

THIS PRINT COVERS CALENDAR ITEM NO.: 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit Services

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a contract with New Flyer of America Inc., in an amount not to exceed \$4,452,536, a contract with BYD Coach & Bus LLC, in an amount not to exceed \$3,509,150, and a contract with Proterra, Inc., in an amount not to exceed \$5,262,602, to procure three 40-foot, low floor, battery-electric buses per contract, along with associated spare parts, training, manuals, and special tools, with options for up to three additional coaches per contract over the next five years.



SUMMARY:

- On May 15, 2018, the SFMTA Board of Directors approved the SFMTA’s Zero Emission Vehicle Policy supporting its commitment to an all-electric battery bus fleet by 2035. The policy mandates that the SFMTA only purchase all-electric battery buses starting in 2025.
- On November 21, 2018, SFMTA Fleet Engineering issued a Request for Proposals (RFP) for a negotiated procurement of up to nine 40-foot, low floor, battery-electric buses for a pilot program to evaluate the available zero-emission battery-electric buses on the market and test their performance capabilities in San Francisco’s unique operating environment.
- On August 30, 2019, the SFMTA received Best and Final Offers from New Flyer of America Inc., BYD Coach & Bus LLC, and Proterra, Inc.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract with New Flyer of America Inc.
3. Contract with BYD Coach & Bus LLC
4. Contract with Proterra, Inc.

APPROVALS:

DIRECTOR 
SECRETARY 

DATE

October 8, 2019
October 7, 2019

ASSIGNED SFMTAB CALENDAR DATE: October 15, 2019

PAGE 2.

PURPOSE

Authorizing the Director of Transportation to execute a contract with New Flyer of America Inc., in an amount not to exceed \$4,452,536, a contract with BYD Coach & Bus LLC, in an amount not to exceed \$3,509,150, and a contract with Proterra, Inc., in an amount not to exceed \$5,262,602, to procure three 40-foot, low floor, battery-electric buses per contract, along with associated spare parts, training, manuals, and special tools, with options for up to three additional coaches per contract over the next five years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Goal 3: Improve the quality of life and environment in San Francisco and the region.

Objective No. 3.4: Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change.

This action supports the following SFMTA Transit First Policy Principles:

2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

BACKGROUND

The SFMTA currently operates over 900 buses, which include 650 hybrid electric buses and 275 zero-emission trolleybuses, accounting for roughly 26 percent of all trips in San Francisco, yet generates only .03 percent of the City's transportation sector greenhouse gas emissions. In continued efforts to reduce the transportation sector carbon footprint, the Fleet Engineering staff of the SFMTA researched the different technologies available for zero-emission transit buses, including battery-electric and fuel cell electric bus technology. Staff determined that the battery-electric bus technology would best serve the SFMTA and its current facilities in terms of future renovations and upgrades. Fuel cell bus technology requires more space for the fueling infrastructure and significant facilities upgrades to store and maintain the buses as opposed to battery electric bus technology.

In May 2016, the SFMTA Fleet Engineering staff reviewed prototype buses from five long-range battery-electric bus manufacturers in an internal technical study to evaluate both their technology capabilities and their compliance with Federal Transit Administration Buy America requirements. The study identified three battery-electric bus manufacturers that could meet the technological and Buy America requirements: New Flyer, Proterra Inc. and BYD.

PAGE 3.

On May 15, 2018, the SFMTA Board of Directors approved Resolution No. 180515-080, the SFMTA's Zero Emission Vehicle Policy. The Policy commits the Agency to start procuring zero emission battery buses to replace the electric hybrid vehicles by 2025, with a goal of achieving a 100% electric vehicle fleet by 2035. In an effort to continue making progress towards the SFMTA's zero emission goal, the policy highlights the following:

- **Green Zones:** The SFMTA has purchased new electric hybrid buses with higher capacity on-board battery systems. The increased on-board battery capacity will allow the SFMTA to run a test program to operate "Green Zones" along several routes. Green Zones operations allows portions of selected routes in San Francisco to shift to all-electric operations to reduce emission in equity strategy neighborhoods. The Green Zones will be serviced by electric hybrid vehicles operating entirely on battery power with the vehicle engine off, for 25% of their daily operation.
- **Battery Conversion:** The SFMTA will also explore the possibility of converting its existing hybrid vehicles into plug-in battery electric buses by replacing the hybrid diesel powertrains with higher density battery packs. Once the conversion pilot is proven, this will pave the way towards a significant overhaul of our existing hybrid fleet, further allowing the SFMTA to expedite its zero emission goals.

On December 14, 2018, the California Air Resources Board approved the Innovative Clean Transit Regulation, a first-of-its-kind regulation in the U.S. The Regulation sets a statewide goal for public transit agencies in California to gradually transition to 100% zero-emission bus fleets by 2040.

PROCUREMENT

On November 21, 2018, the SFMTA issued an RFP for a negotiated procurement of up to nine 40-foot, low floor, battery-electric buses for the SFMTA's battery-electric bus pilot program. Under the pilot program, these buses will be tested for one year in revenue service to allow the SFMTA to evaluate the available zero-emission battery-electric buses on the market and test their performance in San Francisco's unique operating environment. The SFMTA will use the ViriCiti on-board vehicle telematic system to evaluate the performance of the battery-electric buses among different manufacturers.

New Flyer of America Inc. (New Flyer), BYD Coach & Bus LLC (BYD), and Proterra, Inc. (Proterra) responded to the RFP on March 20, 2019. The SFMTA formed a technical evaluation panel and a price evaluation panel to review the initial proposals. Both panels scored the proposals and found them to be within a competitive range. The SFMTA negotiated with the three proposers to address technical questions and concerns and arranged for each proposer to deliver a demonstration bus to San Francisco for review by stakeholders.

The SFMTA issued a request for Best and Final Offers (BAFOs) on August 9, 2019, to all three proposers, who responded on August 30, 2019. The SFMTA's technical evaluation panel and price

PAGE 4.

evaluation panel reviewed the BAFOs and found that all three were within a competitive range.

There will be three contracts awarded as part of this procurement. Each base contract includes three 40-foot, low floor, battery-electric buses, as well as licenses for the ViriCiti vehicle telematics system, operator and maintenance training packages, spare parts, special tools, and all required operating, maintenance, and parts manuals. Each contract includes options to purchase up to three additional coaches over the next five years. The three contracts are as follows:

Contract Number	Type of Funding	Not to Exceed Amount	Firm Name
SFMTA-2019-02	RM3/FTA/ERAF	\$4,452,536	New Flyer
SFMTA-2020-18	RM3/FTA/ERAF	\$3,509,150	BYD
SFMTA-2020-19	RM3/FTA/ERAF	\$5,262,602	Proterra

STAKEHOLDER ENGAGEMENT

The SFMTA conducted extensive public outreach to industry experts and other transit agency representatives to inform the vehicle design. Within the SFMTA, Fleet Engineering staff worked with transit operators and union leadership, vehicle maintenance personnel, Accessible Services, Information Technology, and Transit Planning. The SFMTA received feedback from stakeholders regarding the low sound levels, new flush mounted and tinted windows, and spacious seating configurations, and incorporated these suggestions in the final vehicle specifications. Other new and improved features in the buses include seats, an electric bus telematics system, an upgraded ADA-compliant wheelchair ramp, a computer-aided dispatch system, a passenger information system, a plug door design, and a backup camera for extra safety.

ALTERNATIVES CONSIDERED

The SFMTA has decided to procure only battery electric buses to replace the SFMTA’s existing hybrid electric buses starting in 2025. One alternative to the proposed contractors would have been to procure replacement coaches with this new zero-emission battery electric bus technology in 2025, with no prior experience or data as to how this technology would operate in San Francisco. The SFMTA would not be able to evaluate the current battery electric buses available on the market in a pilot test program before committing to purchasing large numbers of battery electric buses. Such an alternative would significantly hamper SFMTA’s goal of moving toward a 100% zero-emission fleet.

FUNDING IMPACT

A budget of \$18,000,000 has been developed for this project, and equivalent revenues have all been identified below. The budget includes the cost of the buses, capital spares, training, manuals, special tools, and taxes, project engineering, maintenance support, and consultant support. The following is the detailed project budget and funding plan:

Contract	Costs
SFMTA-2019-02 (New Flyer)	\$4,452,536
SFMTA-2020-18 (BYD)	\$3,509,150
SFMTA-2020-19 (Proterra)	\$5,262,602
Soft Costs – Includes planning, preliminary design, detail design, project administration, warranty support, consultant	\$4,775,712
Total Project Cost	\$18,000,000

Contracts	Funding Sources	Amount
SFMTA-2019-02 (New Flyer)	Educational Revenue Augmentation Funds (ERAF)-related Supplemental General Fund Baseline	\$2,222,987
	Regional Measure 3	\$1,941,865
	FTA FY20 5307	\$287,684
	Total	\$4,452,536
SFMTA-2020-18 (BYD)	ERAF-related Supplemental General Fund Baseline	\$1,751,989
	Regional Measure 3	\$1,530,431
	FTA FY20 5307	\$226,730
	Total	\$3,509,150
SFMTA-2020-19 (Proterra)	ERAF-related Supplemental General Fund Baseline	\$2,627,423
	Regional Measure 3	\$2,295,156
	FTA FY20 5307	\$340,023
	Total	\$5,262,602
Total Committed		\$13,224,288

Soft Costs	Funding Sources	Amount
Soft Costs	ERAF-related Supplemental General Fund Baseline	\$3,397,601
	FTA FY20 5307	\$145,563
	GeneralFundPopBaseTransitFY19	\$20,000
	SFMTA Operating	\$230,000
	Regional Measure 3	\$982,548
	Total	\$4,775,712

ENVIRONMENTAL REVIEW

On August 22, 2019, the SFMTA, under authority delegated by the Planning Department, determined that Contract Nos. SFMTA-2019-02, SFMTA-2020-18, and SFMTA-2020-19 are not “projects”

PAGE 6.

under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Office has waived the Small Business Enterprise goal for this project due to the specialized nature of the work and lack of subcontracting opportunities.

The City Attorney's Office has reviewed this calendar item.

The agreements with New Flyer, BYD, and Proterra will not require approval from the Board of Supervisors, as they are each under \$10,000,000.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute a contract with New Flyer of America Inc., in an amount not to exceed \$4,452,536, a contract with BYD Coach & Bus LLC, in an amount not to exceed \$3,509,150, and a contract with Proterra, Inc., in an amount not to exceed \$5,262,602, to procure three 40-foot, low floor, battery electric buses per contract, along with associated spare parts, training, manuals, and special tools, with options for up to three additional coaches per contract over the next five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On May 6, 2016, the SFMTA’s Fleet Engineering staff reviewed prototypes of five battery-electric bus manufacturers in an internal technical study to evaluate both their long-range route technology capabilities and their compliance with Federal Transit Administration Buy America requirements; the study identified three battery electric bus manufacturers that might meet the technological and Buy America requirements: New Flyer, Proterra Inc. and BYD; and

WHEREAS, On May 15, 2018, the SFMTA Board of Directors approved Resolution No. 180515-080, committing the Agency to start procuring zero-emission battery buses to replace the electric hybrid vehicles by 2025, with a goal of achieving a 100% electric vehicle fleet by 2035; and

WHEREAS, On November 21, 2018, the SFMTA issued a Request for Proposals (RFP) for the negotiated procurement of up to nine 40-foot, low floor, battery-electric coaches for a one-year pilot program, during which these coaches will be tested in revenue service to allow the SFMTA to evaluate the available zero-emission battery electric buses on the market and test their performance capabilities in San Francisco’s unique operating environment; and

WHEREAS, On December 14, 2018, the California Air Resources Board approved the Innovative Clean Transit Regulation, a first-of-its-kind regulation in the United States, which sets a statewide goal for public transit agencies in California to gradually transition to 100% zero-emission bus fleets by 2040; and

WHEREAS, The SFMTA received proposals in response to the RFP from New Flyer of America Inc, BYD Coach & Bus LLC, and Proterra, Inc.; after negotiations and evaluations as to technical considerations and cost, the evaluation panel members determined that all three proposers were in the competitive range and recommended that they be awarded contracts; and

WHEREAS, Funding for this project will be provided by educational revenue augmentation fund (ERAF)-related supplemental general fund baseline, RM3 (bridge toll) funds, and federal funds; and

WHEREAS, On August 22, 2019, the SFMTA, under authority delegated by the Planning Department, determined that Contract Nos. SFMTA-2019-02, SFMTA-2020-18, and SFMTA-2020-19 are not “projects” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; and

WHEREAS, The Contract Compliance Office (CCO) reviewed the RFP for this Project; due to the specialized nature of the work and lack of subcontracting opportunities, CCO waived the SBE goal; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2019-02 with New Flyer of America Inc., to procure three 40-foot, low floor, battery-electric buses, along with associated spare parts, training, manuals, and special tools, for a total amount not to exceed \$4,452,536, with options for up to three additional coaches over the next five years; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2020-18 with BYD Coach & Bus LLC, to procure three 40-foot, low floor, battery electric buses, along with associated spare parts, training, manuals, and special tools, for a total amount not to exceed \$3,509,150, with options for up to three additional 40-foot, low floor, battery-electric coaches over the next five years; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2020-19 with Proterra, Inc., to procure three 40-foot, low floor, battery-electric buses, along with associated spare parts, training, manuals, and special tools, for a total amount not to exceed \$5,262,602, with options for up to three additional coaches over the next five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 15, 2019.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco
and
New Flyer of America Inc.**

**For Procurement of 40-Foot Battery Electric Coaches
Contract No. SFMTA-2019-02
CCO No. 18-1476**

Table of Contents

Article 1: Definitions..... 1

Article 2: Term of the Agreement 4

Article 3: Financial Matters..... 5

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation 5

3.2 Guaranteed Maximum Costs..... 5

3.3 Compensation 5

 3.3.1 Payments..... 5

 3.3.2 Progress Payments 5

 3.3.3 Retention..... 6

 3.3.4 Payment Limited to Satisfactory Work 6

 3.3.5 Withhold Payments..... 6

 3.3.6 Invoice Format..... 6

 3.3.7 Reserved. (LBE Payment) 7

 3.3.8 Getting Paid for Goods and/or Work from the City 7

 3.3.9 Grant-Funded Contracts..... 7

 a. Disallowance 7

 b. Grant Terms 7

3.4 Audit and Inspection of Records..... 8

3.5 Submitting False Claims 8

3.6 Reserved. (Payment of Prevailing Wages) 9

Article 4: Work and Resources..... 9

4.1 Work Contractor Agrees to Perform..... 9

4.2 Qualified Personnel..... 9

4.3 Subcontracting 9

 4.3.1 Subcontracts..... 9

 4.3.2 Prompt Payment to Subcontractors 10

4.4 Independent Contractor; Payment of Employment Taxes and 10

 4.4.1 Independent Contractor 10

 4.4.2 Payment of Employment Taxes and Other Expenses..... 11

4.5 Assignment 11

4.6 Option Vehicles 12

 4.6.1 Options for Additional Coaches 12

4.6.2 Uniformity of Option Vehicles	12
4.7 Liquidated Damages	12
4.8 Performance and Payment Security	13
4.8.1 Bonds	13
4.8.2 Requirements for Bonds	14
4.8.3 Requirements for Letter of Credit.....	14
(a) General Requirements	15
(b) Financial Institution.....	15
(c) Demand on Letter of Credit.....	15
(d) Expiration or Termination.....	16
(e) Return of Letter of Credit.....	16
(f) Excessive Demand.....	16
Article 5: Insurance and Indemnity	16
5.1 Insurance.....	16
5.2 Indemnification.....	18
5.3 Notice of Claim; Tender of Defense.....	19
Article 6: Liability of the Parties	19
6.1 Liability of City.....	19
6.2 Liability for Use of Equipment.....	20
6.3 Liability for Incidental and Consequential Damages.....	20
6.4 Limitation of Liability.....	20
Article 7: Payment of Taxes	20
7.1 Contractor to Pay All Taxes.....	20
7.2 Possessory Interest Taxes	20
7.3 Withholding	21
Article 8: Termination and Default.....	21
8.1 Termination for Convenience	21
8.1.1 Exercise of Option	21
8.1.2 Contractor Actions.....	21
8.1.3 Contractor Invoice	22
8.1.4 Non-Recoverable Costs	23
8.1.5 Deductions	23
8.1.6 Survival.....	23
8.2 Termination for Default; Remedies	23
8.2.1 Event of Default.....	23
8.2.2 Remedies.....	24

8.2.3 No Waiver.....	24
8.2.4 Notice of Default	24
8.3 Non-Waiver of Rights.....	24
8.4 Rights and Duties upon Termination or Expiration.....	25
8.4.1 Survival of Sections.....	25
8.4.2 Contractor Duties.....	25
Article 9: Rights In Deliverables	25
9.1 Ownership of Results.....	25
9.2 Works for Hire	26
9.3 Licenses Granted.....	26
9.3.1 Computerized Software and Systems	26
9.3.2 IP Transfer	26
9.3.3 Bankruptcy.....	27
9.3.4 License for Data.....	27
9.3.5 Other Deliverables	27
9.4 Proprietary Materials	27
9.4.1 Contractor Information	27
9.4.2 City Information	28
9.5 Management of City Data and Confidential Information	28
9.5.1 Access to City Data	28
9.5.2 Use of City Data and Confidential Information	28
9.5.3 Disposition of Confidential Information	29
Article 10: Additional Requirements Incorporated by Reference	29
10.1 Laws Incorporated by Reference	29
10.2 Conflict of Interest	29
10.3 Prohibition on Use of Public Funds for Political Activity.....	29
10.4 Consideration of Salary History.....	29
10.5 Nondiscrimination Requirements	30
10.5.1 Non Discrimination in Contracts.....	30
10.5.2 Nondiscrimination in the Provision of Employee Benefits	30
10.6 Reserved (Local Business Enterprise)	30
10.7 Minimum Compensation Ordinance.....	30
10.8 Health Care Accountability Ordinance	30
10.9 First Source Hiring Program.....	30

10.10 Alcohol and Drug-Free Workplace.....	31
10.11 Limitations on Contributions	31
10.12 Reserved. (Slavery Era Disclosure)	32
10.13 Reserved. (Working with Minors)	32
10.14 Consideration of Criminal History in Hiring and Employment Decisions.....	32
10.15 Reserved. (Public Access to Nonprofit Records and Meetings).....	32
10.16 Food Service Waste Reduction Requirements.....	32
10.17 Reserved. (Sugar-Sweetened Beverage Prohibition).....	32
10.18 Tropical Hardwood and Virgin Redwood Ban	32
10.19 Preservative Treated Wood Products.....	33
Article 11: General Provisions	33
11.1 Notices to the Parties	33
11.2 Compliance with Americans with Disabilities Act.....	33
11.3 Reserved.....	33
11.4 Sunshine Ordinance	33
11.5 Modification of this Agreement.....	33
11.6 Authority of Project Manager; Claims; Disputes.....	34
11.6.1 Claims for Additional Compensation	34
11.6.2 Other Claims	35
11.6.3 Resolution of Disputes.....	35
11.6.4 No Cessation of Work	35
11.6.5 Alternative Dispute Resolution.....	35
11.6.6 Disputes Among Contractor's Partners	35
11.6.7 Government Code Claim Requirement	35
11.7 Agreement Made in California; Venue.....	36
11.8 Construction.....	36
11.9 Entire Agreement	36
11.10 Compliance with Laws	36
11.11 Severability	36
11.12 Cooperative Drafting	36
11.13 Order of Precedence.....	36
11.14 Time of Essence.....	36
11.15 Notification of Legal Requests	36
Article 12: Deliveries and Acceptance	37

12.1 Deliveries	37
12.1.1 Predelivery Tests and Inspections	37
12.1.2 Delivery Procedure	37
12.1.3 Condition of Coaches	37
12.1.4 Spare Parts Delivery Procedure	37
12.2 Acceptance of Vehicles.....	38
12.2.1 Procedure	38
12.2.2 Conditional Acceptance.....	38
12.2.3 Assumption of Risk of Loss	38
12.2.4 Title.....	39
12.3 Repairs Prior To Acceptance	39
12.3.1 Repairs by Contractor	39
12.3.2 Repairs by SFMTA.....	39
12.4 Unavoidable Delays.....	40
12.4.1 Definition.....	40
12.4.2 Notification of Delay	40
12.4.3 Request for Extension.....	40
Article 13 SFMTA Conditions	41
13.1 Large Vehicle Driver Safety Training Requirements	41
Article 14: MacBride Principles and Signature	41
14.1 MacBride Principles -Northern Ireland	41

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and
New Flyer of America Inc.
Contract No. SFMTA-2019-02**

This Agreement is made on _____ in the City and County of San Francisco, State of California, by and between New Flyer of America Inc., a North Dakota corporation (Contractor), and the City and County of San Francisco (City), a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to obtain the services of a qualified firm to procure three 40-foot, low floor battery-electric coaches, with options for up to three 40-foot, low floor battery electric coaches, and associated spare parts, training, manuals, ViriCiti licenses, and special tools.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on November 21, 2018.

C. Contractor represents and warrants that it is qualified to perform the procurement Work required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Acceptance” means the formal written acceptance by the City that all Work, or a specific portion thereof, under the Contract has been satisfactorily completed.

1.2 “Agreement” or “Contract” means this contract document covering the performance of the Work and furnishing of labor, materials, equipment, tools, and services, including Work incidental to the procurement, to include the Technical Specifications, all Conformed Contract Documents, the Contract bonds or other security, any future amendments, all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

1.3 “**Award**” means notification from the City to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

1.4 “**Buses**” or “**Coaches**” or “**Vehicles**” means the vehicles procured under this Contract.

1.5 “**CCO**” means SFMTA Contract Compliance Office.

1.6 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation.

1.7 “**City Data**” or “**Data**” means all data given to Contractor by City in the performance of this Agreement.

1.8 “**Conditional Acceptance**” means the circumstance in which a Vehicle has been delivered to SFMTA and placed in revenue service despite not having met all requirements for Acceptance.

1.9 “**Confidential Information**” means confidential City information including, but not limited to, personally-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).

1.10 “**Conformed Contract Documents**” means the Contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

1.11 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.12 “**Contract Modification**” means a written amendment to the Contract, agreed to by the City and Contractor, covering changes in the Conformed Contract Documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the Work affected by the changes.

1.13 “**Contractor**” means New Flyer of America Inc., 6200 Glenn Carlson Drive, St. Cloud, Minnesota 56301.

1.14 “**Controller**” means the Controller of the City.

- 1.15 “Correction”** means the elimination of a Defect.
- 1.16 “Day”** (whether or not capitalized) means a calendar day, unless otherwise designated.
- 1.17 “Defect”** means any patent or latent malfunctions or failure in manufacture or design of any component or subsystem.
- 1.18 “Deliverables”** mean Contractor’s work product resulting from the Work that are provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Technical Specifications.”
- 1.19 “Director”** means the Director of Transportation of the SFMTA or his or her designee.
- 1.20 “Effective Date”** means the date on which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.21 “Engineer”** means the SFMTA Engineer assigned to the Contract or his or her designated agent.
- 1.22 “Final Acceptance”** means the formal written Acceptance by the Director of Transportation or his or her designee that all Contract Deliverables for the Contract have been satisfactorily completed and accepted.
- 1.23 “FTA”** means the Federal Transit Administration.
- 1.24 “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, which impose specific duties and obligations upon Contractor.
- 1.25 “Material and/or Equipment”** means the Buses (including all parts and equipment installed in them) and other Deliverables furnished by the Contractor under the provisions of the Contract.
- 1.26 “Notice to Proceed”** means written notice to the Contractor of the date on which it shall begin prosecution of the Work to be done under the Contract.
- 1.27 “Party”** and **“Parties”** mean the City and Contractor either collectively or individually.
- 1.28 “Project Manager”** means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.
- 1.29 “Proposal”** means the technical and management information and prices submitted by Contractor in response to the RFP.
- 1.30 “Purchase Order”** means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.31 “Related Defect” means damages inflicted on any component or subsystem as a direct result of a Defect.

1.32 “Request for Proposals; RFP” means the Request for Proposals issued by the SFMTA on November 21, 2018, to procure up to five 40-foot Battery Electric Coaches, as amended by addenda.

1.33 “Resident Inspector” means any inspector or inspectors who may be assigned by the SFMTA Project Manager for the inspection of Work to be done under this Contract.

1.34 “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIII A of the City’s Charter.

1.35 “Subcontractor” or “Supplier” means any individual, partnership, firm, or corporation that, under an agreement with Contractor, undertakes integrally on the Project the partial or total design, manufacture, performance of, or furnishes one or more items of work under the terms of the contract. As used in this Agreement, the terms Subcontractor and Supplier are synonymous.

1.36 “Technical Specifications” means the portion of the Conformed Contract Documents that contain the specifications, provisions, and requirements that detail the Work and the materials, products (including the assembly and testing), and other requirements relative to the manufacturing and construction of the Work.

1.37 “Work” means the furnishing of all design, engineering, manufacturing, labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion and warranty of the Vehicles, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.38 “Working Days” means those Days during which regular business is conducted, excluding Saturdays, Sundays, and all Federal, State, and municipal holidays that are observed by the SFMTA during the duration of the Contract.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date, and expire five years thereafter, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

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 the City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, 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 Payments. Contractor shall provide an invoice to the SFMTA pursuant to the Schedule set out in Exhibit C (Payment Milestones). Compensation shall be made for Work identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Four Million, Four Hundred Fifty-Two Thousand, Five Hundred Thirty-Six Dollars (\$4,452,536). The breakdown of charges associated with this Agreement appears in Exhibit A (Schedule of Prices). In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Progress Payments.

a. Progress payments shall be conditioned on either (i) transfer of title, free of encumbrances, to the City for the portion of the components, equipment or material paid for by the progress payment, plus a certificate of insurance required by Section 5.1 of this

Agreement; or (ii) issuance of a letter of credit in conformance with the provision of Section 4.8.3 in the amount of the progress payment. Progress payments for which a letter of credit shall be required are as follows: Milestone set forth in Item 1(a) in Exhibit C for each Vehicle. Letter(s) of credit for such progress payments will be released upon Acceptance or Conditional Acceptance of 50 percent of the total Vehicles.

b. In lieu of a letter of credit to secure progress payments, Contractor may elect to increase its performance bond required under Section 4.8.1 of this Agreement by the amount of progress payments for the above milestone and any other items for which Contractor elects to submit security instead of transferring title. Such increase in the amount of the performance bond shall be included in the amount of the performance bond submitted at the time of Contract Award. This increase in the amount of the performance bond shall constitute security for all progress payments for which the bond is issued should Contractor default with respect to any provision of this Agreement. In lieu of an increase in the Performance Bond, an Advance Payment Bond, in a form acceptable to the City's Risk Manager, or other security acceptable to the City's Risk Manager, will also be accepted.

3.3.3 Retention. As described in Exhibit C, the City will withhold 2% of the Vehicle amount as retention until Final Acceptance and conclusion of the Agreement. The City will not make price adjustments to this Contract to protect Contractor from economic inflation; however, the City will negotiate with Contractor adjustments to the price of the Coaches resulting from legislation or regulations that become effective after the date of this Contract that affect the price of the Coaches.

3.3.4 Payment Limited to Satisfactory Work. Contractor is not entitled to any payments from City until the SFMTA approves Work, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Work even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Work may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Work 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.

3.3.5 Withhold Payments. If Contractor fails to provide Work 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, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.6 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must be sent to the address for City in Section 11.1 (Notices to Parties):

Each invoice shall include:

- Relevant milestones;
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount.
- Supporting documentation and/or documentation referencing submittal or delivery.

City will make payment to Contractor as provided in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.7 Reserved. (LBE Payment)

3.3.8 Getting Paid for Goods and/or Work from the City.

All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every Working Day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

The following information is required to sign up: (a) The enroller must be their company's authorized financial representative, (b) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (c) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (d) the company's bank account information, including routing and account numbers.

3.3.9 Grant-Funded Contracts.

a. Disallowance. If Contractor requests or receives payment from City for Work, reimbursement for which is later disallowed by the State of California or United States Government, 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 to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms may be found in Exhibit D (FTA Requirements for Procurement Contracts). 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.

As required by the Grant Terms, Contractor shall insert applicable provisions into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any Subcontractor, lower-tier Subcontractor, or service provider.

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 its Work. Contractor will permit City to audit, examine and make excerpts and transcripts from 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 fewer than five years 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.

