrued prior to termination.

(b) In the event that a Party commits any breach of or default in any of the terms or conditions of this Agreement, and shall fail to remedy such default or breach within sixty (60) days after receipt of written notice thereof from another Party, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of the receipt of such notice.

(c) Notwithstanding the provisions above, TL may elect in its sole discretion to terminate this agreement immediately as permitted by any other provision of this Agreement.

14. Representations

Each Party represents that it has all necessary power and authority to execute, deliver and perform this Agreement and its obligations hereunder; the execution, delivery and performance of this Agreement has been duly authorized by all necessary action on its part; it has duly and validly executed and delivered this Agreement; and the Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with the terms hereof, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

15. Choice of Law and Jurisdiction

This Agreement shall be governed by the law of the State of Ohio. Any justicable dispute arising hereunder or related hereto shall be brought in the courts of Cuyahoga County, Ohio.

16. Notices

(a) Any notice given under this Agreement will be in writing, will reference this Agreement, and will be effective upon actual receipt if delivered by one of the following methods: (i) delivered personally; (ii) when sent by confirmed facsimile; (iii) registered or certified mail, return receipt requested, postage prepaid; or (iv) commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth below or to such other address as may be designated by a Party by giving written notice to the other Party pursuant to this Section **16**.

If to GCRTA:

1240 West 6th Street,
Cleveland OH 44113
Attn: General Manager

FAX:

If to TL:

195 Governor's Highway,
South Windsor, CT 06074
Attn: General Counsel
FAX: (860) 353-6308

If to UTC Power:

195 Governor's Highway,
South Windsor, CT 06074
Attn: General Counsel
FAX: (860) 353-6308

17. Confidentiality

(a) As used in this Section, "Confidential Information" shall mean information, knowledge or data disclosed by UTC Power and/or TL to GCRTA which is related to the Program or the subject of this Agreement, information, knowledge or data obtained from facility visits, and information, knowledge or data not specifically related to the Program or the subject of this Agreement but which is in written or other tangible form bearing a suitable legend identifying its proprietary or confidential nature. In addition, in the event that UTC Power and/or TL furnishes products or other equipment or material related to

the FCPP to GCRTA, the items so received shall be used and the information obtained from said items shall be treated as Confidential Information hereunder.

(b) Confidential Information disclosed by UTC Power and/or TL to GCRTA shall be used by GCRTA solely for the purposes of the current business relationship with UTC Power and/or TL or for evaluating the TL-provided fuel cell electric hybrid bus technology under normal operating conditions and shall not be disclosed to any third party without TL's express written consent. The Confidential Information may be disclosed to contract workers, consultants and agents (other than employees) of GCRTA who have a need to know such information and who have executed agreements with GCRTA obligating them to treat such information in a manner consistent with the terms of this Agreement. GCRTA represents that its officers, directors and employees have executed agreements with GCRTA obligating them to treat Confidential Information in a manner consistent with the terms of this Agreement. However, the Parties understand and agree that any confidentiality provision contained in this Agreement is only applicable to the extent that it is not in conflict with the Ohio Public Records' Act or any other state or federal public records' act.

(c) Except for the limited right of use granted above, no right or license, either express or implied, under any mask work, patent, copyright, trade secret, or Confidential Information is granted hereunder.

(d) GCRTA shall maintain all Confidential Information received in strict confidence and shall safeguard all Confidential Information by using all reasonable efforts and exercising at least the same level of care as it employs in protecting its own information to prevent its disclosure to or use by third parties.

(e) Notwithstanding the foregoing provisions, this Agreement shall not restrict or affect GCRTA's rights to use or disclose information:

- (i) which is or may hereafter be in the public domain through no fault of GCRTA; or
- (ii) which GCRTA can show, as reflected by its contemporaneous documentation, that it was known to it prior to the disclosure by UTC POWER;
- (iii) which is independently developed by GCRTA without the use of the Confidential Information as evidenced by its contemporaneous documentation kept in the ordinary course of business; or
- (iv) which is required to be disclosed pursuant to a state or federal public records act or other legal entity.

(f) If Confidential Information is required to be disclosed pursuant to governmental or judicial process, notice of demand or intention to release under such process shall be promptly provided to TL in order that it may have every opportunity to intercede in such process to contest such disclosure. It shall be TL's sole responsibility to obtain any protection available under such process and so long as GCRTA has promptly provided notice

under this provision, GCRTA shall have no liability for disclosure if required by the process and TL has failed to obtain such protection.

(g) Notwithstanding the termination or expiration of this Agreement, this Section 17 shall survive such termination and expiration and shall remain in full force and effect for a period of ten years after such termination of this Agreement or expiration of this Agreement, whichever event occurs sooner.

(h) GCRTA understands and agrees that TL considers the FCPP as well as any and all specific, detailed operational data for the Bus, FCPP, and drive train as proprietary and Confidential Information. General bus availability and attributing causes of any unavailability at a major component level are not considered Confidential Information under this Agreement. GCRTA shall have no property rights in the information or data obtained in performance of this Agreement or disclosed pursuant to this Agreement. Except as otherwise permitted for maintenance and diagnostics, GCRTA shall not, nor permit others to, open, reverse engineer or reverse assemble, any portion of the FCPP nor shall it permit any person to decompile any specific, detailed operational data on the FCPP, the Bus or the drive train.

18. National Fuel Cell Bus Program Requirements

(a) DOT/FTA is implementing the Program in accordance with the common rules, and the cost principles that require reimbursement on a cost basis. As stipulated in the legislation authorizing the Program, recipients and sub-recipients under the Program are subject to all applicable terms and conditions to a grant made under section 5309 of USC title 49. The Common Rules require costs to conform to OMB Circular A-122, or FAR Part 31 depending on the type of participant.

