



**Agreement for Electric Transit Buses  
with Charging Infrastructure**

**between**

**The Corporation of the Town of Tecumseh**

**and**

**Damera Bus Sales Canada Corp.**

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**This Agreement** made this 10<sup>th</sup> day of December 2024,

Between:

**The Corporation of the Town of Tecumseh**  
(hereinafter referred to as the “**Town**”)

Of the First Part

-and-

**Damera Bus Sales Canada Corp.**  
(hereinafter referred to as the “**Contractor**”)

Of the Second Part

(collectively the “**Parties**”)

**Recitals:**

**Whereas** the Town wishes to retain procure electric buses;

**And Whereas** the Town issued Request for Proposal #123 on August 27, 2024, respecting the procurement of electric buses and other such services described therein (the “**RFP**”), which RFP is incorporated into and forms part of this Agreement by reference hereto;

**And Whereas** the Contractor responded to the RFP by proposal dated October 8, 2024 (the “**Proposal**”), which Proposal is further incorporated into and forms part of this Agreement by reference hereto;

**And Whereas** each of the Town and the Contractor hereby wish to enter into an agreement for such services upon the terms and conditions set forth herein;

**Now Therefore** in consideration of and reliance upon the terms and conditions contained in this Agreement, the parties hereto agree as follows:

1. **Recitals**

The above recitals are true and correct and incorporated herein by reference.

2. **Contract Documents**

The “**Contract Documents**” shall mean and refer to this Agreement, the RFP including all schedules and attachments thereto including any and all duly executed and issued addenda, any and all Purchase Orders (as defined below), and the Proposal.

3. **Scope of Services**

The Contractor, at the discretion of the Town, shall furnish to the Town Electric Transit Buses with Charging Infrastructure as described in, and in accordance with the specifications, tasks, and scope of work set forth in the RFP (the “**Services**”), and in the amount set forth in the RFP, which RFP forms a part of this Agreement. The Contractor acknowledges that it has read the specifications and understands them. The Contractor also agrees to provide electric transit buses with charging Infrastructure to all permissible assignees of the Town. The Town’s permissible assignees shall have the option to purchase electric transit buses and charging infrastructure in accordance with the terms and conditions of the RFP.

4. **Effective Date and Term of Agreement**

This Agreement shall become effective and commence on the Effective Date and shall remain in effect for five (5) years (the “**Contract Term**”).

5. **Terms of Performance**

a. Time for Completion/Purchase Orders

The Town will issue an award letter for the electric buses with charging infrastructure it needs provided under this Agreement (hereinafter, together with any amendments or change orders thereto, collectively referred to as “**Purchaser Order(s)**”). Upon issuance:

- i. the Purchaser Orders shall be appended to this Agreement and incorporated as an exhibit;
- ii. the Contractor shall immediately begin providing the Services pursuant to the Purchase Orders; and
- iii. all work and deliverables shall be completed by the date set forth in the Purchaser Orders,

unless modified in writing by the Parties.

In the event a Purchaser Order approved during the Contract Term has a completion date beyond the Contract Term, the terms and conditions of this Agreement shall be automatically extended through the completion of the Purchaser Order to the full satisfaction of the Town.

b. Representatives

Prior to the start of any ordering or supplying the Services under this Agreement, the Contractor shall designate a primary and alternative representative, who will have management responsibilities for the Services, Purchaser Order(s), and the Contract Documents, to the Town, in writing. Such designation shall include the contract information (including phone numbers) of the Contractor’s representative. The Town will advise the

Contractor in writing of the personnel who will represent the Town in the administration of the Contract Documents. Such writing from the Town may include the specific duties of each individual and each representative's limits of authority.

c. Non-Exclusive Contract

The Town specifically reserves the right to contract with other entities for the Services described in the Contract Documents or for similar products if it deems, in its sole discretion, such action to be in the Town's best interest.

d. Contractor Responsibility

The Contractor shall provide electric buses with charging infrastructure of first quality, and the workmanship must be in accordance with customary standards of the various trades and industries involved in the manufacturing and furnishing of such products. The Services and the work associated therewith shall be of high-quality in all respects. No advantage will be taken by the Contractor in the omission of any part or detail of the Services. The Contractor hereby assumes responsibility for all materials, equipment, and processes used in the manufacturing and furnishing of the electric buses and all charging infrastructure, whether the same is manufactured by the Contractor or purchased readymade from a source outside the Contractor's company.

e. Compliance with Laws

The Contractor shall comply with all federal, provincial, county, and municipal laws and bylaws, rules and/or regulations, and lawful orders of public authorities including those set forth in this Agreement and that, in any manner, could bear on the provision of the Services under the Contract Documents. Omission of any applicable laws, ordinances, rules, regulations, standards, or orders by the Town in the Contract Document shall be construed as an oversight and shall not relieve the Contractor of its obligations to comply with such laws fully and completely. Upon request, the Contractor shall furnish to the Town certificates of compliance with all such laws, orders, and regulations. The Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under this Agreement.