To the extent that Contractor believes any records provided to SFMTA or its agents in the course of an audit or inspection under this section are confidential or proprietary, Contractor shall clearly identify such information at the time the information is provided. In the event that the SFMTA receives a request for disclosure of records under the California Public Records Act (Govt. Code Sec. 6250 et seq.) or the San Francisco Sunshine Ordinance (SF Admin. Code Chapter 67) that seeks such records, the SFMTA shall endeavor to provide Contractor reasonable notice of such request. Contractor may at its option take whatever legal steps it deems appropriate to protect said information from disclosure to the public, but the SFMTA shall have no further obligation to protect such information from disclosure. However, if the SFMTA is required to incur legal fees and costs in such legal action, and if the Contractor does not prevail in such legal action, Contractor shall pay all legal fees and costs that the SFMTA incurs as a result of such legal action. The foregoing shall not restrict the ability of the SFMTA or any other governmental agency to use information obtained in the course of an audit or inspection under this section in an audit report.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, 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).

Article 4 Work and Resources

4.1 Work Contractor Agrees to Perform. This Agreement is for the procurement of three 40-ft, low floor, battery electric Coaches with options for up to three additional 40-ft, low floor battery electric Coaches, as provided for in the Technical Specifications, and in the Contractor's Proposal (as incorporated into the Conformed Contract Documents), according to the Project Delivery Schedule set forth in Exhibit B. Contractor agrees to perform the Work provided for in the Conformed Contract Documents. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, work beyond the Work provided in the Conformed Contract Documents unless the Contract is modified as provided in Section 11.5 (Modification of this Agreement).

4.1.1 Spare Parts. The total Contract amount includes an allowance of \$250,000 for spare parts, as per Schedule 1 of Exhibit A. The City may choose to purchase spare parts from the Contractor at its sole discretion from the list of spare parts included in Schedule 1A of Exhibit A. The City reserves the right to purchase spare parts that are not included in Schedule 1A from the Contractor at negotiated prices. The prices for spare parts listed in Schedule 1A shall be valid for at least two years from the Effective Date. Spare parts shall be delivered within 120 Days after the SFMTA provides written notice of intent to acquire the specified parts.

4.1.2 Special Tools. The total Contract amount includes an allowance of \$50,000 for special tools, as per Schedule 1 of Exhibit A. The City may choose to purchase special tools from the Contractor at its sole discretion from the list of special tools included in Schedule 1B of Exhibit A. The City reserves the right to purchase special tools that are not included in Schedule 1B from the Contractor at negotiated prices. The prices for special tools listed in Schedule 1B shall be valid for at least two years from the Effective Date.

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized Subcontractors) to perform the Work. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

4.3.1 Subcontracts. Contractor may subcontract portions of the Work only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the Work. All Subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 Prompt Payment to Subcontractors.

a. Contractor shall pay each of its Subcontractors within three Working Days after receipt of each progress payment from the City. Within five Working Days of such payment, Contractor shall provide the SFMTA with satisfactory evidence that it has promptly paid each Subcontractor for the Work that it has performed in that billing period. Failure to provide such evidence shall be cause for the SFMTA to suspend future progress payments to Contractor.

b. Within 30 Days of satisfactory completion of all Work required of the Subcontractor, Contractor shall release any retention withheld to the Subcontractor. A violation of the requirements of this Section shall constitute a violation of San Francisco Administrative Code section 6.22.Q. If Contractor does not pay a Subcontractor as required in this Section, Contractor shall pay directly to said Subcontractor a penalty of two percent per month of the amounts unpaid, as provided by Administrative Code section 6.22.Q.

c. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a Subcontractor, the Contractor may withhold the disputed amount, but shall pay the undisputed amount.

d. Contractor shall include these payment requirements in its subcontracts and shall require every Subcontractor of every tier to include these payment requirements in its subcontracts with lower tier Subcontractors.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Article 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 at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be

construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five Working Days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character. 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 as required under City law and under the policy of the SFMTA Board of Directors. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into

contracts with City; and (c) 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.

4.6 Option Vehicles.

4.6.1 Options for Additional Coaches At the option of the City, the Contractor shall provide up to three 40-foot Buses in addition to the initial purchase(s). These options may be exercised at any time up to and including five years from the Effective Date, as set forth in Section 2.2. The maximum quantities of Buses that will be purchased for the subsequent years will be as shown in the Exhibit A (Schedule of Prices). City, at its exclusive option, may assign all or a portion of this option to another transit agency. Such assignment shall be effectuated by an assignment agreement between the City and the transit agency, with notice to Contractor. The assignment agreement may be executed by the Director on behalf of City. These option Coaches shall be provided at the bid price(s) quoted in Schedule 1 of Exhibit A.

4.6.2 Uniformity of Option Vehicles. All items purchased under the options shall be identical in every way to those purchased under the base Contract. Any changes to items or components furnished under the options are subject to approval by the City. All conditions, Technical Specifications, and requirements set forth in the Contract documents shall apply to the items purchased as options unless otherwise specified in this Agreement.

4.7 Liquidated Damages. By entering into this Agreement, the Contractor agrees that in the event deliveries are not completed within the number of days indicated in Section 4.1.1, in Exhibit B, and in the Technical Specifications, Sections 13, or if Contractor fails to correct fleet defects in accordance with the Technical Specifications, Section 10.1.5.6, as may be revised by Contract Modifications, City will suffer damages that will be impracticable or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but are 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 contract was awarded. Except where the delay is the result of an Unavoidable Delay, City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA. Liquidated damages imposed under this Agreement shall be in addition to any other damages that are recoverable by the City specified elsewhere in the Contract.

Item No.	Milestone	Amount Per Day
1.	Submittal of Management Work Plan	\$100
2.	Delivery of Lead Coach	\$400
3.	Submittal of Training Lesson Plans	\$200
4.	Submittal of Draft Operation, Maintenance, and Parts Manual	\$200
5.	Delivery of 1st Production Coach	\$400
6.	Delivery of last Production Coach	\$400
7.	Spare Parts Delivery	\$400
8.	Completion of Multimedia Training	\$400
9.	Delivery of Special Tools	\$300
10.	Submittal of Final Operation, Maintenance, and Parts Manuals	\$400
11.	Warranty Fleet Defect Correction (see Technical Specifications, Section 10.1.5.2)	\$250 per Coach
12.	Contractor-Supplied Parts	2%*

* 2% per day of Contractor's list price for every day a part is past the 72-hour delivery time (see Technical Specifications, Section 10.2.2.2).

4.8 Performance and Payment Security. The following provisions set forth financial guarantees that must be met by Contractor. Contractor may choose to meet the requirements of this Section 4.8 by obtaining either the required bonds or an irrevocable letter of credit (Letter of Credit) in an equivalent amount.

4.8.1 Bonds

a. Within 20 days following the receipt of a notice of tentative award of contract, and until completion of all Contract obligations and Acceptance by City of the final Vehicle, the Contractor shall furnish to City a performance and a labor and materials bond each in an amount not less than 20 percent of the total Contract amount to guarantee Contractor's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last Vehicle is Accepted, and to guarantee Contractor's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection c. below.

b. One year after the City fully accepts the last Vehicle, the City will issue a letter releasing the obligations of the surety under the performance and labor and materials bonds, provided that all Deliverables have been performed and Accepted and a warranty bond

or letter of credit meeting the requirements of Section 4.8.2 is in place. The original bond document(s) shall be retained by the City.

c. Contractor shall provide a two-year warranty or guaranty bond in the amount of 10 percent of the Contract price covering all of Contractor's warranty obligations under the Contract, which bond shall become effective upon release of the Performance Bond under subsection b. above. At City's election, and subject to approval of the surety issuing the bond, Contractor shall provide for up to two one-year extensions or renewals of the warranty or guaranty bond at an amount approved by the SFMTA and the City's Risk Manager. If the original surety declines to extend or renew the initial bond, Contractor shall in good faith try to obtain the required additional coverage from another surety and shall document to the City its efforts in this regard. At the expiration of the warranty bond, the City will release it in the same manner as it releases the performance and labor and materials bonds (see subsection b. above).

d. Within 20 days of receipt of a notice from the SFMTA of intention to exercise the option to purchase more Coaches, the Contractor shall furnish to City a separate performance bond and a labor and materials bond in the amount of 20 percent of the cost of the additional Coaches to be purchased, to guarantee performance of all Contract obligations with respect to such optional Vehicles. The Contractor shall provide a two-year warranty or guaranty bond with possible extensions for the option Coaches under the terms of subsection c. above. The City will release the warranty bond as provided above, and retain the original bond documents.

4.8.2 Requirements for Bonds.

a. Bonding entities on the above bonds must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to the SFMTA and to the Controller and Risk Manager of the City.

b. During the period covered by the Agreement, if any of the sureties upon the bond shall have an AM Best rating that falls below A-, VIII, or become insolvent and unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 days after notice given by the SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30-day period to substitute another and sufficient surety, Contractor, if the SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

4.8.3 Requirements for Letter of Credit.

a. General Requirements. Any Letter of Credit submitted as required security under this Agreement shall be a confirmed, clean, irrevocable Letter of Credit in favor of the City and County of San Francisco, a municipal corporation. It must have an original term of one year, with automatic renewals of the full amount (subject to modification to reflect the adjustments set forth above in Section 4.8.1) throughout the term of the Agreement and throughout the performance of Contractor's obligations under the Agreement. If Contractor fails to deliver the Letter of Credit as required, City will be entitled to cancel this Agreement. The Letter of Credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation on behalf of the City.

b. Financial Institution. The Letter of Credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating. Should the financial institution fail to maintain such rating, Contractor shall replace the Letter of Credit within 30 days with a Letter of Credit from a financial institution with such a rating.

c. Demand on Letter of Credit. The Letter of Credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, the SFMTA may make a demand under the Letter of Credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said Letter of Credit only after City first has made its demand for payment directly to Contractor, and five full Working Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Letter of Credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the Work described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the Letter of Credit is so used or applied by City, Contractor, within 10 Working Days after written demand by City, shall reinstate the Letter of Credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

d. Expiration or Termination. The Letter of Credit must provide for 60 days notice to City in the event of non-extension of the Letter of Credit; in that event, Contractor shall replace the Letter of Credit at least 10 Working Days prior to its expiration. In the event the City receives notice from the issuer of the Letter of Credit that the Letter of Credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement Letter of Credit (in a form and issued by a financial institution acceptable to the City) within 10 Working Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the Letter of Credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the Letter of Credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

e. Return of Letter of Credit. The Letter of Credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 4.5, City will return or release the Letter of Credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent Letter of Credit, as determined by City.

f. Excessive Demand. If City receives any payments from the aforementioned bank under the Letter of Credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the Letter of Credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

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. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

b. Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

c. Comprehensive or Business Automobile (Transit Coach, Truck, and other vehicles included) Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

d. During the course of this Agreement, should any Vehicles already Accepted by City, and in which title is vested in the City, be returned to Contractor for any reason, Contractor shall maintain, with respect to such vehicles, Garagekeepers' Legal Liability Insurance with limits not less than 100 percent of the value of City Vehicles and equipment in Contractor's care, custody, or control, including coverage's for fire, theft, riot and civil commotion, vandalism or malicious mischief, and collision; all-risk transportation insurance for the full value of all City-owned Coaches in transit between Contractor and City premises; and any loss payable to the City as its interest may appear.

e. During the course of this Agreement, as title to components or Coaches is transferred to City (refer to Section 3.3.2), Contractor shall provide property insurance on such components against all risks of loss or damage for 100% of their replacement value, including City as a named insured and loss payee, as its interests may appear, and any deductible not to exceed \$25,000 each loss.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

a. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

b. 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 insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All

notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

5.1.4 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 contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 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.

5.1.6 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.

5.1.7 Before commencing any Work, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements 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.

5.1.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

5.1.9 If Contractor will use any Subcontractor(s) to provide Work, 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.

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (a) injury to or death of a person, including employees of City or Contractor; (b) loss of or damage to property; (c) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (d) strict liability

imposed by any law or regulation; or (e) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to Subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (a) – (e) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 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 Work.

5.3 Notice of Claim; Tender of Defense. The City shall use its best efforts to give prompt written notice to Contractor of any claim for which it requires indemnification from Contractor and will not admit liability or fault as to the allegations of the claim. Provided Contractor accepts the City's tender of defense without reservations, City agrees to grant Contractor sole control over the defense and settlement of the claim and provide timely assistance to Contractor in the defense of the claim.

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 THE SERVICES PERFORMED 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. Except for liquidated damages, Contractor shall not be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

6.4 Limitation of Liability. Except as provided herein, Contractor's aggregate liability to the City under this Agreement shall be limited to the Contract amount stated in Section 3.3.1, as that amount may be modified by a properly approved and executed Contract Modification. Said limitation on liability shall not apply to:

6.4.1 damages and other liability caused by Contractor's willful, intentional acts or omissions;

6.4.2 liability arising under or for violation of any applicable statute, City ordinance, regulation, or other laws;

6.4.3 damages and other liability arising under claims by third parties, including indemnity or contribution for claims brought by a third party (see Section 5.2.1);

6.4.4 damages and other liability for infringement of any intellectual property right as provided in Section 5.2.3.

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 Services 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 Revenue and Taxation Code section 480.5, 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. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 Exercise of Option. 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. The notice shall specify the date on which termination shall become effective.

8.1.2 Contractor Actions. 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 date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

a. Halting the performance of all Work under this Agreement on the date(s) and in the manner specified by the SFMTA.

b. Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Work, equipment or other items.

c. At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA 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 the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

e. Completing performance of any Work that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.

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

8.1.3 Contractor Invoice. Within 30 days after the specified termination date, Contractor shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

a. The reasonable cost to Contractor, without profit, for all Work prior to the specified termination date, for which Work the SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

b. A reasonable allowance for profit on the cost of the Work described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of the SFMTA, that Contractor would have made a profit had all Work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

c. The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

d. A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Work or other work.

8.1.4 Non-Recoverable Costs. In no event shall the City be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Work under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 Deductions. In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (a) all payments previously made by the SFMTA for Work covered by Contractor's final invoice; (b) any claim which the SFMTA may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (d) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Work, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Work in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

8.2.1 Event of Default. 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.
- 4.5 Assignment
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 9.4 Proprietary Materials
- 9.5 Management of City Data and Confidential Information
- 10.10 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws

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 continues for a period of 10 days after written notice thereof from the SFMTA to Contractor.

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 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: (a) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (b) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (c), 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 No Waiver. 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 Notice of Default. Any notice of default must be sent by registered mail to the address set forth in 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 Survival of Sections. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.4	Payment Limited to Satisfactory Work
3.3.9(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Survival
8.2.2	Remedies
9.1	Ownership of Results
9.2	Works for Hire
9.4.	Proprietary Materials
9.5	Management of City Data and Confidential Information
11.6.3	Resolution of Disputes
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

8.4.2 Contractor Duties. 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 Ownership of Results. Any interest of Contractor or its Subcontractors, in the Deliverables, including any materials, equipment, drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its Subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Work, Contractor or its Subcontractors create Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. These shall include, but not be limited to, the data that comprises the destination sign system, as specified in Section 3.10 of the Technical Specifications; the Data that comprises the voice annunciation system, as specified in Section 3.11 of the Technical Specifications; the source code for the SFMTA-specific portion of the multiplex electrical system controller, as described in Section 7.9 of the Technical Specifications; the vehicle record book, as provided in Section 9.2.7 of the Technical Specifications; and the computer database record, as provided in Section 10.3.3 of the Technical Specifications.. If any Deliverables created by Contractor or its Subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon Subcontractor(s). With City's prior written approval, Contractor and its Subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

9.3 Licenses Granted

9.3.1 Computerized Software and Systems. To the extent that software, firmware, systems designs, computerized manuals, training modules, or other such Deliverables are not designed specifically for City's purposes in connection with the Agreement, Contractor grants City a perpetual, non-exclusive, non-transferable, license at all locations owned or controlled by City to use all such Deliverables, or portions thereof. City shall also be authorized to modify or prepare derivative works of the Deliverables and make copies of such Deliverables for internal use only. Any such modifications shall become the property of the City unless such modifications are not used exclusively for internal purposes. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Deliverable(s) or any related materials or documentation. Contractor warrants that it has title to and/or the authority to grant a license of such Deliverables to the City.

9.3.2 IP Transfer. In the event that Contractor is (a) unable or fails to meet its warranty or service obligations, excluding any such failure that results from Contractor's good faith dispute with City as to the validity of a warranty claim, or (b) Contractor (i) shall make an assignment for the benefit of creditors, or (ii) shall file in any court or agency of competent jurisdiction, a petition in bankruptcy or insolvency (each, an "IP Transfer Trigger Event"), Contractor shall deliver any software, firmware, systems designs, computerized manuals, training modules, or other such information necessary to enable City to perform the maintenance and operation of the Vehicles (collectively, the "Specified Contractor IP"). No later than 30 days

after an IP Transfer Trigger Event, City shall have the right to receive from Contractor, and Contractor shall deliver to City, one copy of the Specified Contractor IP, and Contractor grants to City a non-exclusive, royalty-free right and license to use the Specified Contractor IP solely as necessary for City to perform the maintenance and operation of the Vehicles.

9.3.3 Bankruptcy. All rights and licenses granted in respect of the Specified Contractor IP are, and shall be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, 11 U.S.C. § 101 et seq., licenses of rights to “intellectual property” as defined under Section 101(35A) of the Bankruptcy Code; and the Specified Contractor IP is, and shall be deemed to be, “embodiment[s]” of “intellectual property” for purposes of same. City shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code or equivalent legislation in any other jurisdiction. Without limiting the generality of the foregoing, Contractor acknowledges that the rights and license granted to City pursuant to this Section 9.3 shall not be affected by Contractor’s rejection of this Agreement in bankruptcy and shall continue subject to the terms and conditions of this Agreement.

9.3.4 License for Data. Except as provided below, the City grants to Contractor a license to inspect, examine, and otherwise obtain any information or data available from components provided by the Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable the Contractor to perform reliability maintenance analysis, corrective actions, and/or other engineering work for the Buses. This grant of license does not apply to any data or information obtained through or downloaded from the following systems:

- a. Passenger Information System
- b. CAD/AVL System
- c. Automatic Passenger Counter System
- d. Video Surveillance System

9.3.5 Other Deliverables. Contractor grants City a perpetual, non-exclusive, non-transferable license to use, retain, and reproduce at all locations controlled by the SFMTA, for internal use only, all copies (whether in hard copy or electronic format) of drawings, plans, specifications, schematics, studies, reports, memoranda, computation sheets and all other documents that are (a) prepared by Contractor or its Subcontractors or Suppliers (but not exclusively for City); and (b) subject to any restrictions set forth herein, required to be provided to City in connection with this Agreement. Contractor warrants that it has title to and/or the authority to grant a license of such Deliverables to the City.

9.4 Proprietary Materials.

9.4.1 Contractor Information. To the extent that the Contractor considers any document or Deliverable to be a trade secret or otherwise proprietary, Contractor shall so mark them. SFMTA shall require individuals using such proprietary documents to maintain the confidentiality of the documents, and if necessary, sign a confidentiality agreement regarding use of highly sensitive documents. For purposes of this Agreement, the Specified Contractor IP (see

Section 9.3.2) shall be considered a trade secret under this Section and subject to the provisions of this Section. Contractor shall hold the City harmless from and defend the City against all claims, suits or other proceedings instituted against the City for copyright infringement, misuse or misappropriation of a trade secret, or for access to the documents or Deliverables under the City's Sunshine Ordinance or the California Public Records Act. The SFMTA will give Contractor prompt notice if it receives a request for such records under the Sunshine Ordinance or the California Public Records Act to allow Contractor the opportunity to contest the request. Contractor will pay the costs and damages awarded in any such action or proceeding, or the cost of settling such action or proceeding, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the buses, spare parts, documents or Deliverables constitutes infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

9.4.2 City Information.

a. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and its subcontractors shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

b. In the performance of Work, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, 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.

9.5 Management of City Data and Confidential Information.

9.5.1 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

9.5.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know

basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information 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 or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information 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, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

9.5.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 Working Days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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 Working Days of the purge.

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 performing the Work, 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 Administrative Code Chapter 12K, 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 (a) asking such applicants about their current or past salary or (b) 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 Chapter 12K. Information about and the text of Chapter 12K 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 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. 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 Administrative Code Section 12B.2.

10.6 Reserved. (Local Business Enterprise)

10.7 Minimum Compensation Ordinance. Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor agrees to choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3, and to comply with the HCAO as set forth in Chapter 12Q.

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) and the California Drug-Free Workplace Act of 1990, Cal. Gov. Code, Sections 8350 et seq., if state funds involved.

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 (a) 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, (b) a candidate for that City elective office, or (c) 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 10% in Contractor; any subcontractor listed in the bid 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 Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, 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 Chapter 12T.

10.14.2 The requirements of Chapter 12T 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. Chapter 12T 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. (Sugar-Sweetened Beverage Prohibition).

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.

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 contract 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.

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: San Francisco Municipal Transportation Agency
Transit Division Fleet Engineering
700 Pennsylvania Avenue, San Francisco, CA 94107
Attention: Bhavin Khatri, Project Manager
bhavin.khatri@sfmta.com

To Contractor: New Flyer of America Inc.
6200 Glenn Carlson Drive, St. Cloud, Minnesota 56301
Attention: Adrian Graca, Manager Technical Sales
adrian_graca@newflyer.com

Any notice of default must be sent by registered mail or overnight delivery service or courier. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Work in a manner that complies with the Americans with Disabilities Act (ADA), including, but not limited to, Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Reserved.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code §6250 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. See also Section 3.4 for Contractor's legal obligations for requests under the Sunshine Ordinance.

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

as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Authority of Project Manager; Claims; Disputes . The Project Manager shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Project Manager shall at all times act fairly and reasonably. Any appeal of the Project Manager's decisions shall be in accordance with the provisions of Section 11.9 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 3.3.1 of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Project Manager, who, in consultation with other City representatives, as applicable, and with input the Contractor, shall decide the true meaning and intent of the Contract. The Project Manager's decision in this regard shall be administratively final and conclusive.

11.6.1 Claims for Additional Compensation.

a. Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Project Manager due written notice of potential claim.

b. The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Project Manager prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 30 Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

c. It is the intention of this Section 11.6.1 that differences between the Parties arising under and by virtue of the Contract be brought to the attention of the SFMTA at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

11.6.2 Other Claims. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 15 Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

11.6.3 Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the parties shall be decided in writing by the SFMTA Project Manager. The Project Manager's decision shall be administratively final and conclusive unless within 10 Working Days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit, or his/her designee. In connection with such an appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Project Manager's decision as to a particular dispute is final.

11.6.4 No Cessation of Work. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Project Manager.

11.6.5 Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to 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. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.6 Disputes Among Contractor's Partners. The resolution of any contractual disputes related to Contractor's Joint Venture or Association partners (if any) shall be the sole responsibility of the Contractor. Each party of the Joint Venture or Association shall resolve all such disputes within 30 calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Contractor's Joint Venture or Association firms until the dispute is resolved.

11.6.7 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.

11.7 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 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 (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) 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. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement. Any inconsistency in requirements of the Contract documents shall be resolved by giving precedence in the following order:

- a. This Contract document, including Appendices
- b. Technical Specifications, including the warranty provisions

11.14 Time of Essence. Time is of the essence in this Agreement.

11.15 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (Legal Requests) related to City Data, or which in any way might reasonably require access to City Data, and in no event later than 24 hours after it receives the request. 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

Article 12 Deliveries and Acceptance

12.1 Deliveries

12.1.1 Predelivery Tests and Inspections. Pre-delivery tests and inspections shall be performed prior to shipment to the SFMTA. Such tests and inspections shall be performed in accordance with the procedures defined in Verification Section 12.2.3 of the Technical Specifications, and they may be witnessed by the SFMTA Resident Inspector. When a Coach passes these tests and inspections, the Resident Inspector shall authorize release of the Coach for shipment. Such authorization does not imply Acceptance of the Vehicle by the SFMTA.

12.1.2 Delivery Procedure. Delivery shall be determined by signed receipt of the SFMTA Engineer at the point of delivery and may be preceded by a cursory inspection of the Vehicle. The point of delivery shall be:

40-Ft Battery Electric Coaches
1098 23 rd Street San Francisco, California 94107

Contractor shall deliver Coaches during weekday working hours at a time mutually agreeable to the SFMTA and Contractor, or as otherwise specified in writing by the SFMTA. Contractor shall provide at least five Working Days notice to the SFMTA prior to delivery. Delivery of the Coaches shall be F.O.B. point of delivery, freight pre-paid and allowed. Contractor shall ensure that all Coaches are fully operable when they are delivered. Contractor shall deliver a maximum of three Coaches per week.

12.1.3 Condition of Coaches. Drivers shall keep a complete and accurate maintenance log while enroute, which shall be delivered to the SFMTA Project Manager / Representative with the Coach. The log shall show the driver's compliance with the tire manufacturer's highway operating procedures. If the Coaches are towed, the rear axle shafts shall be removed during the towing and re-coupled by the Contractor after arrival at the point of delivery. Contractor shall deliver each Coach with a full tank of fuel and fully cleaned (exterior, interior, underside, and topside) prior to presentation for inspection. Also, if the Coaches are towed from the Contractor's facility to the SFMTA, highway-type tires shall be installed. Upon arrival at an SFMTA maintenance facility or within the City/County of San Francisco, Contractor, at its expense, shall install city-type tires.

12.1.4 Spare Parts Delivery Procedure. Composition of spare parts is subject to SFMTA approval. Contractor shall provide the SFMTA with one-week advance notice before

shipment of spare parts. Such notice shall include a packing list clearly identifying all parts and their quantity in the shipment.

Delivery of spare parts shall be acknowledged by signed receipt of the SFMTA representative at the point of delivery and may be preceded by a cursory inspection of the parts. Within 20 Days of delivery, the SFMTA will issue a notification of Acceptance, non-Acceptance, or Conditional Acceptance of the spare parts. The point of delivery shall be the location for the applicable Coach provided in Section 12.1.2.

Delivery of spare parts shall be F.O.B. point of delivery, freight pre-paid and allowed.

12.2 Acceptance of Vehicles

12.2.1 Procedure.

(a) Contractor shall ensure that the Coach's underside is washed and cleaned prior to being presented to SFMTA for Acceptance.

(b) After arrival at the designated point of delivery, each Coach shall undergo pre-Acceptance and Acceptance tests by the SFMTA as defined in the Quality Assurance Section of the Technical Specifications. The SFMTA shall make a good faith effort to begin the Acceptance process within 20 Days after delivery of each Coach. When a Coach passes all tests, SFMTA will provide written Acceptance of the Coach to the Contractor. Contractor shall transfer title to the Coach to the City on the day of Acceptance, or Conditional Acceptance, if the Coach is not fully Accepted. Acceptance of one Coach does not imply Acceptance of any other delivered Coaches.

(c) If a Coach fails the Acceptance tests, the Coach shall not be Accepted until the repair procedures defined in Section 12.3, of this Agreement have been carried out and the Coach has been retested and passes all applicable tests. All deliveries of Coaches shall be halted whenever five or more Coaches have failed or have not been Accepted or Conditionally Accepted and are awaiting repairs or Corrections.

(d) After completion of post-delivery testing, the SFMTA will issue a notification of Acceptance, non-Acceptance or Conditional Acceptance.

12.2.2 Conditional Acceptance. If a Coach does not meet all requirements for Acceptance, the SFMTA may, at its exclusive option, "conditionally accept" the Coach and place it into revenue service, pending receipt of Contractor-furnished materials and/or labor necessary to effectuate corrective action for Acceptance. For any Conditionally Accepted Vehicle, payments shall be made as provided in Section 3.3.1 above.

12.2.3 Assumption of Risk of Loss. Prior to delivery as described in Section 12.1 of this Agreement, and regardless whether title has passed to the City, the Contractor shall bear risk of loss of the Coach, including any damage sustained during transportation to the delivery site. Risk of loss will pass to the SFMTA upon delivery of each Coach except that loss

or damage to the Coach resulting from acts or omissions of the Contractor shall be the responsibility of the Contractor until Acceptance of the Vehicle.

12.2.4 Title . At the time each Coach is delivered, Contractor shall provide the SFMTA Project Manager with adequate documents for securing the title for the Coach in the State of California. Unless full unencumbered title transfers earlier under Section 3.3.2, upon Acceptance of each Coach, title to each Coach shall pass to the City, which title Contractor warrants shall be free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims, and demands of any character.