(b) The Program is governed, in part, by the DOT/FTA Master Agreement For Federal Transit Administration Agreements (the "Master Agreement") authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, or other Federal laws that DOT/FTA administers. Additional Federal directives, including FTA C 6100.C1, FTA 4220.1E and 49 C.F.R. PART 661, set forth Federal terms applicable to the Program project, except to the extent that DOT/FTA determines otherwise in writing.

(c) Additionally, both Parties recognize that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Program, except to the extent the DOT/FTA determines otherwise in writing. All standards or limits in the Cooperative Agreement for the Program, and the Master Agreement are minimum requirements, unless modified by DOT/FTA.

(d) Furthermore, the project is contingent upon and operates under an award to conduct the Program pursuant to the DOT/FTA Cooperative agreement with NAVC. Should the DOT/FTA Cooperative Agreement or the Subcontract be terminated, the parties shall confer and negotiate in good faith to decide whether to continue the Program in whole or part. However, notwithstanding the foregoing, it shall be TL's sole discretion whether to terminate the Term with respect to the Bus(es),

(e) GCRTA agrees to comply with all directives and provisions set forth in the Master Agreement available at: <http://www.fta.dot.gov/documents/15-Master.pdf> and above referenced circulars and regulations as applicable to sub-recipients under the Cooperative Agreement.

19. Use of Names.

No Party will use the name, insignia, or symbols of another Party, its subsidiaries or affiliates nor departments, or any variation or combination thereof, for any publicity in any manner or for any purpose whatsoever without the other Party's prior written consent. However, such consent for any public media release initially identifying the existence of the relationship and first operation of the Bus(es) by GCRTA shall not be unreasonably withheld.

20. Entire Agreement, Severability

This Agreement contains all the terms and conditions agreed upon by TL, GCRTA and UTC Power, and no other agreement, oral or otherwise, except amendments executed by those to be bound thereby, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of TL, GCRTA, or UTC Power or to vary any of the terms contained herein. If any provision of the Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Agreement shall remain in full force and effect.

21. Waiver.

No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by an authorized representative of any of TL, GCRTA or UTC Power claiming to have waived or consented.

22. Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto (including UTC Power to the extent specifically identified herein) and each of their respective successors and assigns. This agreement shall not be assigned in whole or in part without the written consent of either TL or GCRTA. Notwithstanding the foregoing, TL may assign or transfer its rights and obligations under this agreement, or any portion thereof, to any United Technologies Corporation affiliate, wholly or majority owned subsidiaries, or business units. Affiliate shall be defined as any entity in which UTC maintains a majority interest. Either TL or GCRTA may assign this Agreement to a successor entity in connection with a change in control, merger, if acquired by or acquires another entity, undergoes a reorganization or otherwise acquires the right to process the business of another entity.

23. Execution via Counterparts/Facsimile.

This Agreement may be executed in counterparts and/or via facsimile signature, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute one and the same instrument.

24. Electronic Transactions and Records.

The Parties may elect to conduct their transactions, execute, transmit, and store this agreement by electronic means including, but not limited to facsimile, transmission to or by computer link, modem, or other communication device. The Parties agree that an electronic record of this document or a copy produced therefrom shall be given the same accord as an executed original and shall not be denied legal effect or enforceability. Notwithstanding the above, the Parties acknowledge that any Party may elect at any time not to conduct some or all transactions by electronic means and that each Party must comply with applicable state laws governing electronic transactions and records retention.

25. Force Majeure.

No Party shall be liable for delays due to any cause without the fault or negligence of the Party and beyond its control including, but not limited to, acts of God or the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

The above and foregoing being in accordance with their understanding, the Parties signify their agreement hereto by their signatures as of the date first set forth above.

GREATER CLEVELAND REGIONAL TRANSIT AGENCY

By: _____

Name: _____

Title: _____

TRANSIT LEASING INC.

By: _____

Name: _____

Title: _____

UTC POWER CORPORATION

By: _____

Name: _____

Title: _____

SCHEDULE 1

Bus Description

Year	Make	Model	VIN #
	Van Hool	A300L	TBD

SCHEDULE 2

Item	Cost
Labor	
Equipment ¹	
Materials	
Travel	
Contractors/Consultants ²	
Other	
Indirect	
Total	

1 - Itemize all anticipated Equipment purchases including estimated cost and a brief description or the proposer's procurement method

2 - Provide copy of consultant agreement verifying loaded daily rate

SCHEDULE 3

Bus Warranties

In accordance with Section 11 the following warranties are provided by to GCRTA through this Agreement:

See attached package.

PureMotion® 120 Fuel Cell Power System - Limited Warranty Terms of Coverage

SCHEDULE 4

Hydrogen Fueling Requirements

Specification for Hydrogen Fuel

Requirement	Limit	Recommended Test Method	Suggested Limit of Detection
Hydrogen Purity	>99.95%	By difference	
Total Impurities	<500 ppm	Sum of Individual Impurities Listed Below	
Individual Impurities			
N ₂	<500 ppm	ASTM D1946	50 ppm
Ar	<500 ppm	ASTM D1946	50 ppm
O ₂	<500 ppm	ASTM D1946	50 ppm
He	<500 ppm	ASTM D1946	50 ppm
CO ₂	<500 ppm	ASTM D1946	50 ppm
THC as CH ₄	<500 ppm	ASTM D1946	50 ppm
Water	<85 ppm	ASTM D6348	25 ppm
CO	<0.3 ppm	ASTM D1946	0.3 ppm
NH ₃	<1 ppm	ASTM D6348	0.8 ppm
H ₂ S	<50 ppb	ASTM D4084	10 ppb