**6. Compensation**

In consideration of the Contractor's faithful performance of the Contract Documents, the Town agrees to pay the Contractor pursuant to the rates and pricing set forth in the Contractors Proposal. However, all payments to the Contractor individually and in the aggregate shall not exceed the Contract Total. Payment shall be made in accordance with the RFP and Part I.1 of the *Construction Act*, R.S.O. 1990, c. C.30.

a. Invoices

All invoices shall be submitted in accordance with Part I.1 of the *Construction Act*, R.S.O. 1990, c. C.30, with all details prescribed by the Town, and delivered to the following address:

The Corporation of the Town of Tecumseh  
Attention: Chad Jeffery  
Manager, Planning Services & Local Economic Development  
917 Lesperance Road, Tecumseh, Ontario N8N 1W9  
Email: [cjeffery@tecumseh.ca](mailto:cjeffery@tecumseh.ca)

b. Contracts with Non-Residents of Canada

Pursuant to section 153(1)(g) of the *Income Tax Act (Canada)* and section 105 of the *Income Tax Regulations*, fees, commissions, or other amounts paid to a non-resident provider of services rendered in Canada are subject to a fifteen percent (15%) withholding tax. The Town will withhold the required amounts on each Invoice and remit same to Canada Revenue Agency as required. Withholding of the 15% of the payment does not represent a definite tax, but rather a payment on account of the non-resident contractor's overall tax liability to Canada.

c. Disputed Invoices

In the event of a disputed invoice, only that portion so contested may be withheld from payment and the undisputed portion shall be due and payable on the terms set forth herein.

**7. Patent, Trademark, Copyright and Trade Secrets**

The Contractor warrants that the Services, and all goods and work associated therewith, do not infringe on any patent, trademark, copyright, or trade secret of any third parties and agrees to defend, indemnify and hold the Town harmless from and against any and all liability, loss, damage, or expense, including without limitation, court costs and reasonable solicitor fees arising out of any infringement of claims of infringement of any patent, trade name, trademark, copyright, or trade secret by reason of the sale or use of any goods or services purchased under this Agreement. The Contractor shall promptly notify the Town of any such claim.

**8. Use of Names/Public Announcements**

Neither party shall use, in any commercial manner, the names, logos, trademarks or other intellectual property of the other party without its prior written consent. Except as may be required by law, no party will issue any press release or make any public announcements of any kind regarding the relationship between the parties without the other party's prior written consent.

9. **Delay in Performance/Force Majeure**

a. Time of the Essence

The timely receipt of the Services and deliverables to the Town is essential. If the Services and deliverables under each Purchase Order are not received by the Town within the date specified in each Purchase Order, the Town may cancel the unfilled portion of the Purchase Order and this Agreement for cause, purchase substitutes elsewhere, and recover from the Contractor any increased costs and damages thereby incurred by the Town.

b. Unavoidable Delay

If completion of the Services under any Purchase Order is unavoidably delayed, the Town may, in its sole and absolute discretion, extend the time for completion for a determined number of days of excusable delay. A delay in unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance; was not caused directly or substantially by negligent errors, omissions, or mistakes of the Contractor, its subcontractors, or its suppliers or their agents; and, in fact, caused the Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

c. No Damages for Delay

The Contractor shall not be entitled to any claim for damages on account of hinderances or delays in the work from any cause whatsoever, including any delays or hinderances caused by the Town. This paragraph shall include, but not be limited to, any actions which result in delays in scheduling, substantial changes in scope of the Services or deliverables or substantial increases in the costs of performing the work under the Contract Documents.

d. Notification

The Contractor will notify the Town as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay completion of the Services under a Purchase Order. Within five (5) working days, the Contractor will confirm such notice in writing, furnishing as much detail as is available, any reasonable proofs that are required by the Town, to decide on any request for extension. The Town will examine the request, and any documentation supplied by the Contractor and will determine if the Contractor is entitled to an extension and the duration of such extension. The Town will notify the Contractor of its decision in writing. It is expressly understood and agreed that the Contractor will not be entitled to any extension and the granting of such extension is in the sole discretion of the Town. It is further expressly understood that the Contractor shall not be entitled to damages or compensation and will not be reimbursed for any losses on account of delays resulting from any cause.

10. **Disputes, Breaches, Defaults, or Other Litigation**

a. Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the Town or the Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing.

b. Solicitors' Fees

In the event of legal action or other proceeding arising under this Agreement, the Town shall be entitled to recover from the Contractor all its reasonable solicitors' fees and costs incurred by the Town in the prosecution or defence of such action, or in any post-judgment or collection proceedings and whether incurred before suit, at trial level or at the appellate level. This shall include any bankruptcy proceedings filed by or against the Contractor. The Town shall also be entitled to recover any reasonable solicitors' fees and costs incurred in litigating the entitlement to solicitors' fees and costs, as well as in determining the amount of the solicitors' fees and costs due to the Town.