12.3 Repairs Prior To Acceptance. The SFMTA Project Manager may require the Contractor, or its designated representative, to perform repairs after non-Acceptance or Conditional Acceptance, or the Contractor may request that the repairs be done by SFMTA personnel with reimbursement by the Contractor. Contractor shall inform the SFMTA in advance of any modifications made to the Coach during the Acceptance period.

12.3.1 Repairs by Contractor. If the SFMTA Project Manager requires the Contractor to perform repairs after non-Acceptance or Conditional Acceptance of the Vehicle, the Contractor's representative must begin the repair within five Days after receiving notification from the SFMTA Project Manager of failure of Acceptance tests.

The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the SFMTA Project Manager's option, the Contractor may be required to remove the Coach from SFMTA property while repairs are being effected. The Contractor shall then provide a space to complete the repairs, shall diligently pursue the repairs, and shall assume risk of loss while the Coach is under its control.

12.3.2 Repairs by SFMTA.

a. If the SFMTA Project Manager agrees to a request by the Contractor for SFMTA to perform repairs on a Contractor-owned Coach prior to SFMTA Acceptance, the SFMTA shall correct or repair the Defect using parts supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the SFMTA Project Manager to the Contractor for actual cost reimbursement of parts. The Contractor shall provide forms for these reports.

b. If the Contractor supplies parts for repairs being performed by the SFMTA before Acceptance of the Coach, Contractor shall deliver these parts prepaid to the SFMTA within 10 Working Days after receipt of the request for the parts. The Contractor may request that Defective components covered by this provision be returned to the manufacturing plant. Contractor shall bear all expenses for supplying such parts and for any associated costs.

c. Contractor shall reimburse the SFMTA for all costs of labor and materials (including taxes) for repairs made or caused to be made by the SFMTA. If the SFMTA

performs the repairs itself, the amount shall be determined by multiplying the number of person-hours actually required to Correct the Defect by the current technician's hourly overtime wage rate, which includes fringe benefits and overhead, plus the cost of towing the Coach if such action was necessary. If the SFMTA requires the service of an outside repair facility, Contractor shall reimburse the SFMTA for all such repair invoices. Contractor shall also reimburse the SFMTA for administrative costs incurred in performing the repairs. The use of SFMTA labor will not relieve the Contractor from the responsibility to ensure that repairs are carried out in accordance with proper procedures.

d. SFMTA may deduct the cost of repairs from any monies due or that may become due to the Contractor under the Agreement, or if such monies are insufficient, the Contractor or its surety shall pay to the SFMTA any deficiency.

12.4 Unavoidable Delays

12.4.1 Definition. An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include, and are limited to, acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the Work are delayed thereby, as determined by the City.

12.4.2 Notification of Delay. The Contractor shall notify the SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five Days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

12.4.3 Request for Extension. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by the SFMTA to make a decision on any request for extension. The SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension, and if so, the duration of such extension. The SFMTA shall notify the Contractor of its decision in writing.

The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

Article 13 SFMTA Conditions

13.1 Large Vehicle Driver Safety Training Requirements.

13.1.1 Contractor agrees that before any of its employees and Subcontractors drive large vehicles within the City and County of San Francisco, those employees and Subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or Subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 14 MacBride Principles and Signature

14.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §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
<p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Thomas G. Maguire Interim Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>New Flyer of America Inc.</p> <hr/> <p>Glenn Asham Chief Financial Officer 6200 Glenn Carlson Drive St. Cloud, Minnesota 56301</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 13.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 0000030698</p>

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Exhibits

- A: Schedule of Prices
- B: Project Delivery Schedule
- C: Payment Milestones
- D: FTA Requirements for Procurement Contracts

Exhibit A
Schedule 1 - Schedule of Prices

City is exempt from federal excise taxes. State, local sales, and use taxes are not to be included in these prices.

No.	Qty.	Description	Unit Price	Total Price
1	3	40-ft Low Floor Coaches	\$1,179,900	\$3,539,700
2	LS	Allowance for regulatory mandated changes, requested passenger enhancements and system modifications resulting from changes to project interface	N/A	\$75,000
3	N/A	Intentionally left blank.		
4	3	ViriCiti User License for two years. License includes basic vehicle, driver behavior, maintenance, basic charging station, and smart charging.	\$3,984	\$11,952
5	1	Training for 40-ft Low Floor Coaches*	N/A	\$250,000
6	LS	Interactive Multimedia Training for 40-ft Low Floor Coaches (Section 9.1.10 of the Technical Specifications)	N/A	\$250,000
7	LS	Operating, Maintenance and Parts Manuals for 40-ft Low Floor Coaches	N/A	\$25,884
8	LS	Spare Parts For 40-ft Low Floor Coaches	N/A	\$250,000
9	LS	Special Tools For 40-ft Low Floor Coaches	N/A	\$50,000
Grand Total				\$4,452,536

* Hourly rate of \$234 for qualified training instructor from New Flyer. Hourly rates from Supplier representatives may vary.

Option Prices:

10	3	Options for 3 40-ft Low Floor Coaches, including ViriCiti subscription (see item #4)	<u>\$1,183,884</u> + PPI ⁽¹⁾	<u>\$3,551,652</u> + PPI ⁽¹⁾
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(1) PPI: Producer's Price Index (Actual) to be determined at the time the options are exercised

Schedule 1A - Spare Parts List

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Battery, Xalt Module	Wear/Tear	A/R	N	85	\$11,350.64
Motor, 24V Electric	Wear/Tear	1	Y	5	\$7,444.24
Panel Assembly, Front Mask	Damage/Loss	1	N	40	\$3,973.61
Battery Distribution Unit Assembly	Damage/Loss	A/R	N	25	\$3,067.74
Panel, Streetside Rear Middle	Damage/Loss	1	Y	5	\$1,689.35
Driveshaft Assembly	Wear/Tear	1	Y	5	\$1,374.70
Bumper Assembly, Front	Damage/Loss	1	Y	5	\$1,138.41
Bumper Assembly, Rear	Damage/Loss	1	N	30	\$1,069.17
Panel, Driver's	Damage/Loss	1	Y	5	\$1,065.81
Gear Box Assembly, Power Steering	Wear/Tear	1	Y	5	\$971.20
Door Shaft & Arm Assembly, Aft	PM Item	1	Y	5	\$815.50
Equalizer, 80A Low Voltage Disconnect	Wear/Tear	1	Y	5	\$740.47
Door Shaft & Arm Assembly, Fore	PM Item	1	Y	5	\$732.73
Door Assembly, Side Console Access	Damage/Loss	1	Y	5	\$601.57
Pillar, Corner Lower Streetside	Damage/Loss	1	N	40	\$568.10
Battery, 1450 CCA 12V	Wear/Tear	2	N	25	\$566.66
Booster Pump, 24V	Wear/Tear	1	Y	5	\$524.64
Booster Pump, 24V	Wear/Tear	2	N	37	\$524.64
Booster Pump, 24V	Wear/Tear	1	N	39	\$524.64
Wheel, Aluminum Hub Piloted 22.5" x 8.25"	Damage/Loss	1	Y	5	\$499.12
Pillar, Corner Lower Curbside	Damage/Loss	1	Y	5	\$496.89
Seal Assembly, Windshields	Damage/Loss	1	Y	5	\$461.55
Headlight Assembly, LED with Turn Signal CS 12V	Wear/Tear	1	Y	5	\$452.22
Headlight Assembly, LED with Turn Signal SS 12V	Wear/Tear	1	Y	5	\$452.22
Drag Link Assembly	Wear/Tear	1	Y	5	\$446.59
Glass, Destination Sign	Damage/Loss	1	Y	5	\$436.18
Mirror Assembly, Curbside	Damage/Loss	1	Y	5	\$396.55
Steering Column Assembly	Wear/Tear	1	Y	5	\$369.86

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Radius Rod Assembly, Upper	Wear/Tear	2	Y	5	\$363.24
Damper, Short Steering With Protective Sleeves	Wear/Tear	1	Y	5	\$346.53
Valve, Leveling w/Sensor	Wear/Tear	1	Y	5	\$332.51
Module, VMM 1615	Wear/Tear	8	Y	5	\$313.18
Mirror Assembly, Driver's Side	Damage/Loss	1	N	40	\$308.90
Door, Battery Access	Damage/Loss	1	Y	5	\$308.79
Pump Assembly, Power Steering	Wear/Tear	1	Y	5	\$285.17
Brake Chamber Assembly, Rear T24	Wear/Tear	2	Y	5	\$277.52
Valve Assembly, Solenoid 24V	Wear/Tear	1	Y	5	\$261.20
Radius Rod Assembly, Lower	Wear/Tear	2	N	75	\$259.83
Windshield, Curbside 72% Green Tint	Damage/Loss	1	Y	5	\$248.92
Windshield, Streetside 72% Green Tint	Damage/Loss	1	Y	5	\$248.92
Switch, Wiper Control 24V	Wear/Tear	1	Y	5	\$247.49
Exterior Curbside Mirror Bracket Assembly	Damage/Loss	1	Y	5	\$240.45
Miter Box, 90°	Wear/Tear	1	Y	5	\$232.30
Valve, SR-7 Spring Brake Control	Wear/Tear	1	Y	5	\$196.27
Shaft Assembly, Lower	Wear/Tear	1	Y	5	\$189.85
Switch Proximity, M12 DC PNP	Wear/Tear	2	N	25	\$176.96
Radius Rod, Upper Rear	Wear/Tear	2	N	75	\$173.37
Relay, Power B-Stable 400 AMP 24V	Wear/Tear	2	Y	5	\$170.15
Door Controller Assembly	Wear/Tear	1	Y	5	\$168.15
Actuator, Brake Valve 85 psi	Wear/Tear	1	Y	5	\$167.36
Flange, Lamp Mount	Damage/Loss	1	Y	5	\$163.56
Wiper Motor and Bracket Assembly, Curbside	Wear/Tear	1	Y	5	\$162.40
Wiper Motor and Bracket Assembly, Streetside	Wear/Tear	1	Y	5	\$162.40
Radius Rod, Lower Rear	Wear/Tear	2	N	75	\$150.55
Lamp Assembly, Strip White LED 10-30V 18"	Wear/Tear	1	Y	5	\$138.96
Lens, White 210.18" Lg.	Wear/Tear	4	Y	5	\$136.55
Roller Blind Assembly, Front	Wear/Tear	1	Y	5	\$134.64

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Exterior Driver's Side Mirror Bracket Assembly	Damage/Loss	1	Y	5	\$126.95
Shock Absorber Assembly	Wear/Tear	4	Y	5	\$125.25
Shock Absorber Assembly	Wear/Tear	2	Y	5	\$125.25
Brake Chamber Assembly, Front Curbside 24L	Wear/Tear	1	Y	5	\$118.82
Brake Chamber Assembly, Front Streetside 24L	Wear/Tear	1	Y	5	\$118.82
Sender, Air Pressure 150 psi	Wear/Tear	3	Y	5	\$118.52
Filter, Fresh Air	Wear/Tear	1	Y	5	\$109.32
Lamp Assembly, Strip White LED 18"	Wear/Tear	2	Y	5	\$106.32
Lamp Assembly, White LED 12V	Wear/Tear	1	Y	5	\$102.77
Filter, ESS Heat Exchanger 13 Micron	Wear/Tear	1	N	35	\$102.21
Valve Assembly, E-6 Brake	Wear/Tear	1	Y	5	\$98.49
Valve, Relay R-14	Wear/Tear	1	N	35	\$92.17
Fender, Polyurethane	Damage/Loss	4	Y	5	\$90.00
Seal, Door Edge Entrance	Wear/Tear	2	Y	5	\$89.46
Filter Kit, Air Dryer Assembly	Wear/Tear	1	Y	5	\$89.00
Valve Assembly, Rotary Dump	Wear/Tear	1	Y	5	\$87.48
Air Spring, Bellows	Wear/Tear	6	Y	5	\$83.99
Mirror Assembly, Rear Stepwell	Damage/Loss	1	Y	5	\$83.95
Valve, Modulator 24V	Wear/Tear	3	Y	5	\$82.31
Lens, White 120.52" Lg.	Wear/Tear	4	Y	5	\$81.40
Wiper Arm Assembly, Wet	Wear/Tear	2	Y	5	\$75.91
Potentiometer, Temperature	Wear/Tear	1	Y	5	\$71.96
Chime Assembly, Passenger Signal	Wear/Tear	1	Y	5	\$66.72
Bearing, Stabilizer 47 mm	Wear/Tear	4	Y	5	\$64.99
Glass, Entrance Aft	Damage/Loss	1	Y	5	\$63.33
Glass, Entrance Fore	Damage/Loss	1	Y	5	\$63.33
Lamp Assembly, Back-Up White LED 12V	Wear/Tear	2	Y	5	\$59.06
Electric Chime Assembly	Wear/Tear	1	Y	5	\$57.82
Mirror Assembly, Rear View	Damage/Loss	1	Y	5	\$56.45

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Lamp Assembly, Strip Red LED 12V 18.50"	Wear/Tear	2	Y	5	\$55.34
Lamp Assembly, LED 12V	Wear/Tear	2	Y	5	\$53.90
Lamp Assembly, White LED 12V	Wear/Tear	2	Y	5	\$49.49
Sensor, Coolant Level Indicator	Wear/Tear	3	Y	5	\$48.13
Circuit Breaker, 80 AMP	Wear/Tear	1	Y	5	\$47.10
Lamp Assembly, White LED 12/24V	Wear/Tear	2	Y	5	\$44.06
Alarm, Back-Up	Wear/Tear	1	Y	5	\$41.97
Lamp Assembly, Rear Turn Signal Amber LED 12V	Wear/Tear	2	Y	5	\$39.76
Lamp Assembly, White LED 12V	Wear/Tear	2	Y	5	\$36.23
Cap, Filler Breather	Damage/Loss	1	Y	5	\$35.79
Lamp Assembly, License Plate LED 12-24V	Wear/Tear	1	Y	5	\$35.54
Filter, Heater/Defroster Air	Wear/Tear	1	Y	5	\$34.95
Lamp Assembly, Green LED 12V	Wear/Tear	1	Y	5	\$32.09
Pump, Washer 24V	Wear/Tear	1	Y	5	\$31.76
Lamp Assembly, Stop Red LED 12V	Wear/Tear	4	Y	5	\$31.05
Mirror Assembly, Front Upper Right	Damage/Loss	1	Y	5	\$29.87
Valve Assembly, Parking Brake Control	Wear/Tear	1	Y	5	\$29.79
Bushing, Stabilizer Bar	Wear/Tear	2	Y	5	\$28.38
Switch, Remote Mirror	Wear/Tear	2	Y	5	\$27.08
Lamp Assembly, LED 12/24V Sealed	Wear/Tear	2	Y	5	\$26.43
Switch, Push Button	Wear/Tear	1	Y	5	\$25.32
Strainer, Air	Wear/Tear	1	Y	5	\$21.69
Lamp Assembly, Side Turn Signal Amber LED 12V	Wear/Tear	4	Y	5	\$20.63
Panel, Frangible	Damage/Loss	1	Y	5	\$19.11
Cylinder, Assisting 80 Lbf	Wear/Tear	4	Y	5	\$18.75
Lamp, Clear LED 12/24V	Wear/Tear	3	Y	5	\$18.32
Cylinder, Gas 130 Lbf	Wear/Tear	4	Y	5	\$16.73
Lamp Assembly, Identification Amber LED 12V	Wear/Tear	5	Y	5	\$16.31
Switch, Pressure 4 psi	Wear/Tear	2	Y	5	\$15.95

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Switch, Turn Signal/PA Modified	Wear/Tear	3	Y	5	\$13.91
Link Assembly, Leveling Valve	Wear/Tear	1	Y	5	\$13.89
Horn, Dual	Wear/Tear	1	Y	5	\$13.40
Guard, Switch Red	Wear/Tear	5	Y	5	\$13.27
Valve Assembly, Quick Release	Wear/Tear	1	Y	5	\$13.24
Cylinder Assembly, 25 Lbs.	Wear/Tear	1	Y	5	\$13.12
Link Assembly, Leveling Valve	Wear/Tear	2	Y	5	\$12.68
Valve Assembly, DC-4 Double Check	Wear/Tear	1	Y	5	\$12.11
Lamp Assembly, Identification Amber LED 12V	Wear/Tear	4	Y	5	\$12.05
Lamp Assembly, Identification Red LED 12V	Wear/Tear	7	Y	5	\$12.05
Valve, Single Check	Wear/Tear	2	Y	5	\$11.83
Circuit Breaker, 3 AMP - Man.	Wear/Tear	3	Y	5	\$10.88
Circuit Breaker, 1 AMP - Man.	Wear/Tear	5	Y	5	\$10.88
Circuit Breaker, 5 AMP - Man.	Wear/Tear	8	Y	5	\$10.88
Circuit Breaker, 5 AMP Medium Delay	Wear/Tear	3	Y	5	\$10.61
Circuit Breaker, 30 AMP Long Delay	Wear/Tear	1	Y	5	\$10.61
Circuit Breaker, 2 AMP Long Delay	Wear/Tear	3	Y	5	\$10.61
Cylinder Assembly, 10 Lbs.	Wear/Tear	4	Y	5	\$10.43
Lamp Assembly, Amber LED 12V	Wear/Tear	1	Y	5	\$10.35
Light, Indicator Hazard	Wear/Tear	1	Y	5	\$10.02
Circuit Breaker, 30 AMP - Man.	Wear/Tear	17	Y	5	\$9.84
Wiper Blade Assembly	Wear/Tear	2	Y	5	\$9.40
Switch, Dimmer Headlight	Wear/Tear	1	Y	5	\$9.23
Circuit Breaker, 2 AMP - Man.	Wear/Tear	2	Y	5	\$9.20
Plug, Drain Magnetic M24 x 1.5	Damage/Loss	1	Y	5	\$8.93
Circuit Breaker, 15 AMP - Man.	Wear/Tear	10	Y	5	\$8.90
Circuit Breaker, 6 AMP - Man.	Wear/Tear	13	Y	5	\$8.90
Circuit Breaker, 20 AMP - Man.	Wear/Tear	7	Y	5	\$8.90
Circuit Breaker, 10 AMP - Man.	Wear/Tear	2	Y	5	\$8.90
Fuse, Limiter 150 AMP	Wear/Tear	2	Y	5	\$8.73

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Replacement Element, Hydraulic Reservoir	Wear/Tear	1	Y	5	\$8.72
Switch, Chime	Wear/Tear	3	Y	5	\$8.65
Latch, Quarter Turn	Wear/Tear	16	Y	5	\$6.62
Switch, Toggle SPST Momentary On-Off	Wear/Tear	4	Y	5	\$6.45
T-Handle, Square Key Latch	Damage/Loss	1	Y	5	\$4.27
Valve, Drain 1/4" PT	Wear/Tear	7	Y	5	\$4.15
Pressure Cap, 16 Psi	Damage/Loss	3	Y	5	\$4.11
Fuse, Limiter 100 AMP	Wear/Tear	2	Y	5	\$3.73
Fuse, Limiter 200 AMP	Wear/Tear	1	Y	5	\$3.73
Fuse, Limiter 130 AMP	Wear/Tear	1	Y	5	\$3.73
Fuse, Limiter 400 AMP	Wear/Tear	2	Y	5	\$3.73
Screw, Lock M12 x 40 Lg.	Wear/Tear	4	Y	5	\$3.73
Spacer, Radius Rod Mounting	Wear/Tear	12	Y	5	\$2.58
Mount, Center Bonded	Wear/Tear	6	Y	5	\$2.33
Relay, 24V SPDT with Diode	Wear/Tear	11	Y	5	\$2.13
Lens, White	Wear/Tear	1	Y	5	\$1.83
Clamp, Tiller Line	Wear/Tear	12	Y	5	\$1.77
Reflector, Amber	Damage/Loss	6	Y	5	\$0.55
Reflector, Red	Damage/Loss	4	Y	5	\$0.55
Bumper, Rubber .170" I.D. x .80" O.D. x .78" with Steel Insert	Damage/Loss	10	Y	5	\$0.29
Disc Brake Caliper Assembly, Front Curbside without Lining	Wear/Tear	1	Y	5	\$1,027.18
Disc Brake Caliper Assembly, Front Streetside without Lining	Wear/Tear	1	Y	5	\$1,027.18
Rotor, Brake Front 17"	Wear/Tear	1	Y	5	\$155.81
ABS Sensor	Wear/Tear	1	Y	5	\$85.94
Center Link Assembly	Wear/Tear	1	Y	5	\$282.47
Hub & Bearing w/Pulse Wheel	Wear/Tear	1	Y	5	\$495.06
Nut, Hex Lock M24 x 1.5	Wear/Tear	1	Y	5	\$7.62
Nut, Lock M58 x 1.5	Wear/Tear	1	Y	5	\$39.50
Sleeve, Clampring	Wear/Tear	1	Y	5	\$4.32

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Steering Knuckle, Curbside	Wear/Tear	1	Y	5	\$897.99
Steering Knuckle, Streetside	Wear/Tear	1	Y	5	\$897.99
Kit, Steering Knuckle Repair	Wear/Tear	1	Y	5	\$541.35
Tie Rod End	Wear/Tear	1	Y	5	\$191.77
Stud, Wheel Mounting M22 x 1.5 x 65	Wear/Tear	1	Y	5	\$11.00
Kit, Brake Pad N2G	Wear/Tear	1	Y	5	\$161.56
Kit, Guide Pin w/Lubricant	Wear/Tear	1	Y	5	\$117.16
Kit, Multi-Purpose Cap	Wear/Tear	1	Y	5	\$85.78
Kit, Tappet & Boot	Wear/Tear	1	Y	5	\$98.23
Disc Brake Caliper Assembly, Rear Curbside without Lining	Wear/Tear	1	Y	5	\$1,027.18
Disc Brake Caliper Assembly, Rear Streetside without Lining	Wear/Tear	1	Y	5	\$1,027.18
ABS Sensor, Curbside	Wear/Tear	1	Y	5	\$143.25
ABS Sensor, Streetside	Wear/Tear	1	Y	5	\$143.25
Bearing Assembly, Hub Unit	Wear/Tear	1	Y	5	\$360.28
Bolt, Hex M18 x 1.5 x 65	Wear/Tear	1	Y	5	\$21.47
Breather, Membrane	Wear/Tear	1	Y	5	\$23.99
Connector, Breather	Damage/Loss	1	Y	5	\$11.91
Kit, Brake Pad N2G	Wear/Tear	1	Y	5	\$161.56
Kit, Guide Pin w/Lubricant	Wear/Tear	1	Y	5	\$117.16
Kit, Multi-Purpose Cap	Wear/Tear	1	Y	5	\$85.78
Kit, Tappet & Boot	Wear/Tear	1	Y	5	\$98.23
Nut, Grooved M70 x 1.5	Wear/Tear	1	Y	5	\$36.30
Nut, Slotted M100 x 1.5	Wear/Tear	1	Y	5	\$43.24
Oil Filter, Differential Assembly	PM Item	1	Y	5	\$13.53
O-Ring, 109.2 x 5.7 B-NBR	Wear/Tear	1	Y	5	\$5.96
Radial Shaft Seal, w/ABS Pulse Wheel	Wear/Tear	1	Y	5	\$84.50
Rotor, Brake Rear 17"	Wear/Tear	1	Y	5	\$162.58
Screw, Lock M16 x 1.5 x 40 Lg.	Wear/Tear	20	Y	5	\$4.88
Seal, Pinion Shaft	Wear/Tear	1	Y	5	\$91.49
Seal, Shaft	Wear/Tear	1	Y	5	\$39.14
Shaft, Rear Axle Curbside	Wear/Tear	1	Y	5	\$977.25

Recommended Stocking List (Subject to Change)					
Part Description	Reason Code	Total Qty per Bus	Stock Item	Lead Time (Days)	Unit Price
Shaft, Rear Axle Streetside	Wear/Tear	1	Y	5	\$977.25
Wheel Hub, Rear	Wear/Tear	1	Y	5	\$613.47
Bolt, Mounting Wheel M22 x 1.5 x 79	Wear/Tear	1	Y	5	\$12.34
Coalescing Element Replacement Kit	Wear/Tear	1	Y	5	\$66.32
Desiccant Canisters Replacement Kit	Wear/Tear	1	Y	5	\$506.97
Diverter Repair Kit	Wear/Tear	1	N	LTOR	\$140.83
Exhaust Muffler Kit	Wear/Tear	1	Y	5	\$6.76
Exhaust Repair Kit	Wear/Tear	1	Y	5	\$58.59
Exhaust Repair Kit	Wear/Tear	1	Y	5	\$68.37
Flow Check & Seal Replacement Kit	Wear/Tear	1	Y	5	\$45.06
Heater Kit	Wear/Tear	1	Y	5	\$185.89
Orifice Check Repair Kit	Wear/Tear	1	Y	5	\$45.06
O-Ring Seal Kit	Wear/Tear	1	Y	5	\$18.60
O-Ring Seal Kit	Wear/Tear	1	Y	5	\$6.76
Prefilter Element Kit	Wear/Tear	1	Y	5	\$32.67
Scrubber Element Kit	Wear/Tear	1	Y	5	\$15.21
Solid Check Repair Kit	Wear/Tear	1	Y	5	\$25.93
Thermostat Kit	Wear/Tear	1	Y	5	\$130.37
Unload Hose Kit	Damage/Loss	1	Y	5	\$5.91
Unload Repair Kit	Wear/Tear	1	Y	5	\$96.89

Schedule 1B - Special Tools List

DESCRIPTION	QUOTED PART #	TOTAL SELLING PRICE
Diagnostic Equipment		
Dell Latitude Rugged 14 Laptop	108658	\$2,115.45
Siemens Siadis Software (Download from Net)	NPN	Included in price of Coach
Siemens PCAN Interface Harness	711447	\$92.22
USB CAN Adapter - Siadis Interface	6402046	\$384.25
XALT Service Tool Software	NPN	Included in price of Coach
XALT Interface Cable - Batteries	704950	\$294.83
Nexiq USB Link 2 - WIFI Edition	6465863	\$1,138.77
Diagnostic Kit - Vanner HBA/EBA	6406922	\$1,047.90
Intelligaire III Diagnostic Software & Cables	6393934	\$1,688.59
EMP Software (Download from Net)	NPN	Included in price of Coach
Meritor Wabco ABS Software	6334596	\$417.77
Spheros Diagnostic Software & Cables	6396448	\$468.32
Adapter Harness - Spheros Interface	6430418	\$188.48
Luminator IPS Software	6339792	\$366.78
Vapor ETO Software	NPN	Included in price of Coach
Vapor Class System Software	NPN	Included in price of Coach
Vapor Class System Diagnostic Interface Kit	6358421	\$95.46
Fleetwatch Mobile Programmer	6445849	\$1,809.45
Service Cable - IRMA APC Analyzer	479892	\$27.11
Ethernet Cable - IRMA APC	6465569	\$100.05
Amerex SafetyNet Software & Interface	6355551	\$474.14
Vansco Software (Download from Net)	NPN	Included in price of Coach
Vansco DLA Adapter Kit	6351820	\$523.85
Special Tools & PPE		
Amerex Discharge Hose Blowout Adapter	052132	\$92.92
Amerex Fire Alarm/Simulator Module	135582	\$218.30
Kit - Lift Tow Universal	6396565	\$196.48
Kit - Lift Tow Receivers	6396567	\$1,026.03
Jacking Adapters	434434	\$900.71
Lifting Device - XALT XMOD Battery Modules	6474871	\$1,362.33
TK A/C Tool Kit - TE15 R407c	6472762	\$16,510.86
Repair Kit - Disc Brakes & Calipers	6408310	\$3,056.95
Torque Multiplier	6314711	\$2,504.57
Hub Repair Kit - MAN VOK-07 Frt Axle	6408311	\$6,277.07

DESCRIPTION	QUOTED PART #	TOTAL SELLING PRICE
Optional Hub Removal Hydraulic Tool Kit - MAN VOK-07	6458834	\$3,968.78
King Pin Press Kit - MAN VOK-07 Frt Axle	6408312	\$10,685.40
Hub Repair Kit - MAN HY1350 RR Axle	6408306	\$4,110.48
ABS Sensor R&R Kit - MAN HY1350 RR Axle	6408307	\$734.86
Pinion Seal Repair Kit - MAN HY1350 RR Axle	6444302	\$2,074.44
Differential Repair Kit - MAN HY1350 RR Axle	6444303	\$6,358.30
Optional Tool Kit - MAN HY1350 RR Axle	6444304	\$27,262.33
Fluke 2 in 1 Multimeter - 1587FC	6473772	\$1,293.33
McMaster Conductivity Meter	6473771	\$715.39
Modular test lead kit	6473267	\$223.56
Test probe flat blade	6473268	\$27.66
Test probe back probe	6473269	\$27.66
Wiha Insulated Master Electrician's tool kit	6473445	\$5,074.81
Wiha Insulated Master Electrician's tool kit	6473446	\$3,141.02
Wiha 1/4 in ratchet set insulated SAE	6473447	\$683.26
Wiha 1/4 in ratchet set insulated Metric	6473448	\$688.85
16 PC 3/8 drive socket set	6473449	\$665.09
3/8 Extension set	6473450	\$81.04
3/8 Extension set	6473451	\$97.11
Wiha open end wrench insulated metric	6473452	\$772.69
Wiha open end wrench insulated SAE	6473453	\$775.48
Wiha insulated Serrated Tweezers Straight	6473454	\$82.78
Wiha insulated Serrated Tweezers Angled	6473455	\$116.67
Insulated Torque Wrench 1/4"	6473456	\$825.78
Insulated Torque Wrench 3/8"	6472024	\$922.19
Insulated Torque Wrench 1/2"	6473457	\$994.84
Torque screwdriver set	6473458	\$564.49
Insulated crimper 30 - 6 Awg 7"	6473459	\$83.63
Wire stripper 6 - 3/8 overall 20 to 10	6473460	\$56.59
Insulated water pump pliers v-jaw	6473461	\$98.86
Insolated hex key set 10pc metric	6473462	\$449.91
Long SAE Natural insulated hex key set 12 pc	6473463	\$398.22
Bit driver	6473464	\$145.31
Stubby Bit Driver	6473465	\$74.40
Wiha Insulated "bitFlip" Set	6472034	\$170.46

DESCRIPTION	QUOTED PART #	TOTAL SELLING PRICE
Mini Screw Driver set	6473466	\$129.25
ARC Flash Protection Clothing Kit - 2PC Small	6471958	\$929.18
ARC Flash Protection Clothing Kit - 2PC Medium	6473412	\$929.18
ARC Flash Protection Clothing Kit - 2PC Large	6473413	\$929.18
ARC Flash Protection Clothing Kit - 2PC XL	6473414	\$929.18
ARC Flash Protection Clothing Kit - 2PC 2XL	6471962	\$969.69
ARC Flash Protection Clothing Kit - 2PC 3XL	6471963	\$1,052.14
ARC Flash Protection Clothing Kit - 2PC 4XL	6471964	\$1,092.65
ARC Flash Protection Clothing Kit - 2PC 5XL	6471965	\$1,134.57
ARC Flash Protection Clothing Kit - 1PC Small	6471966	\$744.74
ARC Flash Protection Clothing Kit - 1PC Medium	6473415	\$744.74
ARC Flash Protection Clothing Kit - 1PC Large	6473416	\$744.74
ARC Flash Protection Clothing Kit - 1PC XL	6473417	\$744.74
ARC Flash Protection Clothing Kit - 1PC 2XL	6473418	\$744.74
ARC Flash Protection Clothing Kit - 1PC 3XL	6471971	\$744.74
ARC Flash Protection Clothing Kit - 1PC 4XL	6471972	\$744.74
ARC Flash Protection Clothing Kit - 1PC 5XL	6471973	\$744.74
Balaclava Head Cover one size fits all	6473440	\$43.46
Hard Hat and Face Shield one size fits all	6473419	\$278.75
Fall Safety Harness 425LBS	6473270	\$220.06
Black electrical glove kit, Size 7	6471976	\$177.46
Black electrical glove kit, Size 8	6473420	\$177.46
Black electrical glove kit, Size 8.5	6471978	\$177.46
Black electrical glove kit, Size 9	6471979	\$177.46
Black electrical glove kit, Size 9.5	6473421	\$177.46
Black electrical glove kit, Size 10	6473422	\$177.46
Black electrical glove kit, Size 10.5	6473423	\$177.46
Black electrical glove kit, Size 11	6473424	\$177.46
Black electrical glove kit, Size 12`	6473425	\$177.46
Over Boots Size 9	6473426	\$196.32
Over Boots Size 10	6473427	\$196.32
Over Boots Size 11	6473428	\$196.32
Over Boots Size 12	6473429	\$196.32
Over Boots Size 13	6473430	\$196.32
Over Boots Size 14	6471990	\$196.32
HV Blanket 3' x 3'	6473431	\$470.19

DESCRIPTION	QUOTED PART #	TOTAL SELLING PRICE
Blanket Clamp 9-1/2" L, 5" Opening	6473432	\$29.07
Glove Dust 0.5oz	6473433	\$18.86
Hot Stick 6FT	6473434	\$725.18
Hot Stick 8FT	6473435	\$790.84
Defibrillator Adult	6473177	\$2,330.09
Brady Personal Lockout Pouch Kit	6473441	\$124.70
Steel Lock Hasp with Tab	6473442	\$16.13
American lock A1106RED	6473443	\$22.49
Lock Out Tag	6473444	\$33.05
Hv Warning sign	6473436	\$21.59
Arc Flash Warning sign	6473437	\$12.37
Hv Caution tape	6473438	\$131.34
steering wheel covers	6473439	\$60.36

Exhibit B

Project Delivery Schedule

Item	Days after Notice-to-Proceed
1) Submittal of Baseline Schedule and Management Work Plan	30
2) Submittal of Vehicle drawings, control, Reliability Program Plan and test plans	140
3) Submittal of training program (including lesson plans)	90
4) Delivery of prototype Coach ¹	266
5) Submittal of draft operations, maintenance, parts manuals, recommended spare parts	By Delivery of the Pilot Coach
6) Approval of Prototype Coach (estimated)	326

Item	Days after Approval of Prototype
7a) Production starts	91
7b) Beginning of Coach delivery ²	161
8) Submittal of final operations, maintenance, and parts manual	By the delivery of the Last Coach
9) Delivery of special tools ³	119 Days from the PO from SFMTA
10) Completion of Coach delivery ⁴	196

1. The SFMTA prefers that the prototype Coach be delivered in September 2020. Approval to deliver the prototype will not be granted until after receipt and approval of all Vehicle drawings, controls and test plans.
2. Approval to deliver production Vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance, and parts manuals; all computer software, manuals, document and demonstrate their operation and after successful completion of all appropriate tests as described in Section 12.2, TEST REQUIREMENTS of the Technical Specification.
3. The delivery of the special tools is dependent on the shipping lead times agreed upon with the Suppliers after the SFMTA selects the final tool list.
4. The SFMTA prefers that the production Coaches are delivered before May 2021.

Exhibit C

Payment Milestones

The City will make progress payments for the Buses upon satisfactory completion of each milestone in accordance with the percentage allocation below.

Item 1- Coach Price

Milestone	Maximum Percent of Bid Item 1 as applicable
(a) Authorization by the SFMTA to ship each Vehicle and authorization by Contractor to release each Vehicle for shipment to the SFMTA, as described in Sections 12.2.3 of the Technical Specifications	25% of Unit Price
(b) Conditional Acceptance of each Vehicle by SFMTA	25% of Unit Price
(c) Full Acceptance of each Vehicle by SFMTA	48% of Unit Price
(d) All Contract Deliverables have been received and Accepted as satisfactory (except for Items 5 and 6)	2%

Item 2 - Spare Parts

The City will make payments for spare parts once they have been delivered and Accepted.

Item 3 – Training

City shall pay for training when 10 mechanics and 20 operators have been fully trained in the operation and maintenance of the vehicle.

Item 4 - Interactive Multimedia Training

City shall make progress payments for Interactive Multimedia Training upon satisfactory completion of each milestone in accordance with the percentage allocation below:

Milestone	Percentage of Bid Item 4
(a) SFMTA approval of design detail documentation	10%
(b) Delivery and approval of one prototype module	20%
(c) Delivery and approval of all pre-production modules	30%
(d) Delivery and approval of all production modules	40%

Item 5 – Operating, Maintenance, and Parts Manuals

When satisfactory draft operating, maintenance and parts manuals have been received, City will pay 30% of this payment item. The balance will be paid when final manuals have been Accepted. Contractor shall deliver to the SFMTA draft operating, maintenance and parts before the start of the first training session.

Item 6 – Special Tools Separate from Coach

City shall pay for special tools and other maintenance equipment upon their Acceptance by the SFMTA.

Exhibit D

FTA Requirements for Procurement Contracts

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

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

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 2 CFR § 200.333.

IV. DEBARMENT AND SUSPENSION (*Contracts over \$25,000*)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, by signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The

bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

VII. DBE/SBE ASSURANCES

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

VIII. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

IX. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

X. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of \$100,000)*

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

XI. CLEAN AIR *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)*

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

XII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIII. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XIV. TERMINATION FOR CONVENIENCE OF CITY *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XV. TERMINATION FOR DEFAULT *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XVI. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less)

made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVII. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XVIII. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XIX. BUS TESTING (*applies to contracts for rolling stock*)

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

B. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a

description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

XX. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

A. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

C. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) the manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) the manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XXII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXIII. NATIONAL ITS ARCHITECTURE POLICY *(applicable to contracts for ITS projects)*

If providing Intelligent Transportation Systems (ITS) property or services, Contractor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXVI. SEAT BELT USE

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States”, April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco
and
BYD Coach and Bus LLC**

**For Procurement of 40-Foot Battery Electric Coaches
Contract No. SFMTA-2020-18
CCO No. 19-1516**

Table of Contents

Article 1: Definitions..... 1

Article 2: Term of the Agreement 4

Article 3: Financial Matters..... 5

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation 5

3.2 Guaranteed Maximum Costs..... 5

3.3 Compensation 5

 3.3.1 Payments..... 5

 3.3.2 Progress Payments 5

 3.3.3 Retention..... 6

 3.3.4 Payment Limited to Satisfactory Work 6

 3.3.5 Withhold Payments..... 6

 3.3.6 Invoice Format..... 6

 3.3.7 Reserved. (LBE Payment) 7

 3.3.8 Getting Paid for Goods and/or Work from the City 7

 3.3.9 Grant-Funded Contracts..... 7

 a. Disallowance 7

 b. Grant Terms 7

3.4 Audit and Inspection of Records..... 8

3.5 Submitting False Claims 8

3.6 Reserved. (Payment of Prevailing Wages) 9

Article 4: Work and Resources..... 9

4.1 Work Contractor Agrees to Perform..... 9

4.2 Qualified Personnel..... 9

4.3 Subcontracting 9

 4.3.1 Subcontracts..... 9

 4.3.2 Prompt Payment to Subcontractors 10

4.4 Independent Contractor; Payment of Employment Taxes and 10

 4.4.1 Independent Contractor 10

 4.4.2 Payment of Employment Taxes and Other Expenses..... 11

4.5 Assignment 11

4.6 Option Vehicles 12

 4.6.1 Options for Additional Coaches 12

4.6.2 Uniformity of Option Vehicles	12
4.7 Liquidated Damages	12
4.8 Performance and Payment Security	13
4.8.1 Bonds	13
4.8.2 Requirements for Bonds	14
4.8.3 Requirements for Letter of Credit.....	15
(a) General Requirements	15
(b) Financial Institution.....	15
(c) Demand on Letter of Credit.....	15
(d) Expiration or Termination.....	16
(e) Return of Letter of Credit.....	16
(f) Excessive Demand.....	16
Article 5: Insurance and Indemnity	17
5.1 Insurance.....	17
5.2 Indemnification.....	18
5.3 Notice of Claim; Tender of Defense.....	19
Article 6: Liability of the Parties	19
6.1 Liability of City.....	19
6.2 Liability for Use of Equipment.....	20
6.3 Liability for Incidental and Consequential Damages.....	20
6.4 Limitation of Liability.....	20
Article 7: Payment of Taxes	20
7.1 Contractor to Pay All Taxes.....	20
7.2 Possessory Interest Taxes	20
7.3 Withholding	21
Article 8: Termination and Default.....	21
8.1 Termination for Convenience	21
8.1.1 Exercise of Option	21
8.1.2 Contractor Actions.....	21
8.1.3 Contractor Invoice	22
8.1.4 Non-Recoverable Costs	23
8.1.5 Deductions	23
8.1.6 Survival.....	23
8.2 Termination for Default; Remedies	23
8.2.1 Event of Default.....	23
8.2.2 Remedies.....	24

8.2.3 No Waiver.....	24
8.2.4 Notice of Default	24
8.3 Non-Waiver of Rights.....	24
8.4 Rights and Duties upon Termination or Expiration.....	25
8.4.1 Survival of Sections.....	25
8.4.2 Contractor Duties.....	25
Article 9: Rights In Deliverables	25
9.1 Ownership of Results.....	25
9.2 Works for Hire	26
9.3 Licenses Granted.....	26
9.3.1 Computerized Software and Systems	26
9.3.2 IP Transfer	26
9.3.3 Bankruptcy.....	27
9.3.4 License for Data.....	27
9.3.5 Other Deliverables.....	27
9.4 Proprietary Materials	28
9.4.1 Contractor Information	28
9.4.2 City Information	28
9.5 Management of City Data and Confidential Information	28
9.5.1 Access to City Data	28
9.5.2 Use of City Data and Confidential Information	29
9.5.3 Disposition of Confidential Information	29
Article 10: Additional Requirements Incorporated by Reference	29
10.1 Laws Incorporated by Reference	29
10.2 Conflict of Interest	29
10.3 Prohibition on Use of Public Funds for Political Activity.....	30
10.4 Consideration of Salary History.....	30
10.5 Nondiscrimination Requirements	30
10.5.1 Non Discrimination in Contracts.....	30
10.5.2 Nondiscrimination in the Provision of Employee Benefits	30
10.6 Reserved (Local Business Enterprise)	30
10.7 Minimum Compensation Ordinance.....	30
10.8 Health Care Accountability Ordinance	31
10.9 First Source Hiring Program.....	31

10.10 Alcohol and Drug-Free Workplace.....	31
10.11 Limitations on Contributions	31
10.12 Reserved. (Slavery Era Disclosure)	32
10.13 Reserved. (Working with Minors)	32
10.14 Consideration of Criminal History in Hiring and Employment Decisions.....	32
10.15 Reserved. (Public Access to Nonprofit Records and Meetings).....	32
10.16 Food Service Waste Reduction Requirements.....	32
10.17 Reserved. (Sugar-Sweetened Beverage Prohibition).....	32
10.18 Tropical Hardwood and Virgin Redwood Ban	32
10.19 Preservative Treated Wood Products.....	33
Article 11: General Provisions	33
11.1 Notices to the Parties	33
11.2 Compliance with Americans with Disabilities Act.....	33
11.3 Reserved.....	33
11.4 Sunshine Ordinance	33
11.5 Modification of this Agreement.....	34
11.6 Authority of Project Manager; Claims; Disputes.....	34
11.6.1 Claims for Additional Compensation	34
11.6.2 Other Claims	35
11.6.3 Resolution of Disputes.....	35
11.6.4 No Cessation of Work	35
11.6.5 Alternative Dispute Resolution.....	35
11.6.6 Disputes Among Contractor's Partners	35
11.6.7 Government Code Claim Requirement	36
11.7 Agreement Made in California; Venue.....	36
11.8 Construction.....	36
11.9 Entire Agreement	36
11.10 Compliance with Laws	36
11.11 Severability	36
11.12 Cooperative Drafting	36
11.13 Order of Precedence.....	36
11.14 Time of Essence.....	37
11.15 Notification of Legal Requests	37
Article 12: Deliveries and Acceptance	37

12.1 Deliveries	37
12.1.1 Predelivery Tests and Inspections	37
12.1.2 Delivery Procedure	37
12.1.3 Condition of Coaches	38
12.1.4 Spare Parts Delivery Procedure	38
12.2 Acceptance of Vehicles.....	38
12.2.1 Procedure	38
12.2.2 Conditional Acceptance.....	39
12.2.3 Assumption of Risk of Loss	39
12.2.4 Title.....	39
12.3 Repairs Prior To Acceptance	39
12.3.1 Repairs by Contractor	39
12.3.2 Repairs by SFMTA.....	39
12.4 Unavoidable Delays.....	40
12.4.1 Definition.....	40
12.4.2 Notification of Delay	40
12.4.3 Request for Extension.....	41
Article 13 SFMTA Conditions	41
13.1 Large Vehicle Driver Safety Training Requirements	41
Article 14: MacBride Principles and Signature	41
14.1 MacBride Principles -Northern Ireland	41

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and
BYD Coach and Bus LLC
Contract No. SFMTA-2020-18**

This Agreement is made on _____ in the City and County of San Francisco, State of California, by and between BYD Coach and Bus LLC, a California limited liability corporation (Contractor), and the City and County of San Francisco (City), a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to obtain the services of a qualified firm to procure three 40-foot, low floor battery-electric coaches, with options for up to three 40-foot, low floor battery electric coaches, and associated spare parts, training, manuals, ViriCiti licenses, and special tools.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on November 21, 2018.

C. Contractor represents and warrants that it is qualified to perform the procurement Work required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Acceptance” means the formal written acceptance by the City that all Work, or a specific portion thereof, under the Contract has been satisfactorily completed.

1.2 “Agreement” or “Contract” means this contract document covering the performance of the Work and furnishing of labor, materials, equipment, tools, and services, including Work incidental to the procurement, to include the Technical Specifications, all Conformed Contract Documents, the Contract bonds or other security, any future amendments, all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

1.3 “**Award**” means notification from the City to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

1.4 “**Buses**” or “**Coaches**” or “**Vehicles**” means the vehicles procured under this Contract.

1.5 “**CCO**” means SFMTA Contract Compliance Office.

1.6 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation.

1.7 “**City Data**” or “**Data**” means all data given to Contractor by City in the performance of this Agreement.

1.8 “**Conditional Acceptance**” means the circumstance in which a Vehicle has been delivered to SFMTA and placed in revenue service despite not having met all requirements for Acceptance.

1.9 “**Confidential Information**” means confidential City information including, but not limited to, personally-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).

1.10 “**Conformed Contract Documents**” means the Contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

1.11 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.12 “**Contract Modification**” means a written amendment to the Contract, agreed to by the City and Contractor, covering changes in the Conformed Contract Documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the Work affected by the changes.

1.13 “**Contractor**” means BYD Coach and Bus LLC, 1800 S. Figueroa Street, Los Angeles, CA 90015.

1.14 “**Controller**” means the Controller of the City.

- 1.15 “Correction”** means the elimination of a Defect.
- 1.16 “Day”** (whether or not capitalized) means a calendar day, unless otherwise designated.
- 1.17 “Defect”** means any patent or latent malfunctions or failure in manufacture or design of any component or subsystem.
- 1.18 “Deliverables”** mean Contractor’s work product resulting from the Work that are provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Technical Specifications.”
- 1.19 “Director”** means the Director of Transportation of the SFMTA or his or her designee.
- 1.20 “Effective Date”** means the date on which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.21 “Engineer”** means the SFMTA Engineer assigned to the Contract or his or her designated agent.
- 1.22 “Final Acceptance”** means the formal written Acceptance by the Director of Transportation or his or her designee that all Contract Deliverables for the Contract have been satisfactorily completed and accepted.
- 1.23 “FTA”** means the Federal Transit Administration.
- 1.24 “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, which impose specific duties and obligations upon Contractor.
- 1.25 “Material and/or Equipment”** means the Buses (including all parts and equipment installed in them) and other Deliverables furnished by the Contractor under the provisions of the Contract.
- 1.26 “Notice to Proceed”** means written notice to the Contractor of the date on which it shall begin prosecution of the Work to be done under the Contract.
- 1.27 “Party”** and **“Parties”** mean the City and Contractor either collectively or individually.
- 1.28 “Project Manager”** means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.
- 1.29 “Proposal”** means the technical and management information and prices submitted by Contractor in response to the RFP.
- 1.30 “Purchase Order”** means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.31 “Related Defect” means damages inflicted on any component or subsystem as a direct result of a Defect.

1.32 “Request for Proposals; RFP” means the Request for Proposals issued by the SFMTA on November 21, 2018, to procure up to five 40-foot Battery Electric Coaches, as amended by addenda.

1.33 “Resident Inspector” means any inspector or inspectors who may be assigned by the SFMTA Project Manager for the inspection of Work to be done under this Contract.

1.34 “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIIIA of the City’s Charter.

1.35 “Subcontractor” or “Supplier” means any individual, partnership, firm, or corporation that, under an agreement with Contractor, undertakes integrally on the Project the partial or total design, manufacture, performance of, or furnishes one or more items of work under the terms of the contract. As used in this Agreement, the terms Subcontractor and Supplier are synonymous.

1.36 “Technical Specifications” means the portion of the Conformed Contract Documents that contain the specifications, provisions, and requirements that detail the Work and the materials, products (including the assembly and testing), and other requirements relative to the manufacturing and construction of the Work.

1.37 “Work” means the furnishing of all design, engineering, manufacturing, labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion and warranty of the Vehicles, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.38 “Working Days” means those Days during which regular business is conducted, excluding Saturdays, Sundays, and all Federal, State, and municipal holidays that are observed by the SFMTA during the duration of the Contract.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date, and expire five years thereafter, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

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 the City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, 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 Payments. Contractor shall provide an invoice to the SFMTA pursuant to the Schedule set out in Exhibit C (Payment Milestones). Compensation shall be made for Work identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Three Million, Five Hundred Nine Thousand, One Hundred Fifty Dollars (\$3,509,150). The breakdown of charges associated with this Agreement appears in Exhibit A (Schedule of Prices). In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Progress Payments.

a. Progress payments shall be conditioned on either (i) transfer of title, free of encumbrances, to the City for the portion of the components, equipment or material paid for by the progress payment, plus a certificate of insurance required by Section 5.1 of this

Agreement; or (ii) issuance of a letter of credit in conformance with the provision of Section 4.8.3 in the amount of the progress payment. Progress payments for which a letter of credit shall be required are as follows: Milestone set forth in Item 1(a) in Exhibit C for each Vehicle. Letter(s) of credit for such progress payments will be released upon Acceptance or Conditional Acceptance of 50 percent of the total Vehicles.

b. In lieu of a letter of credit to secure progress payments, Contractor may elect to increase its performance bond required under Section 4.8.1 of this Agreement by the amount of progress payments for the above milestone and any other items for which Contractor elects to submit security instead of transferring title. Such increase in the amount of the performance bond shall be included in the amount of the performance bond submitted at the time of Contract Award. This increase in the amount of the performance bond shall constitute security for all progress payments for which the bond is issued should Contractor default with respect to any provision of this Agreement. In lieu of an increase in the Performance Bond, an Advance Payment Bond, in a form acceptable to the City's Risk Manager, or other security acceptable to the City's Risk Manager, will also be accepted.

3.3.3 Retention. As described in Exhibit C, the City will withhold 2% of the Vehicle amount as retention until Final Acceptance and conclusion of the Agreement. The City will not make price adjustments to this Contract to protect Contractor from economic inflation; however, the City will negotiate with Contractor adjustments to the price of the Coaches resulting from legislation or regulations that become effective after the date of this Contract that affect the price of the Coaches.

3.3.4 Payment Limited to Satisfactory Work. Contractor is not entitled to any payments from City until the SFMTA approves Work, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Work even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Work may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Work 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.

3.3.5 Withhold Payments. If Contractor fails to provide Work 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, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.6 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must be sent to the address for City in Section 11.1 (Notices to Parties):

Each invoice shall include:

- Relevant milestones;
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount.
- Supporting documentation and/or documentation referencing submittal or delivery.

City will make payment to Contractor as provided in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.7 Reserved. (LBE Payment)

3.3.8 Getting Paid for Goods and/or Work from the City.

All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every Working Day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

The following information is required to sign up: (a) The enroller must be their company's authorized financial representative, (b) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (c) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (d) the company's bank account information, including routing and account numbers.

3.3.9 Grant-Funded Contracts.

a. Disallowance. If Contractor requests or receives payment from City for Work, reimbursement for which is later disallowed by the State of California or United States Government, 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 to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms may be found in Exhibit D (FTA Requirements for Procurement Contracts). 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.

As required by the Grant Terms, Contractor shall insert applicable provisions into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any Subcontractor, lower-tier Subcontractor, or service provider.

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 its Work. Contractor will permit City to audit, examine and make excerpts and transcripts from 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 fewer than five years 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.

To the extent that Contractor believes any records provided to SFMTA or its agents in the course of an audit or inspection under this section are confidential or proprietary, Contractor shall clearly identify such information at the time the information is provided. In the event that the SFMTA receives a request for disclosure of records under the California Public Records Act (Govt. Code Sec. 6250 et seq.) or the San Francisco Sunshine Ordinance (SF Admin. Code Chapter 67) that seeks such records, the SFMTA shall endeavor to provide Contractor reasonable notice of such request. Contractor may at its option take whatever legal steps it deems appropriate to protect said information from disclosure to the public, but the SFMTA shall have no further obligation to protect such information from disclosure. However, if the SFMTA is required to incur legal fees and costs in such legal action, and if the Contractor does not prevail in such legal action, Contractor shall pay all legal fees and costs that the SFMTA incurs as a result of such legal action. The foregoing shall not restrict the ability of the SFMTA or any other governmental agency to use information obtained in the course of an audit or inspection under this section in an audit report.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, 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).

Article 4 Work and Resources

4.1 Work Contractor Agrees to Perform. This Agreement is for the procurement of three 40-ft, low floor, battery electric coaches with options for up to three additional 40-ft, low floor battery electric coaches, as provided for in the Technical Specifications, and in the Contractor's Proposal (as incorporated into the Conformed Contract Documents), according to the Project Delivery Schedule set forth in Exhibit B. Contractor agrees to perform the Work provided for in the Conformed Contract Documents. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, work beyond the Work provided in the Conformed Contract Documents unless the Contract is modified as provided in Section 11.5 (Modification of this Agreement).

4.1.1 Spare Parts. The total Contract amount includes an allowance of \$250,000 for spare parts, as per Schedule 1 of Exhibit A. The City may choose to purchase spare parts from the Contractor at its sole discretion from the list of spare parts included in Schedule 1A of Exhibit A. The City reserves the right to purchase spare parts that are not included in Schedule 1A from the Contractor at negotiated prices. The prices for spare parts listed in Schedule 1A shall be valid for at least two years from the Effective Date. Spare parts shall be delivered within 120 Days after the SFMTA provides written notice of intent to acquire the specified parts.

4.1.2 Special Tools. The total Contract amount includes an allowance of \$50,000 for special tools, as per Schedule 1 of Exhibit A. The City may choose to purchase special tools from the Contractor at its sole discretion from the list of special tools included in Schedule 1B of Exhibit A. The City reserves the right to purchase special tools that are not included in Schedule 1B from the Contractor at negotiated prices. The prices for special tools listed in Schedule 1B shall be valid for at least two years from the Effective Date.

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized Subcontractors) to perform the Work. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

4.3.1 Subcontracts. Contractor may subcontract portions of the Work only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the Work. All Subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 Prompt Payment to Subcontractors.

a. Contractor shall pay each of its Subcontractors within three Working Days after receipt of each progress payment from the City. Within five Working Days of such payment, Contractor shall provide the SFMTA with satisfactory evidence that it has promptly paid each Subcontractor for the Work that it has performed in that billing period. Failure to provide such evidence shall be cause for the SFMTA to suspend future progress payments to Contractor.

b. Within 30 Days of satisfactory completion of all Work required of the Subcontractor, Contractor shall release any retention withheld to the Subcontractor. A violation of the requirements of this Section shall constitute a violation of San Francisco Administrative Code section 6.22.Q. If Contractor does not pay a Subcontractor as required in this Section, Contractor shall pay directly to said Subcontractor a penalty of two percent per month of the amounts unpaid, as provided by Administrative Code section 6.22.Q.

c. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a Subcontractor, the Contractor may withhold the disputed amount, but shall pay the undisputed amount.

d. Contractor shall include these payment requirements in its subcontracts and shall require every Subcontractor of every tier to include these payment requirements in its subcontracts with lower tier Subcontractors.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Article 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 at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be

construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five Working Days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character. 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 as required under City law and under the policy of the SFMTA Board of Directors. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into

contracts with City; and (c) 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.