11. **Indemnification**

a. Indemnification

The Parties recognize that the Contractor is an independent contractor. The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the Town, its council, directors, officers, employees, agents from and against all liability and expense, including reasonable solicitors' fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising out of the execution, performance, non-performance, or enforcement of this Agreement, whether or not due to or caused by the negligence, excluding the sole negligence, of the Town, its council, directors, officers, employees, or agents. The Contractor's liability hereunder shall include all solicitors' fees and costs incurred by the Town in the enforcement of this indemnification provision. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity from or limitation of liability to which the Town is entitled. The obligations contained in this provision shall survive termination of this Agreement, however terminated, and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.



b. Control of Defence

Subject to the limitations set forth in this provision, the Contractor shall assume control of the defence of any claim asserted by a third party against the Town arising from or in any way related to this Agreement and, in connection with such defences, shall appoint a lead counsel, in each case at the Contractor's expense. The Contractor shall have the right, at its sole option, to participate in the defence of any third-party claim, without relieving the Contractor of any of its obligations hereunder. If the Contractor assumes control of the defence of any third-party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the Town before entering into any settlement of such claim. Notwithstanding anything to the contrary in this provision, the Contractor shall not assume or maintain control of the defence of any third-party claim, but shall pay the fees of counsel retained by the Town and all expenses including experts' fees, if:

- i. an adverse determination with respect to the third-party claim would, in the good faith judgment of the Town, be detrimental in any material respect to the Town's reputation;
- ii. the third-party claim seeks an injunction or equitable relief against the Town; or
- iii. the Contractor has failed or is failing to prosecute or defend vigorously the third-party claim.

Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third-party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

12. **Miscellaneous**

a. Entire Agreement

The Contract Documents, including all exhibits, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral negotiations, agreements, proposals, and/or understandings.

b. Notices

Any notices, requests, or other communications pursuant to this Agreement will be addressed to the party at its address listed below. such notices will be deemed to have been duly given: (i) if delivered in person or by courier, upon delivery; (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by registered or certified mail, postage prepaid, within five (5) days of deposit in the mail; or (iv) if sent by fax or electronic mail, at such

time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal.

**If to the Town:**

The Corporation of the Town of Tecumseh  
Attention: Chad Jeffrey  
917 Lesperance Road  
Tecumseh, Ontario N8N 1W9  
[cjeffery@tecumseh.ca](mailto:cjeffery@tecumseh.ca)

**If to the Contractor:**

Damera Bus Sales Canada Corp.  
Attention: Jeff Dowling  
6625 Kestrel Rd.  
Mississauga, Ontario L5T 1P4  
[j.dowling@dameracorp.com](mailto:j.dowling@dameracorp.com)

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

c. Waiver of Remedies for any Breach

In the event the Town elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Agreement, such waiver by the Town shall only be valid if set forth in writing and shall not limit the Town's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

d. Modification

The Contract Documents, including the scope, specification, and details of the Services may only be modified by written agreement of the Parties. No modification shall serve to increase the Contract Total unless such change has been approved by the Town's Council prior to any work being performed that would serve to increase the Contract Total.

e. Headings and Section References

The headings and section references in this Agreement are inserted only for the purpose of convenience and shall not be construed to expand or limit the provisions contained in such sections.

f. Authorization

Both parties to this Agreement represent and warrant that they are authorized to enter into this Agreement without the consent and joinder of any other party and that the parties executing this Agreement have full power and authority to bind their respective parties to the terms hereof.

g. Assignment

The terms and provisions of this Agreement shall be binding upon the Parties and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. Notwithstanding the foregoing, a party's rights and obligations under this Agreement may only be transferred,

assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way with the other party's prior written consent.

h. Severability

If any one or more provisions of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and this Agreement shall be treated as though the invalidated portion(s) had never been a part hereof.

i. Electronic Signatures

This Agreement may be executed by electronic signature technology and such electronic signature shall act as the Parties' legal signatures on this Agreement and shall be treated in all respects as an original handwritten signature.

j. Counterparts

This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

**In Witness Whereof** the parties hereto have signed or affixed their seal as of the date first above written.

**The Corporation of the Town of Tecumseh**

Per: \_\_\_\_\_  
Gary McNamara, Mayor

Per: \_\_\_\_\_  
Robert Auger, Director Legislative  
Services and Clerk

We have authority to bind.

**Damera Bus Sales Canada Corp.**

Per: \_\_\_\_\_  
Name: Mahendra Mahadeo  
Title: President

I have authority to bind.