4.6 Option Vehicles.

4.6.1 Options for Additional Coaches At the option of the City, the Contractor shall provide up to three 40-foot Buses in addition to the initial purchase(s). These options may be exercised at any time up to and including five years from the Effective Date, as set forth in Section 2.2. The maximum quantities of Buses that will be purchased for the subsequent years will be as shown in the Exhibit A (Schedule of Prices). City, at its exclusive option, may assign all or a portion of this option to another transit agency. Such assignment shall be effectuated by an assignment agreement between the City and the transit agency, with notice to Contractor. The assignment agreement may be executed by the Director on behalf of City. These option coaches shall be provided at the bid price(s) quoted in Schedule 1 of Exhibit A.

4.6.2 Uniformity of Option Vehicles. All items purchased under the options shall be identical in every way to those purchased under the base Contract. Any changes to items or components furnished under the options are subject to approval by the City. All conditions, Technical Specifications, and requirements set forth in the Contract documents shall apply to the items purchased as options unless otherwise specified in this Agreement.

4.7 Liquidated Damages. By entering into this Agreement, the Contractor agrees that in the event deliveries are not completed within the number of days indicated in Section 4.1.1, in Exhibit B, and in the Technical Specifications, Sections 13, or if Contractor fails to correct fleet defects in accordance with the Technical Specifications, Section 10.1.5.6, as may be revised by Contract Modifications, City will suffer damages that will be impracticable or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but are 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 contract was awarded. Except where the delay is the result of an Unavoidable Delay, City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA. Liquidated damages imposed under this Agreement shall be in addition to any other damages that are recoverable by the City specified elsewhere in the Contract.

Item No.	Milestone	Amount Per Day
1.	Submittal of Management Work Plan	\$100
2.	Delivery of Lead Coach	\$400
3.	Submittal of Training Lesson Plans	\$200
4.	Submittal of Draft Operation, Maintenance, and Parts Manual	\$200
5.	Delivery of 1st Production Coach	\$400
6.	Delivery of last Production Coach	\$400
7.	Spare Parts Delivery	\$400
8.	Completion of Multimedia Training	\$400
9.	Delivery of Special Tools	\$300
10.	Submittal of Final Operation, Maintenance, and Parts Manuals	\$400
11.	Warranty Fleet Defect Correction (see Technical Specifications, Section 10.1.5.2)	\$250 per coach
12.	Contractor-Supplied Parts	2%*

* 2% per day of Contractor's list price for every Day a part is past the 72-hour delivery time (see Technical Specifications, Section 10.2.2.2).

4.8 Performance and Payment Security. The following provisions set forth financial guarantees that must be met by Contractor. Contractor may choose to meet the requirements of this Section 4.8 by obtaining either the required bonds or an irrevocable letter of credit (Letter of Credit) in an equivalent amount.

4.8.1 Bonds

a. Within 20 days following the receipt of a notice of tentative award of contract, and until completion of all Contract obligations and Acceptance by City of the final Vehicle, the Contractor shall furnish to City a performance and a labor and materials bond each in an amount not less than 20 percent of the total Contract amount to guarantee Contractor's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last Vehicle is Accepted, and to guarantee Contractor's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection c. below.

b. One year after the City fully accepts the last Vehicle, the City will issue a letter releasing the obligations of the surety under the performance and labor and materials bonds, provided that all Deliverables have been performed and Accepted and a warranty bond

or letter of credit meeting the requirements of Section 4.8.2 is in place. The original bond document(s) shall be retained by the City.

c. Contractor shall provide a two-year warranty or guaranty bond in the amount of 10 percent of the Contract price covering all of Contractor's warranty obligations under the Contract, which bond shall become effective upon release of the Performance Bond under subsection b. above. At City's election, and subject to approval of the surety issuing the bond, Contractor shall provide for up to two one-year extensions or renewals of the warranty or guaranty bond at an amount approved by the SFMTA and the City's Risk Manager. If the original surety declines to extend or renew the initial bond, Contractor shall in good faith try to obtain the required additional coverage from another surety and shall document to the City its efforts in this regard. At the expiration of the warranty bond, the City will release it in the same manner as it releases the performance and labor and materials bonds (see subsection b. above).

d. Within 20 days of receipt of a notice from the SFMTA of intention to exercise the option to purchase more Coaches, the Contractor shall furnish to City a separate performance bond and a labor and materials bond in the amount of 20 percent of the cost of the additional Coaches to be purchased, to guarantee performance of all Contract obligations with respect to such optional Vehicles. The Contractor shall provide a two-year warranty or guaranty bond with possible extensions for the option Coaches under the terms of subsection c. above. The City will release the warranty bond as provided above, and retain the original bond documents.

4.8.2 Requirements for Bonds.

a. Bonding entities on the above bonds must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to the SFMTA and to the Controller and Risk Manager of the City.

b. During the period covered by the Agreement, if any of the sureties upon the bond shall have an AM Best rating that falls below A-, VIII, or become insolvent and unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 days after notice given by the SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30-day period to substitute another and sufficient surety, Contractor, if the SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

4.8.3 Requirements for Letter of Credit.

a. General Requirements. Any Letter of Credit submitted as required security under this Agreement shall be a confirmed, clean, irrevocable Letter of Credit in favor of the City and County of San Francisco, a municipal corporation. It must have an original term of one year, with automatic renewals of the full amount (subject to modification to reflect the adjustments set forth above in Section 4.8.1) throughout the term of the Agreement and throughout the performance of Contractor's obligations under the Agreement. If Contractor fails to deliver the Letter of Credit as required, City will be entitled to cancel this Agreement. The Letter of Credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation on behalf of the City.

b. Financial Institution. The Letter of Credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating. Should the financial institution fail to maintain such rating, Contractor shall replace the Letter of Credit within 30 days with a Letter of Credit from a financial institution with such a rating.

c. Demand on Letter of Credit. The Letter of Credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, the SFMTA may make a demand under the Letter of Credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said Letter of Credit only after City first has made its demand for payment directly to Contractor, and five full Working Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Letter of Credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the Work described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the Letter of Credit is so used or applied by City, Contractor, within 10 Working Days after written demand by City, shall reinstate the Letter of Credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

d. Expiration or Termination. The Letter of Credit must provide for 60 days notice to City in the event of non-extension of the Letter of Credit; in that event, Contractor shall replace the Letter of Credit at least 10 Working Days prior to its expiration. In the event the City receives notice from the issuer of the Letter of Credit that the Letter of Credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement Letter of Credit (in a form and issued by a financial institution acceptable to the City) within 10 Working Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the Letter of Credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the Letter of Credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

e. Return of Letter of Credit. The Letter of Credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 4.5, City will return or release the Letter of Credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent Letter of Credit, as determined by City.

f. Excessive Demand. If City receives any payments from the aforementioned bank under the Letter of Credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the Letter of Credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

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.** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- b.** Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- c.** Comprehensive or Business Automobile (Transit Coach, Truck, and other vehicles included) Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- d.** During the course of this Agreement, should any Vehicles already Accepted by City, and in which title is vested in the City, be returned to Contractor for any reason, Contractor shall maintain, with respect to such vehicles, Garagekeepers' Legal Liability Insurance with limits not less than 100 percent of the value of City Vehicles and equipment in Contractor's care, custody, or control, including coverage's for fire, theft, riot and civil commotion, vandalism or malicious mischief, and collision; all-risk transportation insurance for the full value of all City-owned coaches in transit between Contractor and City premises; and any loss payable to the City as its interest may appear.
- e.** During the course of this Agreement, as title to components or Coaches is transferred to City (refer to Section 3.3.2), Contractor shall provide property insurance on such components against all risks of loss or damage for 100% of their replacement value, including City as a named insured and loss payee, as its interests may appear, and any deductible not to exceed \$25,000 each loss.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

- a.** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- b.** 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 insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

5.1.4 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 contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 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.

5.1.6 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.

5.1.7 Before commencing any Work, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements 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.

5.1.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

5.1.9 If Contractor will use any Subcontractor(s) to provide Work, 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.

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (a) injury to or death of a person, including employees

of City or Contractor; (b) loss of or damage to property; (c) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (d) strict liability imposed by any law or regulation; or (e) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to Subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (a) – (e) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 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 Work.

5.3 Notice of Claim; Tender of Defense. The City shall use its best efforts to give prompt written notice to Contractor of any claim for which it requires indemnification from Contractor and will not admit liability or fault as to the allegations of the claim. Provided Contractor accepts the City's tender of defense without reservations, City agrees to grant Contractor sole control over the defense and settlement of the claim and provide timely assistance to Contractor in the defense of the claim.

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 THE SERVICES PERFORMED 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. Except for liquidated damages, Contractor shall not be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

6.4 Limitation of Liability. Except as provided herein, Contractor's aggregate liability to the City under this Agreement shall be limited to the Contract amount stated in Section 3.3.1, as that amount may be modified by a properly approved and executed Contract Modification. Said limitation on liability shall not apply to:

6.4.1 damages and other liability caused by Contractor's willful, intentional acts or omissions;

6.4.2 liability arising under or for violation of any applicable statute, City ordinance, regulation, or other laws;

6.4.3 damages and other liability arising under claims by third parties, including indemnity or contribution for claims brought by a third party (see Section 5.2.1);

6.4.4 damages and other liability for infringement of any intellectual property right as provided in Section 5.2.3.

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 Services 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 Revenue and Taxation Code section 480.5, 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. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 Exercise of Option. 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. The notice shall specify the date on which termination shall become effective.

8.1.2 Contractor Actions. 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 date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such

actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- a.** Halting the performance of all Work under this Agreement on the date(s) and in the manner specified by the SFMTA.
- b.** Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Work, equipment or other items.
- c.**
- d.** At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA 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.
- e.** Subject to the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- f.** Completing performance of any Work that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.
- g.** Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which the SFMTA has or may acquire an interest.

8.1.3 Contractor Invoice. Within 30 days after the specified termination date, Contractor shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

- a.** The reasonable cost to Contractor, without profit, for all Work prior to the specified termination date, for which Work the SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- b.** A reasonable allowance for profit on the cost of the Work described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of the SFMTA, that Contractor would have made a profit had all Work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- c.** The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.
- d.** A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the

SFMTA, and any other appropriate credits to the SFMTA against the cost of the Work or other work.

8.1.4 Non-Recoverable Costs. In no event shall the City be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Work under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 Deductions. In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (a) all payments previously made by the SFMTA for Work covered by Contractor's final invoice; (b) any claim which the SFMTA may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (d) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Work, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Work in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

8.2.1 Event of Default. 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.
- 4.5 Assignment
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 9.4 Proprietary Materials
- 9.5 Management of City Data and Confidential Information
- 10.10 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws

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 continues for a period of 10 days after written notice thereof from the SFMTA to Contractor.

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 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: (a) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (b) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (c), 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 No Waiver. 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 Notice of Default. Any notice of default must be sent by registered mail to the address set forth in 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 Survival of Sections. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.4	Payment Limited to Satisfactory Work
3.3.9(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Survival
8.2.2	Remedies
9.1	Ownership of Results
9.2	Works for Hire
9.4.	Proprietary Materials
9.5	Management of City Data and Confidential Information
11.6.3	Resolution of Disputes
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

8.4.2 Contractor Duties. 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 Ownership of Results. Any interest of Contractor or its Subcontractors, in the Deliverables, including any materials, equipment, drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents

prepared by Contractor or its Subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Work, Contractor or its Subcontractors create Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. These shall include, but not be limited to, the data that comprises the destination sign system, as specified in Section 3.10 of the Technical Specifications; the Data that comprises the voice annunciation system, as specified in Section 3.11 of the Technical Specifications; the source code for the SFMTA-specific portion of the multiplex electrical system controller, as described in Section 7.9 of the Technical Specifications; the vehicle record book, as provided in Section 9.2.7 of the Technical Specifications; and the computer database record, as provided in Section 10.3.3 of the Technical Specifications.. If any Deliverables created by Contractor or its Subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon Subcontractor(s). With City's prior written approval, Contractor and its Subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

9.3 Licenses Granted

9.3.1 Computerized Software and Systems. To the extent that software, firmware, systems designs, computerized manuals, training modules, or other such Deliverables are not designed specifically for City's purposes in connection with the Agreement, Contractor grants City a perpetual, non-exclusive, non-transferable, license at all locations owned or controlled by City to use all such Deliverables, or portions thereof. City shall also be authorized to modify or prepare derivative works of the Deliverables and make copies of such Deliverables for internal use only. Any such modifications shall become the property of the City unless such modifications are not used exclusively for internal purposes. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Deliverable(s) or any related materials or documentation. Contractor warrants that it has title to and/or the authority to grant a license of such Deliverables to the City.

9.3.2 IP Transfer. In the event that Contractor is (a) unable or fails to meet its warranty or service obligations, excluding any such failure that results from Contractor's good faith dispute with City as to the validity of a warranty claim, or (b) Contractor (i) shall make an assignment for the benefit of creditors, or (ii) shall file in any court or agency of competent

jurisdiction, a petition in bankruptcy or insolvency (each, an “IP Transfer Trigger Event”), Contractor shall deliver any software, firmware, systems designs, computerized manuals, training modules, or other such information necessary to enable City to perform the maintenance and operation of the Vehicles (collectively, the “Specified Contractor IP”). No later than 30 days after an IP Transfer Trigger Event, City shall have the right to receive from Contractor, and Contractor shall deliver to City, one copy of the Specified Contractor IP, and Contractor grants to City a non-exclusive, royalty-free right and license to use the Specified Contractor IP solely as necessary for City to perform the maintenance and operation of the Vehicles.

9.3.3 Bankruptcy. All rights and licenses granted in respect of the Specified Contractor IP are, and shall be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, 11 U.S.C. § 101 et seq., licenses of rights to “intellectual property” as defined under Section 101(35A) of the Bankruptcy Code; and the Specified Contractor IP is, and shall be deemed to be, “embodiment[s]” of “intellectual property” for purposes of same. City shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code or equivalent legislation in any other jurisdiction. Without limiting the generality of the foregoing, Contractor acknowledges that the rights and license granted to City pursuant to this Section 9.3 shall not be affected by Contractor’s rejection of this Agreement in bankruptcy and shall continue subject to the terms and conditions of this Agreement.

9.3.4 License for Data. Except as provided below, the City grants to Contractor a license to inspect, examine, and otherwise obtain any information or data available from components provided by the Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable the Contractor to perform reliability maintenance analysis, corrective actions, and/or other engineering work for the Buses. This grant of license does not apply to any data or information obtained through or downloaded from the following systems:

- a. Passenger Information System
- b. CAD/AVL System
- c. Automatic Passenger Counter System
- d. Video Surveillance System

9.3.5 Other Deliverables. Contractor grants City a perpetual, non-exclusive, non-transferable license to use, retain, and reproduce at all locations controlled by the SFMTA, for internal use only, all copies (whether in hard copy or electronic format) of drawings, plans, specifications, schematics, studies, reports, memoranda, computation sheets and all other documents that are (a) prepared by Contractor or its Subcontractors or Suppliers (but not exclusively for City); and (b) subject to any restrictions set forth herein, required to be provided to City in connection with this Agreement. Contractor warrants that it has title to and/or the authority to grant a license of such Deliverables to the City.

9.4 Proprietary Materials.

9.4.1 Contractor Information. To the extent that the Contractor considers any document or Deliverable to be a trade secret or otherwise proprietary, Contractor shall so mark them. SFMTA shall require individuals using such proprietary documents to maintain the confidentiality of the documents, and if necessary, sign a confidentiality agreement regarding use of highly sensitive documents. For purposes of this Agreement, the Specified Contractor IP (see Section 9.3.2) shall be considered a trade secret under this Section and subject to the provisions of this Section. Contractor shall hold the City harmless from and defend the City against all claims, suits or other proceedings instituted against the City for copyright infringement, misuse or misappropriation of a trade secret, or for access to the documents or Deliverables under the City's Sunshine Ordinance or the California Public Records Act. The SFMTA will give Contractor prompt notice if it receives a request for such records under the Sunshine Ordinance or the California Public Records Act to allow Contractor the opportunity to contest the request. Contractor will pay the costs and damages awarded in any such action or proceeding, or the cost of settling such action or proceeding, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the buses, spare parts, documents or Deliverables constitutes infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

9.4.2 City Information.

a. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and its subcontractors shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

b. In the performance of Work, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, 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.

9.5 Management of City Data and Confidential Information.

9.5.1 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

9.5.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information 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 or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information 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, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

9.5.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 Working Days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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 Working Days of the purge.

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 performing the Work, 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 Administrative Code Chapter 12K, 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 (a) asking such applicants about their current or past salary or (b) 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 Chapter 12K. Information about and the text of Chapter 12K 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 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. 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 Administrative Code Section 12B.2.

10.6 Reserved. (Local Business Enterprise)

10.7 Minimum Compensation Ordinance. Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in

Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor agrees to choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3, and to comply with the HCAO as set forth in Chapter 12Q.

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) and the California Drug-Free Workplace Act of 1990, Cal. Gov. Code, Sections 8350 et seq., if state funds involved.

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 (a) 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, (b) a candidate for that City elective office, or (c) 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 10% in Contractor; any subcontractor listed in the bid 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 Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, 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 Chapter 12T.

10.14.2 The requirements of Chapter 12T 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. Chapter 12T 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. (Sugar-Sweetened Beverage Prohibition).

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.

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 contract 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.

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: San Francisco Municipal Transportation Agency
 Transit Division Fleet Engineering
 700 Pennsylvania Avenue, San Francisco, CA 94107
 Attention: Bhavin Khatri, Project Manager
 bhavin.khatri@sfmta.com

To Contractor: BYD Coach & Bus LLC
 1800 S. Figueroa Street, Los Angeles, CA 90015
 Attention: Robert B. Hill, Vice President of Sales, North America
 bobby.hill@byd.com

Any notice of default must be sent by registered mail or overnight delivery service or courier. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Work in a manner that complies with the Americans with Disabilities Act (ADA), including, but not limited to, Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Reserved.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code §6250 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. See also Section 3.4 for Contractor's legal obligations for requests under the Sunshine Ordinance.

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 as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Authority of Project Manager; Claims; Disputes . The Project Manager shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Project Manager shall at all times act fairly and reasonably. Any appeal of the Project Manager's decisions shall be in accordance with the provisions of Section 11.9 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 3.3.1 of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Project Manager, who, in consultation with other City representatives, as applicable, and with input the Contractor, shall decide the true meaning and intent of the Contract. The Project Manager's decision in this regard shall be administratively final and conclusive.

11.6.1 Claims for Additional Compensation.

a. Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Project Manager due written notice of potential claim.

b. The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Project Manager prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other

cases, within 30 Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

c. It is the intention of this Section 11.6.1 that differences between the Parties arising under and by virtue of the Contract be brought to the attention of the SFMTA at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

11.6.2 Other Claims. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 15 Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

11.6.3 Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the parties shall be decided in writing by the SFMTA Project Manager. The Project Manager's decision shall be administratively final and conclusive unless within 10 Working Days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit, or his/her designee. In connection with such an appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Project Manager's decision as to a particular dispute is final.

11.6.4 No Cessation of Work. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Project Manager.

11.6.5 Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to 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. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.6 Disputes Among Contractor's Partners. The resolution of any contractual disputes related to Contractor's Joint Venture or Association partners (if any) shall be the sole responsibility of the Contractor. Each party of the Joint Venture or Association shall resolve all such disputes within 30 calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to

withhold and/or reduce invoice payments to the Contractor's Joint Venture or Association firms until the dispute is resolved.

11.6.7 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.

11.7 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 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 (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) 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. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement. Any inconsistency in

requirements of the Contract documents shall be resolved by giving precedence in the following order:

- a. This Contract document, including Appendices
- b. Technical Specifications, including the warranty provisions

11.14 Time of Essence. Time is of the essence in this Agreement.

11.15 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (Legal Requests) related to City Data, or which in any way might reasonably require access to City Data, and in no event later than 24 hours after it receives the request. 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

Article 12 Deliveries and Acceptance

12.1 Deliveries

12.1.1 Predelivery Tests and Inspections. Pre-delivery tests and inspections shall be performed prior to shipment to the SFMTA. Such tests and inspections shall be performed in accordance with the procedures defined in Verification Section 12.2.3 of the Technical Specifications, and they may be witnessed by the SFMTA Resident Inspector. When a Coach passes these tests and inspections, the Resident Inspector shall authorize release of the Coach for shipment. Such authorization does not imply Acceptance of the Vehicle by the SFMTA.

12.1.2 Delivery Procedure. Delivery shall be determined by signed receipt of the SFMTA Engineer at the point of delivery and may be preceded by a cursory inspection of the Vehicle. The point of delivery shall be:

40-Ft Battery Electric Coaches
1098 23 rd Street
San Francisco, California 94107

Contractor shall deliver Coaches during weekday working hours at a time mutually agreeable to the SFMTA and Contractor, or as otherwise specified in writing by the SFMTA. Contractor shall provide at least five Working Days' notice to the SFMTA prior to delivery. Delivery of the Coaches shall be F.O.B. point of delivery, freight pre-paid and allowed. Contractor shall ensure that all Coaches are fully operable when they are delivered. Contractor shall deliver a maximum of three coaches per week.

12.1.3 Condition of Coaches. Drivers shall keep a complete and accurate maintenance log while enroute, which shall be delivered to the SFMTA Project Manager / Representative with the Coach. The log shall show the driver's compliance with the tire manufacturer's highway operating procedures. If the Coaches are towed, the rear axle shafts shall be removed during the towing and re-coupled by the Contractor after arrival at the point of delivery. Contractor shall deliver each Coach with a full tank of fuel and fully cleaned (exterior, interior, underside, and topside) prior to presentation for inspection. Also, if the Coaches are towed from the Contractor's facility to the SFMTA, highway-type tires shall be installed. Upon arrival at an SFMTA maintenance facility or within the City/County of San Francisco, Contractor, at its expense, shall install city-type tires.

12.1.4 Spare Parts Delivery Procedure. Composition of spare parts is subject to SFMTA approval. Contractor shall provide the SFMTA with one-week advance notice before shipment of spare parts. Such notice shall include a packing list clearly identifying all parts and their quantity in the shipment.

Delivery of spare parts shall be acknowledged by signed receipt of the SFMTA representative at the point of delivery and may be preceded by a cursory inspection of the parts. Within 20 Days of delivery, the SFMTA will issue a notification of Acceptance, non-Acceptance, or Conditional Acceptance of the spare parts. The point of delivery shall be the location for the applicable Coach provided in Section 12.1.2.

Delivery of spare parts shall be F.O.B. point of delivery, freight pre-paid and allowed.

12.2 Acceptance of Vehicles

12.2.1 Procedure.

a. Contractor shall ensure that the Coach's underside is washed and cleaned prior to being presented to SFMTA for Acceptance.

b. After arrival at the designated point of delivery, each Coach shall undergo pre-Acceptance and Acceptance tests by the SFMTA as defined in the Quality Assurance Section of the Technical Specifications. The SFMTA shall make a good faith effort to begin the Acceptance process within 20 Days after delivery of each Coach. When a Coach passes all tests, SFMTA will provide written Acceptance of the Coach to the Contractor. Contractor shall transfer title to the Coach to the City on the day of Acceptance, or Conditional Acceptance, if the Coach is not fully Accepted. Acceptance of one Coach does not imply Acceptance of any other delivered Coaches.

c. If a Coach fails the Acceptance tests, the Coach shall not be Accepted until the repair procedures defined in Section 12.3, of this Agreement have been carried out and the Coach has been retested and passes all applicable tests. All deliveries of Coaches shall be halted whenever five or more Coaches have failed or have not been Accepted or Conditionally Accepted and are awaiting repairs or Corrections.

d. After completion of post-delivery testing, the SFMTA will issue a notification of Acceptance, non-Acceptance or Conditional Acceptance.

12.2.2 Conditional Acceptance. If a Coach does not meet all requirements for Acceptance, the SFMTA may, at its exclusive option, “conditionally accept” the Coach and place it into revenue service, pending receipt of Contractor-furnished materials and/or labor necessary to effectuate corrective action for Acceptance. For any Conditionally Accepted Vehicle, payments shall be made as provided in Section 3.3.1 above.

12.2.3 Assumption of Risk of Loss. Prior to delivery as described in Section 12.1 of this Agreement, and regardless whether title has passed to the City, the Contractor shall bear risk of loss of the Coach, including any damage sustained during transportation to the delivery site. Risk of loss will pass to the SFMTA upon delivery of each Coach except that loss or damage to the Coach resulting from acts or omissions of the Contractor shall be the responsibility of the Contractor until Acceptance of the Vehicle.

12.2.4 Title . At the time each Coach is delivered, Contractor shall provide the SFMTA Project Manager with adequate documents for securing the title for the Coach in the State of California. Unless full unencumbered title transfers earlier under Section 3.3.2, upon Acceptance of each Coach, title to each Coach shall pass to the City, which title Contractor warrants shall be free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims, and demands of any character.

12.3 Repairs Prior To Acceptance. The SFMTA Project Manager may require the Contractor, or its designated representative, to perform repairs after non-Acceptance or Conditional Acceptance, or the Contractor may request that the repairs be done by SFMTA personnel with reimbursement by the Contractor. Contractor shall inform the SFMTA in advance of any modifications made to the Coach during the Acceptance period.

12.3.1 Repairs by Contractor. If the SFMTA Project Manager requires the Contractor to perform repairs after non-Acceptance or Conditional Acceptance of the Vehicle, the Contractor's representative must begin the repair within five Days after receiving notification from the SFMTA Project Manager of failure of Acceptance tests.

The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the SFMTA Project Manager’s option, the Contractor may be required to remove the Coach from SFMTA property while repairs are being effected. The Contractor shall then provide a space to complete the repairs, shall diligently pursue the repairs, and shall assume risk of loss while the Coach is under its control.

12.3.2 Repairs by SFMTA.

a. If the SFMTA Project Manager agrees to a request by the Contractor for SFMTA to perform repairs on a Contractor-owned Coach prior to SFMTA

Acceptance, the SFMTA shall correct or repair the Defect using parts supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the SFMTA Project Manager to the Contractor for actual cost reimbursement of parts. The Contractor shall provide forms for these reports.

b. If the Contractor supplies parts for repairs being performed by the SFMTA before Acceptance of the Coach, Contractor shall deliver these parts prepaid to the SFMTA within 10 Working Days after receipt of the request for the parts. The Contractor may request that Defective components covered by this provision be returned to the manufacturing plant. Contractor shall bear all expenses for supplying such parts and for any associated costs.

c. Contractor shall reimburse the SFMTA for all costs of labor and materials (including taxes) for repairs made or caused to be made by the SFMTA. If the SFMTA performs the repairs itself, the amount shall be determined by multiplying the number of person-hours actually required to Correct the Defect by the current technician's hourly overtime wage rate, which includes fringe benefits and overhead, plus the cost of towing the Coach if such action was necessary. If the SFMTA requires the service of an outside repair facility, Contractor shall reimburse the SFMTA for all such repair invoices. Contractor shall also reimburse the SFMTA for administrative costs incurred in performing the repairs. The use of SFMTA labor will not relieve the Contractor from the responsibility to ensure that repairs are carried out in accordance with proper procedures.

d. SFMTA may deduct the cost of repairs from any monies due or that may become due to the Contractor under the Agreement, or if such monies are insufficient, the Contractor or its surety shall pay to the SFMTA any deficiency.

12.4 Unavoidable Delays

12.4.1 Definition. An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include, and are limited to, acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the Work are delayed thereby, as determined by the City.

12.4.2 Notification of Delay. The Contractor shall notify the SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay

deliveries. Within five Days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

12.4.3 Request for Extension. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by the SFMTA to make a decision on any request for extension. The SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension, and if so, the duration of such extension. The SFMTA shall notify the Contractor of its decision in writing.

The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

Article 13 SFMTA Conditions

13.1 Large Vehicle Driver Safety Training Requirements.

13.1.1 Contractor agrees that before any of its employees and Subcontractors drive large vehicles within the City and County of San Francisco, those employees and Subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or Subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 14 MacBride Principles and Signature

14.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §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.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Thomas G. Maguire Interim Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>BYD Coach and Bus LLC</p> <hr/> <p>Robert B. Hill Vice President of Sales, North America 1800 S Figueroa St, Los Angeles, CA 90015</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 13.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 0000032388</p>
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Exhibits

- A: Schedule of Prices
- B: Project Delivery Schedule

- C: Payment Milestones
- D: FTA Requirements for Procurement Contracts

Exhibit A
Schedule 1 - Schedule of Prices

City is exempt from federal excise taxes. State, local sales, and use taxes are not to be included in these prices.

No.	Qty.	Description	Unit Price	Total Price
1	3	40-ft Low Floor Coaches	\$861,150	\$2,583,450
2	LS	Allowance for regulatory mandated changes, requested passenger enhancements and system modifications resulting from changes to project interface	N/A	\$75,000
3	N/A	Intentionally left blank.		
4	3	ViriCiti User License for 2 years. License includes basic vehicle, driver behavior, maintenance, basic charging station, and smart charging.	\$12,150	\$36,450
5	1	Training for 40-ft Low Floor Coaches	N/A	\$250,000
6	LS	Interactive Multimedia Training for 40-ft Low Floor Coaches (Section 9.1.10 of the Technical Specifications)	N/A	\$250,000
7	LS	Operating, Maintenance and Parts Manuals for 40-ft Low Floor Coaches	N/A	\$14,250
8	LS	Spare Parts For 40-ft Low Floor Coaches	N/A	\$250,000
9	LS	Special Tools For 40-ft Low Floor Coaches	N/A	\$50,000
Grand Total				\$3,509,150

* Hourly rate of \$200 for qualified training instructor from New Flyer. Hourly rates from Supplier representatives may vary.

Option Prices:

10	3	Options for 3 40-ft Low Floor Coaches, including ViriCiti subscription (see item #4)	<u>\$873,300.00</u> + PPI ⁽¹⁾	<u>\$2,619,900.00</u> + PPI ⁽¹⁾
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(1) PPI: Producer's Price Index (Actual) to be determined at the time the options are exercised

Schedule 1A - Spare Parts List

Classification	Part No.	Description	Qty per Bus	Unit Price (USD)
Recommended Stocking List (Subject to Change)				
Basic Parts	C8A-7922020	USB charge	1	\$ 20.34
Critical Parts	K6F-3776010B	rear camera	1	\$ 87.33
Basic Parts	C10M-7910010	BYD monitor	1	\$ 347.25
Basic Parts	K9W-3850020	Date Logger	1	\$ 277.71
Basic Parts	K9M-7917080	(InteriorSpeaker)	6	\$ 11.25
Basic Parts	K9M-3607020C	36" VR Microphone w/90"	1	\$ 167.63
Basic Parts	K9-3819300B	alarmbuzzer	2	\$ 7.05
Basic Parts	K9A-3819200	ReverseBuzzer	1	\$ 52.47
Basic Parts	K9M-3819300	Buzzer	1	\$ 49.19
Basic Parts	KB-3721010	HighFrequencyHorn	1	\$ 18.00
Basic Parts	KB-3721020	LowFrequencyHorn	1	\$ 17.55
Basic Parts	K9M-1308010	CoolingFan	1	\$ 26.94
Critical Parts	K11U-2142050	Bidirectional Inverted Motor	1	\$ 6,179.49
Critical Parts	K11U-2142060	Bidirectional Inverted Motor	1	\$ 9,210.18
Critical Parts	K8M-2142070	Vehicle Controllor Assy.	1	\$ 252.60
Basic Parts	C8A-8125140A	Coolant sensor	2	\$ 19.95
Critical Parts	C8A-8125120	Water pump assembly	2	\$ 140.61
Critical Parts	C8A-8125120D	Water pump assembly	2	\$ 184.20
Basic Parts	K9MC-2803010	Front Bumper	1	\$ 1,368.62
Basic Parts	K9MC-2804010	Rear Bumper	1	\$ 1,294.41
Basic Parts	KA-5526316C	Sling	12	\$ 10.14
Basic Parts	YQ10/22-310-700 (SAP 11629314)	air spring	1	\$ 7.17
Basic Parts	YQ10/22-310-700 (SAP # 11691902)	air spring	1	\$ 8.13
Basic Parts	TK-6206235	Six-link hingeVIIleft	1	\$ 38.85
Basic Parts	TK-6206236	Six-link hingeVIIright	1	\$ 38.85
Basic Parts	TK-6205165	circumgyrate Key	3	\$ 21.96
Frequently	K9MC-5205111	136-9045-GA-04	2	\$ 23.06
Basic Parts	K9MC-5205112	Wiper arm assemble	2	\$ 67.88
Critical Parts	K9MC-5205113	motor	2	\$ 71.48
Basic Parts	K9MC-5205114	Linkage Assembly (with	2	\$ 83.70
Critical Parts	K9MC-5207111	20L washer Tank with one 24	1	\$ 67.88
Basic Parts	K9MC-5205115	100-5026—39-C0 Max	2	\$ 2.39
Critical Parts	K9MC-5206311	Left-frontwindow Glass	1	\$ 247.01

Critical Parts	K9MC-5206312	Right-frontwindow Glass	1	\$ 247.01
Critical Parts	K9MC-5206313	Up-frontwindow Glass	1	\$ 219.11
Critical Parts	K9MC-5206314A	Windshield Weatherstrip	1	\$ 607.77
Basic Parts	K9A-3526010B	Hand brake valve	1	\$ 295.05
Basic Parts	K9-3535030A	SingleCheckValveASSY	3	\$ 10.92
Basic Parts	K9A-3526020	BrakeReleaseValveASSY	1	\$ 29.10
Basic Parts	C9M-3565010	Solenoidvalvefordoorinterlock	2	\$ 234.90
Basic Parts	K9M-3535040	Double Check Valve(278614N)	2	\$ 11.46
Basic Parts	C9M-3555010	airdryer	1	\$ 1,579.56
Basic Parts	K11M-3518010	RelayValve	1	\$ 42.33
Basic Parts	K9MA-3518020	RelayValve	1	\$ 97.67
Basic Parts	K11M-3535050	Pressure-limitValve	1	\$ 23.91
Basic Parts	K9M-3816010A	Mechanical pressure gauge	1	\$ 308.70
Critical Parts	K10MR-3525010	ModulatorValve	4	\$ 125.55
Basic Parts	C10M-2908020	levelingvalve	3	\$ 48.81
Basic Parts	K9M-3404400	Universal joint drive axle	1	\$ 240.71
Basic Parts	K8M-2105410H	1# Power Battery in series HV	1	\$ 495.33
Basic Parts	K8M-2105420H	1# Power Battery in series HV	1	\$ 228.06
Basic Parts	K8M-2105910F	1# Power Battery Positive Pole	1	\$ 425.91
Basic Parts	K8M-2105930F	2# Power Battery Positive Pole	1	\$ 388.92
Critical Parts	TK-8102300ZH	Multi-function electric	1	\$ 1,006.41
Critical Parts	TK-8114680ZC	Defroster PTC Driver	1	\$ 324.66
Critical Parts	K9U-8114650Z	Defroster Controller	1	\$ 100.08
Critical Parts	K9DA-8114810C	Air conditioning control panel	1	\$ 284.49
Basic Parts	C10MS-3513050A	Manual purge valve assembly	5	\$ 5.91
Basic Parts	K9-3513030A	AutomaticDrainValve	2	\$ 16.86
Critical Parts	K9A-1315010	Pump Assembly	2	\$ 293.61
Basic Parts	K8SR-1311100	Left Antifreeze Tank	1	\$ 57.87
Basic Parts	K8SR-1311200	Right Antifreeze Tank	1	\$ 103.50
Basic Parts	K9-3101100-C1	Aluminum alloy wheel	6	\$ 554.25
Basic Parts	C8A-8125130E	Antifreeze tank	1	\$ 60.54
Basic Parts	K8M-2155020N	High Voltage Distribution Box	1	\$ 4,363.62
Critical Parts	K8M-2105800AD	AC Charging Inlet Assembly	1	\$ 488.82
Critical Parts	K8M-2105800BD	AC Charging Inlet Assembly	1	\$ 588.33
Basic Parts	K9A-2105240	3-Phase Harness Transferring	2	\$ 316.55
Basic Parts	K8M-2813311R	front hubcap fence 1	2	\$ 78.93
Basic Parts	K8M-2813323R	rear hubcap fence 3	1	\$ 60.57
Basic Parts	K8M-2813324R	rear hubcap fence 4	1	\$ 60.57
Frequently	BYDQ304C22T13F17P	wheel nut	20	\$ 10.68

Frequently	BYDQ304C22-	wheel nut	20	\$ 11.04
Basic Parts	K10MR-2906010B	Front sway bar	1	\$ 798.15
Basic Parts	K9-3101112	Inflate extension	2	\$ 5.01
Basic Parts	K11M-2300010	Front axle assembly	1	\$ 8,529.00
Basic Parts	EQ13B-2400010-G5	Rear Axle	1	\$ 36,869.13
Basic Parts	KD2-1108010	Electronic Accelerate Pedal	1	\$ 182.70
Basic Parts	K11M-3419010	Steering pitman arm assembly	1	\$ 61.50
Critical Parts	K11U-3416010	Power steering fluid pump	1	\$ 1,305.09
Critical Parts	K9-3404030	Steering angle driver assembly	1	\$ 197.82
Critical Parts	K9-3404050	Steering drive axle assembly	1	\$ 85.26
Basic Parts	K9-3408010	Power steering fluid reservoir	1	\$ 70.32
Critical Parts	K9D-3411010A	Power steering gear assembly	1	\$ 1,017.15
Critical Parts	K9MC-3419020	Steering drag link assembly	1	\$ 512.02
Critical Parts	K9MC-5206315A	Windshield Pillar	1	\$ 62.91
Critical Parts	K8M-5206111	Driver's Window	1	\$ 1,803.17
Critical Parts	K8M-5206112	Side Window1	1	\$ 910.89
Critical Parts	K8M-5206113	Side Window2	1	\$ 1,732.77
Critical Parts	K8M-5206114	Side Window3	1	\$ 437.12
Critical Parts	K8M-5206115U	Side Window4	1	\$ 1,864.01
Critical Parts	K8M-5206116	Side Window5	1	\$ 1,549.55
Critical Parts	K8M-5206117S	Side Window6	1	\$ 1,699.75
Critical Parts	K8M-5206118S	Side Window7	1	\$ 1,699.75
Critical Parts	K8M-5206211A	Side Window8	1	\$ 1,925.45
Critical Parts	K8M-5206212S	Side Window9	1	\$ 1,984.44
Critical Parts	K8M-5206213U	Side Window10	1	\$ 1,748.47
Critical Parts	K9MC-5206316A	Windshield Pillar	1	\$ 86.28
Basic Parts	K8M-5613100V	LEFT RADIATOR GRID DOOR	1	\$ 161.88
Basic Parts	K8M-5613200V	RIGHT RADIATOR GRID DOOR	1	\$ 161.88
Basic Parts	YQ10/22-310-700(B-	air spring	2	\$ 4.47
Basic Parts	TK-6206155	Left single-axis hinge VI	1	\$ 9.63
Basic Parts	TK-6206156	Right single-axis hinge VI	1	\$ 9.63
Basic Parts	K8M-5916100H	distributor door	1	\$ 379.68
Basic Parts	YQ10/22-210-500(B-	Air spring	6	\$ 5.58
Basic Parts	K8M-5921100H	Left Battery Box Door	1	\$ 429.15
Basic Parts	K8M-5921200H	Right Battery Box Door	1	\$ 429.15
Basic Parts	YQ10/22-135-350(B-	air spring	2	\$ 8.73
Basic Parts	TK-6205141	insure flagstaff lock850	2	\$ 25.20
Basic Parts	K8M-3513050	shutdffcockvalve	2	\$ 11.82
Critical Parts	K9C-3514010A	Foot brake valve assembly	1	\$ 1,129.29
Critical Parts	K11M-3509010A	Air compressor Assembly	1	\$ 7,941.18

Basic Parts	KA-3511010	Condenser Assembly	1	\$ 254.40
Basic Parts	TK-6205148	Circumgyrate Lock	19	\$ 21.17
Basic Parts	K11M-8204100A	Side sunvisor	1	\$ 120.00
Basic Parts	K9M-8201100A	rear-view mirror I	1	\$ 67.67
Basic Parts	K9M-8201200	rear-view mirror II	1	\$ 81.65
Critical Parts	K8M-2152420P	Battery Management	1	\$ 227.94
Critical Parts	K8M-2152430P	Battery Management	1	\$ 227.94
Critical Parts	K7M-2108060B-D1	rear auxiliary controller	1	\$ 106.68
Critical Parts	K8M-3510010	DC and Auxiliary Motor	1	\$ 2,005.44
Critical Parts	K9-3630010	ABS Electronic Control Unit	1	\$ 178.74
Basic Parts	K9C-8114380A	Pressure sensor	3	\$ 166.35
Basic Parts	K9C-1300800	Temperature Sensor	2	\$ 7.68
Basic Parts	K9M-3736300A	SPSTMomentaryOn-	5	\$ 29.07
Basic Parts	K9M-1602530B	TurningLightSwitch	3	\$ 49.50
Basic Parts	K9M-1602520	TurningLightSwitch	1	\$ 13.04
Basic Parts	K9M-3736500	SPDTMomOn-Off-	2	\$ 21.90
Basic Parts	K9M-3736200	SPSTOn-	1	\$ 21.15
Basic Parts	TK-6206153	left six link hinge III	1	\$ 29.10
Basic Parts	TK-6206154	right six link hinge III	1	\$ 29.10
Frequently	K9MC-8202100	High Mount RS Mirror	1	\$ 655.02
Frequently	K9MA-8202109	Right exterior mirror with	1	\$ 889.86
Critical Parts	K9KA-2102010F	Maintenance Switch	1	\$ 577.83
Critical Parts	K8M-2152410P	Battery Management	1	\$ 328.47
Frequently	K9M-4126500	KneelingAlarmLight	1	\$ 20.88
Frequently	K9M-4133010	Brake&TailLight	2	\$ 81.09
Frequently	K9M-4111500	RearTurningLight	2	\$ 91.14
Frequently	K7M-4113100	ReverseLight	2	\$ 82.32
Frequently	K9M-4134100	AuxiliaryStopLight	2	\$ 53.34
Critical Parts	K9MC-3820010	Combined Instrument	1	\$ 384.66
Basic Parts	e6-3642900	Start Button	1	\$ 30.15
Critical Parts	K9-3640100N	Body Control Module	1	\$ 89.13
Critical Parts	K9M-3640200	2# Body Control Module	1	\$ 98.85
Basic Parts	K9U-3600010A	Gateway Controller	1	\$ 58.38
Basic Parts	K9U-3600030	Charging Gateway Controller	1	\$ 64.92
Critical Parts	K11M-3722010	Instrument Distribution Box	1	\$ 223.11
Critical Parts	K9U-3722030	Rear Hatch Distribution Box	1	\$ 191.88
Basic Parts	K9M-3910244	Manual Actuation Switch	1	\$ 157.08
Basic Parts	K9M-3910213	VH25ABC horizontal cylinder,	2	\$ 861.71
Basic Parts	K9M-3736400A	SPDTOn-Off-	2	\$ 26.16
Basic Parts	KB-4115100	chargingportlight	3	\$ 9.78
Frequently	K9A-4127100	Rearcompartmentlight	12	\$ 6.90

Frequently	C6-4126100	StepLamp	2	\$ 6.75
Frequently	K9M-4101100A	HighBeamHeadlight	2	\$ 223.50
Frequently	K9M-4102100D	Low Beam Headlight	2	\$ 208.50
Frequently	K9M-4111300A	FrontTurninglight	2	\$ 61.34
Frequently	K9M-4114100	FrontMarkerLight	9	\$ 17.01
Frequently	K9M-4111100	SideTurnSignalLight	4	\$ 27.81
Basic Parts	K9M-3850010	(VehicletravelingdataRecorder	1	\$ 3,440.63
Basic Parts	K8M-3607030A	ERIC++2MFL M\COMMS	1	\$ 750.00
Frequently	K9M-4114300	RearMarkerLight	7	\$ 17.01
Frequently	K9M-4127100	RearCompartmentLight	4	\$ 60.36
Basic Parts	K9M-4108100	LisencePlateLight	1	\$ 92.78
Basic Parts	K9M-4131100	DoorLight	2	\$ 84.47
Frequently	BYDEG-3703010	LowVoltageBattery	2	\$ 310.19
Basic Parts	K9M-8220317	LowVoltageBatteryGuiderail	2	\$ 60.48
Basic Parts	K8M-5107200T	Ramp assembly	1	\$ 9,468.54
Basic Parts	K11M-8204200D	Front sunvisor	1	\$ 115.50
Critical Parts	K9A-3555011A	Air Dryer Filter	1	\$ 48.47
Basic Parts	k9w-8114510	brush evaporator fan	1	\$ 173.04
Basic Parts	TB3-8114420	Temperature sensor	1	\$ 5.40
Basic Parts	TK-8102380B	DeforsterPTC	1	\$ 663.99
Frequently	6B-8114110	Model Motor	1	\$ 23.33
Basic Parts	K7A-1301010	Radiator Assy.	2	\$ 227.43
Critical Parts	K7A-1308010	Electronic Fan	2	\$ 581.55
Basic Parts	K8SR-1311211	Liquid Level sensor	2	\$ 19.17
Basic Parts	TK-8100520	Condenser Blower	1	\$ 133.26
Basic Parts	F3-8114400B	Temperature sensor	1	\$ 2.67
Basic Parts		Evaporator Fan	1	\$ 672.51
Critical Parts		Electronic Compressor Assy.	1	\$ 949.71
Critical Parts	K11M-6100321	Fronnd Door Motor	1	\$ 2,035.53
Critical Parts	K8M-6100130P	CONTROLLER ASSY. ETO BYD	2	\$ 695.79
Critical Parts	K11M-6700321	Middle Door Motor	1	\$ 2,790.00
Basic Parts	K8SR-8103100-C1	Electric Compressor Assy.	1	\$ 1,181.34
Basic Parts	F3-8114400B	Exterior Temperature Sensor	1	\$ 2.67
Basic Parts	C8A-8125110A	BatteryTemperatureManagem	1	\$ 182.52
Frequently		Fuse_170M3148-1300V-400A	2	\$ 74.37
Frequently		Fuse_170M1809-1000V-125A	2	\$ 103.98
Frequently		Fuse_170M1807-1000V-80A	3	\$ 102.93
Frequently		Fuse_PV-32A14L-	3	\$ 24.54
Frequently		Prefilled Resistance_UXP/250-	1	\$ 43.86

Frequently		Power Relay-EVR40CI-A-800V-	4	\$ 61.08
Frequently		Power Relay_HFE82V-120/750-	1	\$ 127.86
Frequently		Power Relay_EVR300CE-	3	\$ 165.57
Frequently		DC LeakageSensors	1	\$ 153.81
Frequently		Fuse_297005	1	\$ 0.38
Frequently		Fuse_29707.5	1	\$ 0.24
Frequently		Fuse_297010	1	\$ 0.24
Frequently		Fuse_297015	1	\$ 0.24
Frequently		Fuse_297020	1	\$ 0.30
Frequently		Fuse_297030	1	\$ 0.45
Frequently		Fuse3151-0001-50A	1	\$ 1.29
Frequently		Fuse_3170-0001_MIDI_70A	1	\$ 0.72
Frequently		Fuse_3120-0001_MIDI_150A	1	\$ 0.87
Frequently		Fuse297030	1	\$ 0.48
Frequently		Fuse_40A	1	\$ 0.78
Frequently		Fuse_50A	1	\$ 1.05
Frequently		Fuse_E11121_MINI_5A	1	\$ 0.24
Frequently	K9F-2916211	Round Bushing	2	\$ 28.05
Basic Parts	K8S-2906200A	Hanger	2	\$ 122.13
Frequently	K9-2935010	Rear Air Bag Assy.	4	\$ 416.61
Basic Parts		Rear Sway Bar Rod	2	\$ 121.26
Frequently	K9F-2916211	Round Bushing	2	\$ 28.05
Basic Parts	K9FE-2919010	Rear Upper Thrust Rod	2	\$ 226.14
Basic Parts	K9FE-2919020	Rear Lower Thrust Rod	2	\$ 226.14
Basic Parts	K9U-2915010	Rear Shock Absorber	2	\$ 306.42
Basic Parts	K9-2909010B	Front Thrust Rod	2	\$ 732.53
Basic Parts	K9F-2905010	Front Shock Absorber	2	\$ 293.01
Frequently	K9-2930010	Front Air Bag Assembly	2	\$ 508.74
Frequently	K9-3408100	Steering Tank Filter	1	\$ 50.55
Basic Parts	K9M-3509710S	Air compressor pump head	1	\$ 9,902.85
Basic Parts	K9M-3509820S	Air compressor Maintenance	1	\$ 51.87
Frequently	K9M-3509211A	Air compressor air filter	1	\$ 311.79
Basic Parts	K9M-3509510A	Air compressor Oil cooler	1	\$ 1,012.08
Basic Parts	K9M-3509610A	Air compressor Oil Level	1	\$ 824.01
Basic Parts	K9M-3509222A	Air compressor Equalizing	1	\$ 268.53
Basic Parts	K9M-3509223A	Air compressor Safety valve	1	\$ 446.91
Basic Parts	K9M-3509224A	Air compressor Suction valve	1	\$ 557.76
Frequently	K9M-3509110A	Air compressor Oil Separation	1	\$ 506.88
Basic Parts	K9M-3509210A	Air compressor Air filter	1	\$ 419.43

Basic Parts	K9M-3509410A	Air compressor Coupling	1	\$ 682.17
Basic Parts	K9M-3509810T	Motor Maintenance Package	1	\$ 1,943.34
Critical Parts	K9G-2102110	MaintenanceSwitchHandle	1	\$ 91.77
Frequently	K9A-3630310	Front Speed Sensor	1	\$ 42.51
Frequently	K11M-3501011	Front Rotor	2	\$ 352.05
Frequently	K8SR-3501130	Front Friction Disk Point	2	\$ 206.64
Critical Parts	K11M-3501200	Front Left Brake Caliper	1	\$ 3,319.86
Critical Parts	K11M-3501100	Front Right Brake Caliper	1	\$ 3,319.86
Frequently	K11M-2301113	Front Wheel Bolt	20	\$ 18.30
Frequently	K9A-3501114A	Brake Sealing Kit	2	\$ 430.67
Critical Parts	K10MR-3501300	Front Brake Chamber	2	\$ 155.37
Critical Parts		ChargingGun_K9-EVA080KS-	1	\$ 663.45
Critical Parts		PowerTransformer_R20-480V-	1	\$ 13.68
Critical Parts		Contactors_P85AC277V	1	\$ 122.43
Critical Parts		SurgeProtector_DS44S_3+1P_	1	\$ 274.68
Critical Parts		Smallcircuitbreaker_GSB2-	1	\$ 14.19
Critical Parts		Switching power supply _220-	1	\$ 35.34
Critical Parts		Man-machine interface	1	\$ 400.83
Critical Parts		Emergency Stop Button	1	\$ 15.09
Critical Parts		Self-made accessory 40KW wall-mounted charging box no	1	\$ 238.98
Critical Parts		Self-made accessory 40KW	1	\$ 16.98
Critical Parts		Leakage Protection Circuit	1	\$ 538.50
Critical Parts		BYD3425TZA-	1	\$ 10,210.11
Critical Parts		BYD3425TZA-	1	\$ 9,903.42
Basic Parts		KD2-2935211_Air	1	\$ 436.50
Basic Parts		KD2-2935212_Air cantilever	1	\$ 436.50
Basic Parts		KD2-2935215_Air	1	\$ 599.25
Critical Parts		KD2-3502100B_Left Rear	1	\$ 1,675.08
Critical Parts		KD2-3502500B_Left Rear	1	\$ 650.37
Critical Parts		KD2-3502200B_Right Rear	1	\$ 1,675.08
Critical Parts		Right Rear Brake Clamp	1	\$ 667.65
Critical Parts		KD2-2935216_Air	1	\$ 599.25
Frequently		35J18L-2405115_Rear wheel	2	\$ 48.87
Critical Parts		35J18L-2405910_Gear Oil	2	\$ 8.67
Critical Parts		KD1-3104010_Rear hub	2	\$ 1,235.34
Critical Parts		150J09L-	2	\$ 11.61
Frequently	KD2-3502140B	Friction pad repair kit	1	\$ 519.36
Frequently	K8SR-3501130	Friction disc wear indicator	2	\$ 206.64
Critical Parts	150J10L-2405021	Left secondary reducer	1	\$ 9,327.15

Critical Parts	150J10R-2405022	Right secondary reducer	1	\$ 9,182.49
Critical Parts	K9-3501011	K9-3501011_Rear brake disc	2	\$ 291.03
Critical Parts	35J18L-1721030C	Left Planetary Gear Reducer	1	\$ 1,447.32
Critical Parts	35J18R-1721040C	Right Planetary Gear Reducer	1	\$ 1,657.68

Schedule 1B - Special Tools List

Description	Qty	Unit Price
Reducer removal socket tools	1	\$351.90
Assemble box guide	1	\$369.51
Power battery equalization equipment BAT	1	\$11,000.01
Special tool for battery pack formodularization battery	1	\$897.18
Rubber protector	8	\$20.62
Plier	2	\$41.56
C18DT-G- CC00047_1.8T American 80V Dual Drive Electrical valve four function 270Ah Non-marking tire 4.8mSingle free lift 900 Hang on-SS 4th hose 1200 LBR Front	1	\$78,735.00
CAN Box	1	\$971.45
VDCI Data Logger	1	\$577.59
Vehicle Diagnosis System_VDS2100-CE-S+	1	\$19,560.00

Exhibit B

Project Delivery Schedule

Item	Days after Notice-to-Proceed
1) Submittal of Baseline Schedule and Management Work Plan	30
2) Submittal of Vehicle drawings, control, Reliability Program Plan and test plans	60
3) Submittal of training program (including lesson plans)	90
4) Delivery of prototype Coach ¹	270
5) Submittal of draft operations, maintenance, parts manuals, recommended spare parts	300
6) Approval of Prototype Coach (estimated)	330

Item	Days after Approval of Prototype
7a) Production starts	90
7b) Beginning of Coach delivery ²	120
8) Submittal of final operations, maintenance, and parts manual	135
9) Delivery of special tools ³	200
10) Completion of Coach delivery ⁴	150

- ¹ The SFMTA prefers that the prototype Coach be delivered in September 2020. Approval to deliver the prototype will not be granted until after receipt and approval of all Vehicle drawings, controls and test plans.
- ² Approval to deliver production Vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance, and parts manuals; all computer software, manuals, document and demonstrate their operation and after successful completion of all appropriate tests as described in Section 12.2, TEST REQUIREMENTS of the Technical Specification.
- ³ The delivery of the special tools is dependent on the shipping lead times agreed upon with the Suppliers after the SFMTA selects the final tool list.
- ⁴ The SFMTA prefers that the production Coaches are delivered before May 2021.

Exhibit C

Payment Milestones

The City will make progress payments for the Buses upon satisfactory completion of each milestone in accordance with the percentage allocation below.

Item 1- Coach Price

Milestone	Maximum Percent of Bid Item 1 as applicable
(a) Authorization by the SFMTA to ship each Vehicle and authorization by Contractor to release each Vehicle for shipment to the SFMTA, as described in Sections 12.2.3 of the Technical Specifications	25% of Unit Price
(b) Conditional Acceptance of each Vehicle by SFMTA	25% of Unit Price
(c) Full Acceptance of each Vehicle by SFMTA	48% of Unit Price
(d) All Contract Deliverables have been received and Accepted as satisfactory (except for Items 5 and 6)	2%

Item 2 - Spare Parts

The City will make payments for spare parts once they have been delivered and Accepted.

Item 3 – Training

City shall pay for training when 10 mechanics and 20 operators have been fully trained in the operation and maintenance of the vehicle.

Item 4 - Interactive Multimedia Training

City shall make progress payments for Interactive Multimedia Training upon satisfactory completion of each milestone in accordance with the percentage allocation below:

Milestone	Percentage of Bid Item 4
(a) SFMTA approval of design detail documentation	10%
(b) Delivery and approval of one prototype module	20%
(c) Delivery and approval of all pre-production modules	30%
(d) Delivery and approval of all production modules	40%
(e)	

Item 5 - Operating, Maintenance, and Parts Manuals

When satisfactory draft operating, maintenance and parts manuals have been received, City will pay 30% of this payment item. The balance will be paid when final manuals have been Accepted. Contractor shall deliver to the SFMTA draft operating, maintenance and parts before the start of the first training session.

Item 6 – Special Tools Separate from Coach

City shall pay for special tools and other maintenance equipment upon their Acceptance by the SFMTA.

Exhibit D

FTA Requirements for Procurement Contracts

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

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

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 2 CFR § 200.333.

IV. DEBARMENT AND SUSPENSION (*Contracts over \$25,000*)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, by signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The

bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

VII. DBE/SBE ASSURANCES

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

VIII. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

IX. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

X. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of \$100,000)*

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

XI. CLEAN AIR *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)*

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

XII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIII. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XIV. TERMINATION FOR CONVENIENCE OF CITY *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XV. TERMINATION FOR DEFAULT *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XVI. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less)

made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVII. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XVIII. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XIX. BUS TESTING (*applies to contracts for rolling stock*)

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

B. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a

description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

XX. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

A. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

C. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) the manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) the manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XXII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXIII. NATIONAL ITS ARCHITECTURE POLICY *(applicable to contracts for ITS projects)*

If providing Intelligent Transportation Systems (ITS) property or services, Contractor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXVI. SEAT BELT USE

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States”, April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco
and
Proterra Inc.**

**For Procurement of 40-Foot Battery Electric Coaches
Contract No. SFMTA-2020-19
CCO No. 19-1517**

Table of Contents

Article 1: Definitions..... 1

Article 2: Term of the Agreement 4

Article 3: Financial Matters..... 5

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation 5

3.2 Guaranteed Maximum Costs..... 5

3.3 Compensation 5

 3.3.1 Payments..... 5

 3.3.2 Progress Payments 5

 3.3.3 Retention..... 6

 3.3.4 Payment Limited to Satisfactory Work 6

 3.3.5 Withhold Payments..... 6

 3.3.6 Invoice Format..... 6

 3.3.7 Reserved. (LBE Payment) 7

 3.3.8 Getting Paid for Goods and/or Work from the City 7

 3.3.9 Grant-Funded Contracts..... 7

 a. Disallowance 7

 b. Grant Terms 7

3.4 Audit and Inspection of Records..... 8

3.5 Submitting False Claims 8

3.6 Reserved. (Payment of Prevailing Wages) 9

Article 4: Work and Resources..... 9

4.1 Work Contractor Agrees to Perform..... 9

4.2 Qualified Personnel..... 9

4.3 Subcontracting 9

 4.3.1 Subcontracts..... 9

 4.3.2 Prompt Payment to Subcontractors 10

4.4 Independent Contractor; Payment of Employment Taxes and 10

 4.4.1 Independent Contractor 10

 4.4.2 Payment of Employment Taxes and Other Expenses..... 11

4.5 Assignment 11

4.6 Option Vehicles 12

 4.6.1 Options for Additional Coaches 12

4.6.2 Uniformity of Option Vehicles	12
4.7 Liquidated Damages	12
4.8 Performance and Payment Security	13
4.8.1 Bonds	13
4.8.2 Requirements for Bonds	14
4.8.3 Requirements for Letter of Credit.....	15
(a) General Requirements	15
(b) Financial Institution.....	15
(c) Demand on Letter of Credit.....	15
(d) Expiration or Termination.....	16
(e) Return of Letter of Credit.....	16
(f) Excessive Demand.....	16
Article 5: Insurance and Indemnity	17
5.1 Insurance.....	17
5.2 Indemnification.....	18
5.3 Notice of Claim; Tender of Defense.....	19
Article 6: Liability of the Parties	19
6.1 Liability of City.....	19
6.2 Liability for Use of Equipment.....	20
6.3 Liability for Incidental and Consequential Damages.....	20
6.4 Limitation of Liability.....	20
Article 7: Payment of Taxes	20
7.1 Contractor to Pay All Taxes.....	20
7.2 Possessory Interest Taxes	20
7.3 Withholding	21
Article 8: Termination and Default.....	21
8.1 Termination for Convenience	21
8.1.1 Exercise of Option	21
8.1.2 Contractor Actions.....	21
8.1.3 Contractor Invoice	22
8.1.4 Non-Recoverable Costs	23
8.1.5 Deductions	23
8.1.6 Survival.....	23
8.2 Termination for Default; Remedies	23
8.2.1 Event of Default.....	23
8.2.2 Remedies.....	24

8.2.3 No Waiver.....	24
8.2.4 Notice of Default	24
8.3 Non-Waiver of Rights.....	24
8.4 Rights and Duties upon Termination or Expiration.....	25
8.4.1 Survival of Sections.....	25
8.4.2 Contractor Duties.....	25
Article 9: Rights In Deliverables	25
9.1 Ownership of Results.....	25
9.2 Works for Hire	26
9.3 Licenses Granted.....	26
9.3.1 Computerized Software and Systems	26
9.3.2 IP Transfer	26
9.3.3 Bankruptcy.....	27
9.3.4 License for Data.....	27
9.3.5 Other Deliverables.....	27
9.4 Proprietary Materials	28
9.4.1 Contractor Information	28
9.4.2 City Information	28
9.5 Management of City Data and Confidential Information	28
9.5.1 Access to City Data	28
9.5.2 Use of City Data and Confidential Information	29
9.5.3 Disposition of Confidential Information	29
Article 10: Additional Requirements Incorporated by Reference	29
10.1 Laws Incorporated by Reference	29
10.2 Conflict of Interest	29
10.3 Prohibition on Use of Public Funds for Political Activity.....	30
10.4 Consideration of Salary History.....	30
10.5 Nondiscrimination Requirements	30
10.5.1 Non Discrimination in Contracts.....	30
10.5.2 Nondiscrimination in the Provision of Employee Benefits	30
10.6 Reserved (Local Business Enterprise)	30
10.7 Minimum Compensation Ordinance.....	30
10.8 Health Care Accountability Ordinance	31
10.9 First Source Hiring Program.....	31

10.10 Alcohol and Drug-Free Workplace.....	31
10.11 Limitations on Contributions	31
10.12 Reserved. (Slavery Era Disclosure)	32
10.13 Reserved. (Working with Minors)	32
10.14 Consideration of Criminal History in Hiring and Employment Decisions.....	32
10.15 Reserved. (Public Access to Nonprofit Records and Meetings).....	32
10.16 Food Service Waste Reduction Requirements.....	32
10.17 Reserved. (Sugar-Sweetened Beverage Prohibition).....	32
10.18 Tropical Hardwood and Virgin Redwood Ban	32
10.19 Preservative Treated Wood Products.....	33
Article 11: General Provisions	33
11.1 Notices to the Parties	33
11.2 Compliance with Americans with Disabilities Act.....	33
11.3 Reserved.....	33
11.4 Sunshine Ordinance	33
11.5 Modification of this Agreement.....	34
11.6 Authority of Project Manager; Claims; Disputes.....	34
11.6.1 Claims for Additional Compensation	34
11.6.2 Other Claims	35
11.6.3 Resolution of Disputes.....	35
11.6.4 No Cessation of Work	35
11.6.5 Alternative Dispute Resolution.....	35
11.6.6 Disputes Among Contractor's Partners	35
11.6.7 Government Code Claim Requirement	36
11.7 Agreement Made in California; Venue.....	36
11.8 Construction.....	36
11.9 Entire Agreement	36
11.10 Compliance with Laws	36
11.11 Severability	36
11.12 Cooperative Drafting	36
11.13 Order of Precedence.....	36
11.14 Time of Essence.....	37
11.15 Notification of Legal Requests	37
Article 12: Deliveries and Acceptance	37

12.1 Deliveries	37
12.1.1 Predelivery Tests and Inspections	37
12.1.2 Delivery Procedure	37
12.1.3 Condition of Coaches	37
12.1.4 Spare Parts Delivery Procedure	38
12.2 Acceptance of Vehicles.....	38
12.2.1 Procedure	38
12.2.2 Conditional Acceptance.....	38
12.2.3 Assumption of Risk of Loss	39
12.2.4 Title.....	39
12.3 Repairs Prior To Acceptance	39
12.3.1 Repairs by Contractor	39
12.3.2 Repairs by SFMTA.....	39
12.4 Unavoidable Delays.....	40
12.4.1 Definition.....	40
12.4.2 Notification of Delay	40
12.4.3 Request for Extension.....	40
Article 13 SFMTA Conditions	41
13.1 Large Vehicle Driver Safety Training Requirements	41
Article 14: MacBride Principles and Signature	41
14.1 MacBride Principles -Northern Ireland	41

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and
Proterra Inc.
Contract No. SFMTA-2020-19**

This Agreement is made on _____ in the City and County of San Francisco, State of California, by and between Proterra Inc., a Delaware corporation (Contractor), and the City and County of San Francisco (City), a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to obtain the services of a qualified firm to procure three 40-foot, low floor battery-electric coaches, with options for up to three 40-foot, low floor battery electric coaches, and associated spare parts, training, manuals, ViriCiti licenses, and special tools.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on November 21, 2018.

C. Contractor represents and warrants that it is qualified to perform the procurement Work required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Acceptance” means the formal written acceptance by the City that all Work, or a specific portion thereof, under the Contract has been satisfactorily completed.

1.2 “Agreement” or “Contract” means this contract document covering the performance of the Work and furnishing of labor, materials, equipment, tools, and services, including Work incidental to the procurement, to include the Technical Specifications, all Conformed Contract Documents, the Contract bonds or other security, any future amendments, all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

1.3 “**Award**” means notification from the City to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

1.4 “**Buses**” or “**Coaches**” or “**Vehicles**” means the vehicles procured under this Contract.

1.5 “**CCO**” means SFMTA Contract Compliance Office.

1.6 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation.

1.7 “**City Data**” or “**Data**” means all data given to Contractor by City in the performance of this Agreement.

1.8 “**Conditional Acceptance**” means the circumstance in which a Vehicle has been delivered to SFMTA and placed in revenue service despite not having met all requirements for Acceptance.

1.9 “**Confidential Information**” means confidential City information including, but not limited to, personally-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).

1.10 “**Conformed Contract Documents**” means the Contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

1.11 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.12 “**Contract Modification**” means a written amendment to the Contract, agreed to by the City and Contractor, covering changes in the Conformed Contract Documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the Work affected by the changes.

1.13 “**Contractor**” means Proterra Inc., located at 1815 Rollins Road, Burlingame, CA 94010.

1.14 “**Controller**” means the Controller of the City.

- 1.15 “Correction”** means the elimination of a Defect.
- 1.16 “Day”** (whether or not capitalized) means a calendar day, unless otherwise designated.
- 1.17 “Defect”** means any patent or latent malfunctions or failure in manufacture or design of any component or subsystem.
- 1.18 “Deliverables”** mean Contractor’s work product resulting from the Work that are provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Technical Specifications.”
- 1.19 “Director”** means the Director of Transportation of the SFMTA or his or her designee.
- 1.20 “Effective Date”** means the date on which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.21 “Engineer”** means the SFMTA Engineer assigned to the Contract or his or her designated agent.
- 1.22 “Final Acceptance”** means the formal written Acceptance by the Director of Transportation or his or her designee that all Contract Deliverables for the Contract have been satisfactorily completed and accepted.
- 1.23 “FTA”** means the Federal Transit Administration.
- 1.24 “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, which impose specific duties and obligations upon Contractor.
- 1.25 “Material and/or Equipment”** means the Buses (including all parts and equipment installed in them) and other Deliverables furnished by the Contractor under the provisions of the Contract.
- 1.26 “Notice to Proceed”** means written notice to the Contractor of the date on which it shall begin prosecution of the Work to be done under the Contract.
- 1.27 “Party”** and **“Parties”** mean the City and Contractor either collectively or individually.
- 1.28 “Project Manager”** means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.
- 1.29 “Proposal”** means the technical and management information and prices submitted by Contractor in response to the RFP.
- 1.30 “Purchase Order”** means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.31 “Related Defect” means damages inflicted on any component or subsystem as a direct result of a Defect.

1.32 “Request for Proposals; RFP” means the Request for Proposals issued by the SFMTA on November 21, 2018, to procure up to five 40-foot Battery Electric Coaches, as amended by addenda.

1.33 “Resident Inspector” means any inspector or inspectors who may be assigned by the SFMTA Project Manager for the inspection of Work to be done under this Contract.

1.34 “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIIIA of the City’s Charter.

1.35 “Subcontractor” or “Supplier” means any individual, partnership, firm, or corporation that, under an agreement with Contractor, undertakes integrally on the Project the partial or total design, manufacture, performance of, or furnishes one or more items of work under the terms of the contract. As used in this Agreement, the terms Subcontractor and Supplier are synonymous.

1.36 “Technical Specifications” means the portion of the Conformed Contract Documents that contain the specifications, provisions, and requirements that detail the Work and the materials, products (including the assembly and testing), and other requirements relative to the manufacturing and construction of the Work.

1.37 “Work” means the furnishing of all design, engineering, manufacturing, labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion and warranty of the Vehicles, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.38 “Working Days” means those Days during which regular business is conducted, excluding Saturdays, Sundays, and all Federal, State, and municipal holidays that are observed by the SFMTA during the duration of the Contract.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date, and expire five years thereafter, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

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 the City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, 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 Payments. Contractor shall provide an invoice to the SFMTA pursuant to the Schedule set out in Exhibit C (Payment Milestones). Compensation shall be made for Work identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Five Million, Two Hundred Sixty-Two Thousand, Six Hundred Two Dollars (\$5,262,602). The breakdown of charges associated with this Agreement appears in Exhibit A (Schedule of Prices). In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Progress Payments.

a. Progress payments shall be conditioned on either (i) transfer of title, free of encumbrances, to the City for the portion of the components, equipment or material paid for by the progress payment, plus a certificate of insurance required by Section 5.1 of this

Agreement; or (ii) issuance of a letter of credit in conformance with the provision of Section 4.8.3 in the amount of the progress payment. Progress payments for which a letter of credit shall be required are as follows: Milestone set forth in Item 1(a) in Exhibit C for each Vehicle. Letter(s) of credit for such progress payments will be released upon Acceptance or Conditional Acceptance of 50 percent of the total Vehicles.

b. In lieu of a letter of credit to secure progress payments, Contractor may elect to increase its performance bond required under Section 4.8.1 of this Agreement by the amount of progress payments for the above milestone and any other items for which Contractor elects to submit security instead of transferring title. Such increase in the amount of the performance bond shall be included in the amount of the performance bond submitted at the time of Contract Award. This increase in the amount of the performance bond shall constitute security for all progress payments for which the bond is issued should Contractor default with respect to any provision of this Agreement. In lieu of an increase in the Performance Bond, an Advance Payment Bond, in a form acceptable to the City's Risk Manager, or other security acceptable to the City's Risk Manager, will also be accepted.

3.3.3 Retention. As described in Exhibit C, the City will withhold 2% of the Vehicle amount as retention until Final Acceptance and conclusion of the Agreement. The City will not make price adjustments to this Contract to protect Contractor from economic inflation; however, the City will negotiate with Contractor adjustments to the price of the Coaches resulting from legislation or regulations that become effective after the date of this Contract that affect the price of the Coaches.

3.3.4 Payment Limited to Satisfactory Work. Contractor is not entitled to any payments from City until the SFMTA approves Work, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Work even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Work may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Work 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.

3.3.5 Withhold Payments. If Contractor fails to provide Work 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, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.6 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must be sent to the address for City in Section 11.1 (Notices to Parties):

Each invoice shall include:

- Relevant milestones;
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount.
- Supporting documentation and/or documentation referencing submittal or delivery.

City will make payment to Contractor as provided in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.7 Reserved. (LBE Payment)

3.3.8 Getting Paid for Goods and/or Work from the City.

All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every Working Day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

The following information is required to sign up: (a) The enroller must be their company's authorized financial representative, (b) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (c) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (d) the company's bank account information, including routing and account numbers.

3.3.9 Grant-Funded Contracts.

a. Disallowance. If Contractor requests or receives payment from City for Work, reimbursement for which is later disallowed by the State of California or United States Government, 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 to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms may be found in Exhibit D (FTA Requirements for Procurement Contracts). 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.

As required by the Grant Terms, Contractor shall insert applicable provisions into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any Subcontractor, lower-tier Subcontractor, or service provider.

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 its Work. Contractor will permit City to audit, examine and make excerpts and transcripts from 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 fewer than five years 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.

To the extent that Contractor believes any records provided to SFMTA or its agents in the course of an audit or inspection under this section are confidential or proprietary, Contractor shall clearly identify such information at the time the information is provided. In the event that the SFMTA receives a request for disclosure of records under the California Public Records Act (Govt. Code Sec. 6250 et seq.) or the San Francisco Sunshine Ordinance (SF Admin. Code Chapter 67) that seeks such records, the SFMTA shall endeavor to provide Contractor reasonable notice of such request. Contractor may at its option take whatever legal steps it deems appropriate to protect said information from disclosure to the public, but the SFMTA shall have no further obligation to protect such information from disclosure. However, if the SFMTA is required to incur legal fees and costs in such legal action, and if the Contractor does not prevail in such legal action, Contractor shall pay all legal fees and costs that the SFMTA incurs as a result of such legal action. The foregoing shall not restrict the ability of the SFMTA or any other governmental agency to use information obtained in the course of an audit or inspection under this section in an audit report.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, 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).

Article 4 Work and Resources

4.1 Work Contractor Agrees to Perform. This Agreement is for the procurement of three 40-ft, low floor, battery electric coaches with options for up to three additional 40-ft, low floor battery electric coaches, as provided for in the Technical Specifications, and in the Contractor's Proposal (as incorporated into the Conformed Contract Documents), according to the Project Delivery Schedule set forth in Exhibit B. Contractor agrees to perform the Work provided for in the Conformed Contract Documents. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, work beyond the Work provided in the Conformed Contract Documents unless the Contract is modified as provided in Section 11.5 (Modification of this Agreement).

4.1.1 Spare Parts. The total Contract amount includes an allowance of \$250,000 for spare parts, as per Schedule 1 of Exhibit A. The City may choose to purchase spare parts from the Contractor at its sole discretion from the list of spare parts included in Schedule 1A of Exhibit A. The City reserves the right to purchase spare parts that are not included in Schedule 1A from the Contractor at negotiated prices. The prices for spare parts listed in Schedule 1A shall be valid for at least two years from the Effective Date. Spare parts shall be delivered within 120 Days after the SFMTA provides written notice of intent to acquire the specified parts.

4.1.2 Special Tools. The total Contract amount includes an allowance of \$50,000 for special tools, as per Schedule 1 of Exhibit A. The City may choose to purchase special tools from the Contractor at its sole discretion from the list of special tools included in Schedule 1B of Exhibit A. The City reserves the right to purchase special tools that are not included in Schedule 1B from the Contractor at negotiated prices. The prices for special tools listed in Schedule 1B shall be valid for at least two years from the Effective Date.

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized Subcontractors) to perform the Work. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

4.3.1 Subcontracts. Contractor may subcontract portions of the Work only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the Work. All Subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 Prompt Payment to Subcontractors.

a. Contractor shall pay each of its Subcontractors within three Working Days after receipt of each progress payment from the City. Within five Working Days of such payment, Contractor shall provide the SFMTA with satisfactory evidence that it has promptly paid each Subcontractor for the Work that it has performed in that billing period. Failure to provide such evidence shall be cause for the SFMTA to suspend future progress payments to Contractor.

b. Within 30 Days of satisfactory completion of all Work required of the Subcontractor, Contractor shall release any retention withheld to the Subcontractor. A violation of the requirements of this Section shall constitute a violation of San Francisco Administrative Code section 6.22.Q. If Contractor does not pay a Subcontractor as required in this Section, Contractor shall pay directly to said Subcontractor a penalty of two percent per month of the amounts unpaid, as provided by Administrative Code section 6.22.Q.

c. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a Subcontractor, the Contractor may withhold the disputed amount, but shall pay the undisputed amount.

d. Contractor shall include these payment requirements in its subcontracts and shall require every Subcontractor of every tier to include these payment requirements in its subcontracts with lower tier Subcontractors.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Article 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 at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be

construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five Working Days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character. 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 as required under City law and under the policy of the SFMTA Board of Directors. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into

contracts with City; and (c) 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.

4.6 Option Vehicles.

4.6.1 Options for Additional Coaches At the option of the City, the Contractor shall provide up to three 40-foot Buses in addition to the initial purchase(s). These options may be exercised at any time up to and including five years from the Effective Date, as set forth in Section 2.2. The maximum quantities of Buses that will be purchased for the subsequent years will be as shown in the Exhibit A (Schedule of Prices). City, at its exclusive option, may assign all or a portion of this option to another transit agency. Such assignment shall be effectuated by an assignment agreement between the City and the transit agency, with notice to Contractor. The assignment agreement may be executed by the Director on behalf of City. These option coaches shall be provided at the bid price(s) quoted in Schedule 1 of Exhibit A.

4.6.2 Uniformity of Option Vehicles. All items purchased under the options shall be identical in every way to those purchased under the base Contract. Any changes to items or components furnished under the options are subject to approval by the City. All conditions, Technical Specifications, and requirements set forth in the Contract documents shall apply to the items purchased as options unless otherwise specified in this Agreement.

4.7 Liquidated Damages. By entering into this Agreement, the Contractor agrees that in the event deliveries are not completed within the number of days indicated in Section 4.1.1, in Exhibit B, and in the Technical Specifications, Sections 13, or if Contractor fails to correct fleet defects in accordance with the Technical Specifications, Section 10.1.5.6, as may be revised by Contract Modifications, City will suffer damages that will be impracticable or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but are 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 contract was awarded. Except where the delay is the result of an Unavoidable Delay, City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA. Liquidated damages imposed under this Agreement shall be in addition to any other damages that are recoverable by the City specified elsewhere in the Contract.

Item No.	Milestone	Amount Per Day
1.	Submittal of Management Work Plan	\$100
2.	Delivery of Lead Coach	\$400
3.	Submittal of Training Lesson Plans	\$200
4.	Submittal of Draft Operation, Maintenance, and Parts Manual	\$200
5.	Delivery of 1st Production Coach	\$400
6.	Delivery of last Production Coach	\$400
7.	Spare Parts Delivery	\$400
8.	Completion of Multimedia Training	\$400
9.	Delivery of Special Tools	\$300
10.	Submittal of Final Operation, Maintenance, and Parts Manuals	\$400
11.	Warranty Fleet Defect Correction (see Technical Specifications, Section 10.1.5.2)	\$250 per coach
12.	Contractor-Supplied Parts	2%*

* 2% per day of Contractor's list price for every Day a part is past the 72-hour delivery time (see Technical Specifications, Section 10.2.2.2).

4.8 Performance and Payment Security. The following provisions set forth financial guarantees that must be met by Contractor. Contractor may choose to meet the requirements of this Section 4.8 by obtaining either the required bonds or an irrevocable letter of credit (Letter of Credit) in an equivalent amount.

4.8.1 Bonds

a. Within 20 days following the receipt of a notice of tentative award of contract, and until completion of all Contract obligations and Acceptance by City of the final Vehicle, the Contractor shall furnish to City a performance and a labor and materials bond each in an amount not less than 20 percent of the total Contract amount to guarantee Contractor's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last Vehicle is Accepted, and to guarantee Contractor's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection c. below.

b. One year after the City fully accepts the last Vehicle, the City will issue a letter releasing the obligations of the surety under the performance and labor and materials bonds, provided that all Deliverables have been performed and Accepted and a warranty bond

or letter of credit meeting the requirements of Section 4.8.2 is in place. The original bond document(s) shall be retained by the City.

c. Contractor shall provide a two-year warranty or guaranty bond in the amount of 10 percent of the Contract price covering all of Contractor's warranty obligations under the Contract, which bond shall become effective upon release of the Performance Bond under subsection b. above. At City's election, and subject to approval of the surety issuing the bond, Contractor shall provide for up to two one-year extensions or renewals of the warranty or guaranty bond at an amount approved by the SFMTA and the City's Risk Manager. If the original surety declines to extend or renew the initial bond, Contractor shall in good faith try to obtain the required additional coverage from another surety and shall document to the City its efforts in this regard. At the expiration of the warranty bond, the City will release it in the same manner as it releases the performance and labor and materials bonds (see subsection b. above).

d. Within 20 days of receipt of a notice from the SFMTA of intention to exercise the option to purchase more Coaches, the Contractor shall furnish to City a separate performance bond and a labor and materials bond in the amount of 20 percent of the cost of the additional Coaches to be purchased, to guarantee performance of all Contract obligations with respect to such optional Vehicles. The Contractor shall provide a two-year warranty or guaranty bond with possible extensions for the option Coaches under the terms of subsection c. above. The City will release the warranty bond as provided above, and retain the original bond documents.

4.8.2 Requirements for Bonds.

a. Bonding entities on the above bonds must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to the SFMTA and to the Controller and Risk Manager of the City.

b. During the period covered by the Agreement, if any of the sureties upon the bond shall have an AM Best rating that falls below A-, VIII, or become insolvent and unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 days after notice given by the SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30-day period to substitute another and sufficient surety, Contractor, if the SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

4.8.3 Requirements for Letter of Credit.

a. General Requirements. Any Letter of Credit submitted as required security under this Agreement shall be a confirmed, clean, irrevocable Letter of Credit in favor of the City and County of San Francisco, a municipal corporation. It must have an original term of one year, with automatic renewals of the full amount (subject to modification to reflect the adjustments set forth above in Section 4.8.1) throughout the term of the Agreement and throughout the performance of Contractor's obligations under the Agreement. If Contractor fails to deliver the Letter of Credit as required, City will be entitled to cancel this Agreement. The Letter of Credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation on behalf of the City.

b. Financial Institution. The Letter of Credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating. Should the financial institution fail to maintain such rating, Contractor shall replace the Letter of Credit within 30 days with a Letter of Credit from a financial institution with such a rating.

c. Demand on Letter of Credit. The Letter of Credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, the SFMTA may make a demand under the Letter of Credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said Letter of Credit only after City first has made its demand for payment directly to Contractor, and five full Working Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Letter of Credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the Work described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the Letter of Credit is so used or applied by City, Contractor, within 10 Working Days after written demand by City, shall reinstate the Letter of Credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

d. Expiration or Termination. The Letter of Credit must provide for 60 days notice to City in the event of non-extension of the Letter of Credit; in that event, Contractor shall replace the Letter of Credit at least 10 Working Days prior to its expiration. In the event the City receives notice from the issuer of the Letter of Credit that the Letter of Credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement Letter of Credit (in a form and issued by a financial institution acceptable to the City) within 10 Working Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the Letter of Credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the Letter of Credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

e. Return of Letter of Credit. The Letter of Credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 4.5, City will return or release the Letter of Credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent Letter of Credit, as determined by City.

f. Excessive Demand. If City receives any payments from the aforementioned bank under the Letter of Credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the Letter of Credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

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.** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- b.** Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- c.** Comprehensive or Business Automobile (Transit Coach, Truck, and other vehicles included) Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- d.** During the course of this Agreement, should any Vehicles already Accepted by City, and in which title is vested in the City, be returned to Contractor for any reason, Contractor shall maintain, with respect to such vehicles, Garagekeepers' Legal Liability Insurance with limits not less than 100 percent of the value of City Vehicles and equipment in Contractor's care, custody, or control, including coverage's for fire, theft, riot and civil commotion, vandalism or malicious mischief, and collision; all-risk transportation insurance for the full value of all City-owned coaches in transit between Contractor and City premises; and any loss payable to the City as its interest may appear.
- e.** During the course of this Agreement, as title to components or Coaches is transferred to City (refer to Section 3.3.2), Contractor shall provide property insurance on such components against all risks of loss or damage for 100% of their replacement value, including City as a named insured and loss payee, as its interests may appear, and any deductible not to exceed \$25,000 each loss.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

- a.** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- b.** 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 insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

5.1.4 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 contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 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.

5.1.6 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.

5.1.7 Before commencing any Work, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements 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.

5.1.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

5.1.9 If Contractor will use any Subcontractor(s) to provide Work, 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.

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (a) injury to or death of a person, including employees

of City or Contractor; (b) loss of or damage to property; (c) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (d) strict liability imposed by any law or regulation; or (e) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to Subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (a) – (e) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 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 Work.

5.3 Notice of Claim; Tender of Defense. The City shall use its best efforts to give prompt written notice to Contractor of any claim for which it requires indemnification from Contractor and will not admit liability or fault as to the allegations of the claim. Provided Contractor accepts the City's tender of defense without reservations, City agrees to grant Contractor sole control over the defense and settlement of the claim and provide timely assistance to Contractor in the defense of the claim.

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 THE SERVICES PERFORMED 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. Except for liquidated damages, Contractor shall not be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

6.4 Limitation of Liability. Except as provided herein, Contractor's aggregate liability to the City under this Agreement shall be limited to the Contract amount stated in Section 3.3.1, as that amount may be modified by a properly approved and executed Contract Modification. Said limitation on liability shall not apply to:

6.4.1 damages and other liability caused by Contractor's willful, intentional acts or omissions;

6.4.2 liability arising under or for violation of any applicable statute, City ordinance, regulation, or other laws;

6.4.3 damages and other liability arising under claims by third parties, including indemnity or contribution for claims brought by a third party (see Section 5.2.1);

6.4.4 damages and other liability for infringement of any intellectual property right as provided in Section 5.2.3.

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 Services 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 Revenue and Taxation Code section 480.5, 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. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 Exercise of Option. 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. The notice shall specify the date on which termination shall become effective.

8.1.2 Contractor Actions. 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 date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such

actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- a.** Halting the performance of all Work under this Agreement on the date(s) and in the manner specified by the SFMTA.
- b.** Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Work, equipment or other items.
- c.** At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA 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 the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- e.** Completing performance of any Work that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.
- f.** Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which the SFMTA has or may acquire an interest.

8.1.3 Contractor Invoice. Within 30 days after the specified termination date, Contractor shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

- a.** The reasonable cost to Contractor, without profit, for all Work prior to the specified termination date, for which Work the SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- b.** A reasonable allowance for profit on the cost of the Work described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of the SFMTA, that Contractor would have made a profit had all Work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- c.** The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.
- d.** A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the

SFMTA, and any other appropriate credits to the SFMTA against the cost of the Work or other work.

8.1.4 Non-Recoverable Costs. In no event shall the City be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Work under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 Deductions. In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (a) all payments previously made by the SFMTA for Work covered by Contractor's final invoice; (b) any claim which the SFMTA may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (d) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Work, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Work in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

8.2.1 Event of Default. 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.
- 4.5 Assignment
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 9.4 Proprietary Materials
- 9.5 Management of City Data and Confidential Information
- 10.10 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws

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 continues for a period of 10 days after written notice thereof from the SFMTA to Contractor.

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 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: (a) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (b) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (c), 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 No Waiver. 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 Notice of Default. Any notice of default must be sent by registered mail to the address set forth in 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 Survival of Sections. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.4	Payment Limited to Satisfactory Work
3.3.9(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Survival
8.2.2	Remedies
9.1	Ownership of Results
9.2	Works for Hire
9.4.	Proprietary Materials
9.5	Management of City Data and Confidential Information
11.6.3	Resolution off Disputes
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

8.4.2 Contractor Duties. 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 Ownership of Results. Any interest of Contractor or its Subcontractors, in the Deliverables, including any materials, equipment, drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents

prepared by Contractor or its Subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Work, Contractor or its Subcontractors create Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. These shall include, but not be limited to, the data that comprises the destination sign system, as specified in Section 3.10 of the Technical Specifications; the Data that comprises the voice annunciation system, as specified in Section 3.11 of the Technical Specifications; the source code for the SFMTA-specific portion of the multiplex electrical system controller, as described in Section 7.9 of the Technical Specifications; the vehicle record book, as provided in Section 9.2.7 of the Technical Specifications; and the computer database record, as provided in Section 10.3.3 of the Technical Specifications.. If any Deliverables created by Contractor or its Subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon Subcontractor(s). With City's prior written approval, Contractor and its Subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

9.3 Licenses Granted

9.3.1 Computerized Software and Systems. To the extent that software, firmware, systems designs, computerized manuals, training modules, or other such Deliverables are not designed specifically for City's purposes in connection with the Agreement, Contractor grants City a perpetual, non-exclusive, non-transferable, license at all locations owned or controlled by City to use all such Deliverables, or portions thereof. City shall also be authorized to modify or prepare derivative works of the Deliverables and make copies of such Deliverables for internal use only. Any such modifications shall become the property of the City unless such modifications are not used exclusively for internal purposes. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Deliverable(s) or any related materials or documentation. Contractor warrants that it has title to and/or the authority to grant a license of such Deliverables to the City.

9.3.2 IP Transfer. In the event that Contractor is (a) unable or fails to meet its warranty or service obligations, excluding any such failure that results from Contractor's good faith dispute with City as to the validity of a warranty claim, or (b) Contractor (i) shall make an assignment for the benefit of creditors, or (ii) shall file in any court or agency of competent

jurisdiction, a petition in bankruptcy or insolvency (each, an “IP Transfer Trigger Event”), Contractor shall deliver any software, firmware, systems designs, computerized manuals, training modules, or other such information necessary to enable City to perform the maintenance and operation of the Vehicles (collectively, the “Specified Contractor IP”). No later than 30 days after an IP Transfer Trigger Event, City shall have the right to receive from Contractor, and Contractor shall deliver to City, one copy of the Specified Contractor IP, and Contractor grants to City a non-exclusive, royalty-free right and license to use the Specified Contractor IP solely as necessary for City to perform the maintenance and operation of the Vehicles.

9.3.3 Bankruptcy. All rights and licenses granted in respect of the Specified Contractor IP are, and shall be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, 11 U.S.C. § 101 et seq., licenses of rights to “intellectual property” as defined under Section 101(35A) of the Bankruptcy Code; and the Specified Contractor IP is, and shall be deemed to be, “embodiment[s]” of “intellectual property” for purposes of same. City shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code or equivalent legislation in any other jurisdiction. Without limiting the generality of the foregoing, Contractor acknowledges that the rights and license granted to City pursuant to this Section 9.3 shall not be affected by Contractor’s rejection of this Agreement in bankruptcy and shall continue subject to the terms and conditions of this Agreement.

9.3.4 License for Data. Except as provided below, the City grants to Contractor a license to inspect, examine, and otherwise obtain any information or data available from components provided by the Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable the Contractor to perform reliability maintenance analysis, corrective actions, and/or other engineering work for the Buses. This grant of license does not apply to any data or information obtained through or downloaded from the following systems:

- a. Passenger Information System
- b. CAD/AVL System
- c. Automatic Passenger Counter System
- d. Video Surveillance System

9.3.5 Other Deliverables. Contractor grants City a perpetual, non-exclusive, non-transferable license to use, retain, and reproduce at all locations controlled by the SFMTA, for internal use only, all copies (whether in hard copy or electronic format) of drawings, plans, specifications, schematics, studies, reports, memoranda, computation sheets and all other documents that are (a) prepared by Contractor or its Subcontractors or Suppliers (but not exclusively for City); and (b) subject to any restrictions set forth herein, required to be provided to City in connection with this Agreement. Contractor warrants that it has title to and/or the authority to grant a license of such Deliverables to the City.

9.4 Proprietary Materials.

9.4.1 Contractor Information. To the extent that the Contractor considers any document or Deliverable to be a trade secret or otherwise proprietary, Contractor shall so mark them. SFMTA shall require individuals using such proprietary documents to maintain the confidentiality of the documents, and if necessary, sign a confidentiality agreement regarding use of highly sensitive documents. For purposes of this Agreement, the Specified Contractor IP (see Section 9.3.2) shall be considered a trade secret under this Section and subject to the provisions of this Section. Contractor shall hold the City harmless from and defend the City against all claims, suits or other proceedings instituted against the City for copyright infringement, misuse or misappropriation of a trade secret, or for access to the documents or Deliverables under the City's Sunshine Ordinance or the California Public Records Act. The SFMTA will give Contractor prompt notice if it receives a request for such records under the Sunshine Ordinance or the California Public Records Act to allow Contractor the opportunity to contest the request. Contractor will pay the costs and damages awarded in any such action or proceeding, or the cost of settling such action or proceeding, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the buses, spare parts, documents or Deliverables constitutes infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

9.4.2 City Information.

a. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and its subcontractors shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

b. In the performance of Work, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, 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.

9.5 Management of City Data and Confidential Information.

9.5.1 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

9.5.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information 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 or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information 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, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

9.5.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 Working Days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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 Working Days of the purge.

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 performing the Work, 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 Administrative Code Chapter 12K, 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 (a) asking such applicants about their current or past salary or (b) 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 Chapter 12K. Information about and the text of Chapter 12K 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 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. 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 Administrative Code Section 12B.2.

10.6 Reserved. (Local Business Enterprise)

10.7 Minimum Compensation Ordinance. Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in

Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor agrees to choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3, and to comply with the HCAO as set forth in Chapter 12Q.

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) and the California Drug-Free Workplace Act of 1990, Cal. Gov. Code, Sections 8350 et seq., if state funds involved.

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 (a) 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, (b) a candidate for that City elective office, or (c) 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 10% in Contractor; any subcontractor listed in the bid 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 Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, 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 Chapter 12T.

10.14.2 The requirements of Chapter 12T 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. Chapter 12T 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. (Sugar-Sweetened Beverage Prohibition).

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.

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 contract 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.

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: San Francisco Municipal Transportation Agency
 Transit Division Fleet Engineering
 700 Pennsylvania Avenue, San Francisco, CA 94107
 Attention: Bhavin Khatri, Project Manager
 bhavin.khatri@sfmta.com

To Contractor: Proterra Inc.
 1815 Rollins Road, Burlingame, CA 94010
 Attention: Devin Ikenberry, Business Engagement Manager
 Dikenberry@Proterra.com

Any notice of default must be sent by registered mail or overnight delivery service or courier. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Work in a manner that complies with the Americans with Disabilities Act (ADA), including, but not limited to, Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Reserved.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code §6250 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. See also Section 3.4 for Contractor's legal obligations for requests under the Sunshine Ordinance.

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 as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Authority of Project Manager; Claims; Disputes. The Project Manager shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Project Manager shall at all times act fairly and reasonably. Any appeal of the Project Manager's decisions shall be in accordance with the provisions of Section 11.9 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 3.3.1 of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Project Manager, who, in consultation with other City representatives, as applicable, and with input the Contractor, shall decide the true meaning and intent of the Contract. The Project Manager's decision in this regard shall be administratively final and conclusive.

11.6.1 Claims for Additional Compensation.

a. Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Project Manager due written notice of potential claim.

b. The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Project Manager prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 30 Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

c. It is the intention of this Section 11.6.1 that differences between the Parties arising under and by virtue of the Contract be brought to the attention of the SFMTA at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

11.6.2 Other Claims. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 15 Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

11.6.3 Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the parties shall be decided in writing by the SFMTA Project Manager. The Project Manager's decision shall be administratively final and conclusive unless within 10 Working Days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit, or his/her designee. In connection with such an appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Project Manager's decision as to a particular dispute is final.

11.6.4 No Cessation of Work. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Project Manager.

11.6.5 Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to 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. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.6 Disputes Among Contractor's Partners. The resolution of any contractual disputes related to Contractor's Joint Venture or Association partners (if any) shall be the sole responsibility of the Contractor. Each party of the Joint Venture or Association shall resolve all such disputes within 30 calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Contractor's Joint Venture or Association firms until the dispute is resolved.

11.6.7 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.

11.7 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 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 (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) 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. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement. Any inconsistency in requirements of the Contract documents shall be resolved by giving precedence in the following order:

- a. This Contract document, including Appendices

- b. Technical Specifications, including the warranty provisions

11.14 Time of Essence. Time is of the essence in this Agreement.

11.15 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (Legal Requests) related to City Data, or which in any way might reasonably require access to City Data, and in no event later than 24 hours after it receives the request. 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

Article 12 Deliveries and Acceptance

12.1 Deliveries

12.1.1 Predelivery Tests and Inspections. Pre-delivery tests and inspections shall be performed prior to shipment to the SFMTA. Such tests and inspections shall be performed in accordance with the procedures defined in Verification Section 12.2.3 of the Technical Specifications, and they may be witnessed by the SFMTA Resident Inspector. When a Coach passes these tests and inspections, the Resident Inspector shall authorize release of the Coach for shipment. Such authorization does not imply Acceptance of the Vehicle by the SFMTA.

12.1.2 Delivery Procedure. Delivery shall be determined by signed receipt of the SFMTA Engineer at the point of delivery and may be preceded by a cursory inspection of the Vehicle. The point of delivery shall be:

40-Ft Battery Electric Coaches
1098 23 rd Street
San Francisco, California 94107

Contractor shall deliver Coaches during weekday working hours at a time mutually agreeable to the SFMTA and Contractor, or as otherwise specified in writing by the SFMTA. Contractor shall provide at least five Working Days' notice to the SFMTA prior to delivery. Delivery of the Coaches shall be F.O.B. point of delivery, freight pre-paid and allowed. Contractor shall ensure that all Coaches are fully operable when they are delivered. Contractor shall deliver a maximum of three coaches per week.

12.1.3 Condition of Coaches. Drivers shall keep a complete and accurate maintenance log while enroute, which shall be delivered to the SFMTA Project Manager / Representative with the Coach. The log shall show the driver's compliance with the tire manufacturer's highway operating procedures. If the Coaches are towed, the rear axle shafts

shall be removed during the towing and re-coupled by the Contractor after arrival at the point of delivery. Contractor shall deliver each Coach with a full tank of fuel and fully cleaned (exterior, interior, underside, and topside) prior to presentation for inspection. Also, if the Coaches are towed from the Contractor's facility to the SFMTA, highway-type tires shall be installed. Upon arrival at an SFMTA maintenance facility or within the City/County of San Francisco, Contractor, at its expense, shall install city-type tires.

12.1.4 Spare Parts Delivery Procedure. Composition of spare parts is subject to SFMTA approval. Contractor shall provide the SFMTA with one-week advance notice before shipment of spare parts. Such notice shall include a packing list clearly identifying all parts and their quantity in the shipment.

Delivery of spare parts shall be acknowledged by signed receipt of the SFMTA representative at the point of delivery and may be preceded by a cursory inspection of the parts. Within 20 Days of delivery, the SFMTA will issue a notification of Acceptance, non-Acceptance, or Conditional Acceptance of the spare parts. The point of delivery shall be the location for the applicable Coach provided in Section 12.1.2.

Delivery of spare parts shall be F.O.B. point of delivery, freight pre-paid and allowed.

12.2 Acceptance of Vehicles

12.2.1 Procedure.

a. Contractor shall ensure that the Coach's underside is washed and cleaned prior to being presented to SFMTA for Acceptance.

b. After arrival at the designated point of delivery, each Coach shall undergo pre-Acceptance and Acceptance tests by the SFMTA as defined in the Quality Assurance Section of the Technical Specifications. The SFMTA shall make a good faith effort to begin the Acceptance process within 20 Days after delivery of each Coach. When a Coach passes all tests, SFMTA will provide written Acceptance of the Coach to the Contractor. Contractor shall transfer title to the Coach to the City on the day of Acceptance, or Conditional Acceptance, if the Coach is not fully Accepted. Acceptance of one Coach does not imply Acceptance of any other delivered Coaches.

c. If a Coach fails the Acceptance tests, the Coach shall not be Accepted until the repair procedures defined in Section 12.3, of this Agreement have been carried out and the Coach has been retested and passes all applicable tests. All deliveries of Coaches shall be halted whenever five or more Coaches have failed or have not been Accepted or Conditionally Accepted and are awaiting repairs or Corrections.

d. After completion of post-delivery testing, the SFMTA will issue a notification of Acceptance, non-Acceptance or Conditional Acceptance.

12.2.2 Conditional Acceptance. If a Coach does not meet all requirements for Acceptance, the SFMTA may, at its exclusive option, "conditionally accept" the Coach and place

it into revenue service, pending receipt of Contractor-furnished materials and/or labor necessary to effectuate corrective action for Acceptance. For any Conditionally Accepted Vehicle, payments shall be made as provided in Section 3.3.1 above.

12.2.3 Assumption of Risk of Loss. Prior to delivery as described in Section 12.1 of this Agreement, and regardless whether title has passed to the City, the Contractor shall bear risk of loss of the Coach, including any damage sustained during transportation to the delivery site. Risk of loss will pass to the SFMTA upon delivery of each Coach except that loss or damage to the Coach resulting from acts or omissions of the Contractor shall be the responsibility of the Contractor until Acceptance of the Vehicle.

12.2.4 Title. At the time each Coach is delivered, Contractor shall provide the SFMTA Project Manager with adequate documents for securing the title for the Coach in the State of California. Unless full unencumbered title transfers earlier under Section 3.3.2, upon Acceptance of each Coach, title to each Coach shall pass to the City, which title Contractor warrants shall be free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims, and demands of any character.

12.3 Repairs Prior To Acceptance. The SFMTA Project Manager may require the Contractor, or its designated representative, to perform repairs after non-Acceptance or Conditional Acceptance, or the Contractor may request that the repairs be done by SFMTA personnel with reimbursement by the Contractor. Contractor shall inform the SFMTA in advance of any modifications made to the Coach during the Acceptance period.

12.3.1 Repairs by Contractor. If the SFMTA Project Manager requires the Contractor to perform repairs after non-Acceptance or Conditional Acceptance of the Vehicle, the Contractor's representative must begin the repair within five Days after receiving notification from the SFMTA Project Manager of failure of Acceptance tests.

The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the SFMTA Project Manager's option, the Contractor may be required to remove the Coach from SFMTA property while repairs are being effected. The Contractor shall then provide a space to complete the repairs, shall diligently pursue the repairs, and shall assume risk of loss while the Coach is under its control.

12.3.2 Repairs by SFMTA.

a. If the SFMTA Project Manager agrees to a request by the Contractor for SFMTA to perform repairs on a Contractor-owned Coach prior to SFMTA Acceptance, the SFMTA shall correct or repair the Defect using parts supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the SFMTA Project Manager to the Contractor for actual cost reimbursement of parts. The Contractor shall provide forms for these reports.

b. If the Contractor supplies parts for repairs being performed by the SFMTA before Acceptance of the Coach, Contractor shall deliver these parts prepaid to the SFMTA within 10 Working Days after receipt of the request for the parts. The Contractor may request that Defective components covered by this provision be returned to the manufacturing plant. Contractor shall bear all expenses for supplying such parts and for any associated costs.

c. Contractor shall reimburse the SFMTA for all costs of labor and materials (including taxes) for repairs made or caused to be made by the SFMTA. If the SFMTA performs the repairs itself, the amount shall be determined by multiplying the number of person-hours actually required to Correct the Defect by the current technician's hourly overtime wage rate, which includes fringe benefits and overhead, plus the cost of towing the Coach if such action was necessary. If the SFMTA requires the service of an outside repair facility, Contractor shall reimburse the SFMTA for all such repair invoices. Contractor shall also reimburse the SFMTA for administrative costs incurred in performing the repairs. The use of SFMTA labor will not relieve the Contractor from the responsibility to ensure that repairs are carried out in accordance with proper procedures.

d. SFMTA may deduct the cost of repairs from any monies due or that may become due to the Contractor under the Agreement, or if such monies are insufficient, the Contractor or its surety shall pay to the SFMTA any deficiency.

12.4 Unavoidable Delays

12.4.1 Definition. An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include, and are limited to, acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the Work are delayed thereby, as determined by the City.

12.4.2 Notification of Delay. The Contractor shall notify the SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five Days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

12.4.3 Request for Extension. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by the SFMTA to make a decision on any request for extension. The SFMTA shall examine the request and any documents supplied

by the Contractor and shall determine if the Contractor is entitled to an extension, and if so, the duration of such extension. The SFMTA shall notify the Contractor of its decision in writing.

The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

Article 13 SFMTA Conditions

13.1 Large Vehicle Driver Safety Training Requirements.

13.1.1 Contractor agrees that before any of its employees and Subcontractors drive large vehicles within the City and County of San Francisco, those employees and Subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletrainningstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or Subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 14 MacBride Principles and Signature

14.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §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.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Thomas G. Maguire Interim Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Proterra Inc.</p> <hr/> <p>Amy Ard Chief Financial Officer 1815 Rollins Road Burlingame, CA 94010</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 13.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 0000037042</p>
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Exhibits

- A: Schedule of Prices
- B: Project Delivery Schedule
- C: Payment Milestones
- D: FTA Requirements for Procurement Contracts

Exhibit A
Schedule 1 - Schedule of Prices

City is exempt from federal excise taxes. State, local sales, and use taxes are not to be included in these prices.

No.	Qty.	Description	Unit Price	Total Price
1	3	40-ft Low Floor Coaches	\$1,453,076	\$4,359,228
2	LS	Allowance for regulatory mandated changes, requested passenger enhancements and system modifications resulting from changes to project interface	N/A	\$75,000
3	N/A	Intentionally left blank.		
4	3	ViriCiti User License for 2 years. License includes basic vehicle, driver behavior, maintenance, basic charging station, and smart charging.	\$5,458	\$16,374
5	1	Training for 40-ft Low Floor Coaches	N/A	\$250,000
6	LS	Interactive Multimedia Training for 40-ft Low Floor Coaches (Section 9.1.10 of the Technical Specifications)	N/A	\$250,000
7	LS	Operating, Maintenance and Parts Manuals for 40-ft Low Floor Coaches	N/A	\$12,000
8	LS	Spare Parts For 40-ft Low Floor Coaches	N/A	\$250,000
9	LS	Special Tools For 40-ft Low Floor Coaches	N/A	\$50,000
Grand Total				\$5,262,602

Option Prices:

10	3	Options for 3 40-ft Low Floor Coaches, including ViriCiti subscription (see item #4)	<u>\$1,407,624</u> + PPI ⁽¹⁾	<u>\$4,222,872</u> + PPI ⁽¹⁾
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(1) PPI: Producer's Price Index (Actual) to be determined at the time the options are exercised

Schedule 1A - Spare Parts List

*NOTES CONFIGURABLE ITEMS			
Proterra Part Number	Description	Recommended Qty	Unit Price
Module 50	LOW VOLTAGE ELECTRICAL POWER		
10204	CONVERTER, DC-DC	1	\$4,800.00
21729	CONTACTOR 350 AMP	2	\$135.00
814	VANNER BATTERY EQUALIZER	1	\$699.00
880	BATTERY, 12V, 100AH, GROUP 31	2	\$343.00
Module 60	HIGH VOLTAGE ELECTRICAL POWER		
25179	CONTACTOR, GX26,600A, 800 VDC	2	\$186.00
20480	CONTACTOR, GIGAVAC (FAST CHARGE ONLY)		\$107.00
6757	FUSE, 20AMP, 600VAC, FERRAZ SHAWMUT (ATMR20)	2	\$10.00
14391	VFD, DUAL 30KW OUTPUT	1	\$7,900.00
Module 80	DRIVERS WORK PLACE		
15156	ACTUATOR, REVERSE SELECTION SWITCH	1	\$85.00
15157	ACTUATOR, DRIVE SELECTION SWITCH	1	\$85.00
15158	ACTUATOR, NEUTRAL SELECTION SWITCH	1	\$85.00
015159*	ACTUATOR, FRONT DOOR CONTROL SWITCH	1	\$86.00
015160*	ACTUATOR, REAR DOOR CONTROL SWITCH	1	\$86.00
25309	SWITCH, NO PUSH BUTTON, RED/GREEN, LED, 6-POS (FAST CHARGE ONLY)	1	\$36.00
27598	SWITCH, MUSHROOM (FAST CHARGE ONLY)	1	\$83.00

1137	SWITCH, FLOOR, DIMMER, HEADLAMP	2	\$12.00
1139	SWITCH, FLOOR, TURN SIGNAL	2	\$20.00
Module 120	ENERGY STORAGE		
16303	BMU (FAST CHARGE ONLY)	2	\$471.00
Module 140	WIPERS AND WASHERS		
14147	WIPER MOTOR, 2 SPEED	1	\$239.00
17648	WIPER ARM, WINDSHIELD, CS	1	\$92.00
14149	WIPER ARM, WINDSHIELD, SS	1	\$91.00
14150	WIPER, BLADE	1	\$24.00
17629	WIPER BLADE, WINDSHIELD, 1000MM	1	\$29.00
Module 150	ELECTRICAL CABINET		
14900	Relay 10A	2	\$4.00
16180	Relay 35A	2	\$4.00
Module 170	FRONT SUSPENSION AND STEERING		
4747	SPRING, AIR, FRONT, 1T19L-5 BELLOW	2	\$124.00
15064	SHOCK ABSORBER FRONT	2	\$352.00
Module 180	REAR SUSPENSION		
17729	SPRING, AIR, REAR	2	\$64.00
19265	SHOCK ABSORBER REAR	2	\$352.00
Module 200	RIDE HEIGHT		
4695	SENSOR, HEIGHT, SUSPENSION, 6" ARM	2	\$65.00
Module 210	EXTERIOR LIGHTING		
013831*	LIGHT, TAIL LAMP, REAR	2	\$106.00
013833*	LIGHT, BACK UP LAMP, REAR	2	\$36.00
032639*	LIGHT, REAR TURN SIGNAL, CLEAR LENS, AMBER LED	2	\$136.00
013844*	LIGHT, RED, SIDE MARKER	4	\$23.00

013843*	LIGHT, YELLOW, SIDE MARKER	8	\$23.00
Module 240	AIR SYSTEM		
21347	MODULATOR, M-32, 24V	2	\$108.00
320	VALVE, DOUBLE CHECK, DC-4	1	\$10.00
321	VALVE, SINGLE CHECK, SC-3	1	\$10.00
323	TRANSDUCER, PRESSURE	1	\$48.00
4697	SOLENOID, PNEUMATIC, EXHAUST, HIGH FLOW, SUSPENSION	2	\$347.00
Module 250	COOLANT SYSTEM		
18370	PUMP, WATER, CATALYST	3	\$455.00
Module 270	ENTRANCE DOORS		
17446	GLASS, ENTRANCE DOOR	1	\$403.00
21624	PANEL, ASSY, LEFT, ENTRANCE DOOR	1	\$2,096.00
21625	PANEL ASSY, RIGHT, ENTRANCE DOOR	1	\$2,097.00
Module 280	EXIT DOORS		
17447	GLASS, EXIT DOOR	1	\$333.00
21626	PANEL ASSY, LEFT, EXIT DOOR	1	\$2,269.00
21627	PANEL ASSY, RIGHT, EXIT DOOR	1	\$2,269.00
Module 300	BUS BODY		
14662	GAS SPRING, LOWER SIDE HATCH	3	\$11.00
14667	GAS SPRING, CLAMSHELL	3	\$37.00
15452	GAS SPRING, LOWER HATCH REAR	3	\$9.00
20953	SPRING, ACCESS PANEL (FAST CHARGE ONLY)	4	\$18.00
15054	LATCH, CLAMSHELL SCOOP (FAST CHARGE ONLY)	1	\$14.00
26436	SPRING, GAS, 8" STROKE, 20LB	2	\$13.00

19480	LATCH, SCOOP	1	\$22.00
25811	LATCH , COMPRESSION, SQUARE KEY	1	\$28.00
Module 350	EXTERIOR ATTACHMENTS		
14616	WHEEL WELL FLARE, FRONT	2	\$418.00
014621*	WHEEL WELL FLARE, REAR	2	\$456.00
013719*	MIRROR, CS	2	\$927.00
013721*	MIRROR, SS	2	\$621.00
031697*	MIRROR, SS	2	\$538.00
Module 390	WINDOWS AND WINDSHIELD		
020918*	WINDSHIELD, FRONT	1	\$779.00
13715	REAR WINDOW	1	\$457.00
014142*	DRIVER WINDOW	1	\$1,345.00
031111*	DRIVER WINDOW	1	\$4,897.00
15656	GASKET,WINDSHIELD	1	\$218.00
Mult. Modules			
1275	COMPUTER, CENTRAL, MULTIPLEX, ZR32-A, 24V	1	\$515.00
13527	CIRCUIT BREAKER, TYPE III, 5A	1	\$4.00
13528	CIRCUIT BREAKER, TYPE III, 10A	1	\$4.00
13529	CIRCUIT BREAKER, TYPE III, 15AMP	1	\$4.00
13530	CIRCUIT BREAKER, TYPE III, 20A	1	\$4.00
1273	CONTROLLER, NODE, MUX (MULTIPLEX), MUX2-B, 12V, 24	3	\$246.00
Mult. Modules	CONSUMABLES		
18384	OIL, COMPRESSOR, HYDROVANE HPO	169oz	2/oz.
19931	AIR FILTER, LARGE, AIR COMPRESSOR	1	\$22.00
19932	AIR FILTER, SMALL, AIR COMPRESSOR	1	\$19.00
22358	DESICCANT,PACK	10	\$128.00

22387	TA366-3056 DESICCATOR	5	\$85.00
19763	FILTER, AIR, DEFROSTER	1	\$49.00
19403	FILTER, AIR, FOAM , HVAC	1	\$14.00

Schedule 1B - Special Tools List

PART NO.	DESCRIPTION	QTY	SELL PRICE \$	EXTENDED PRICE \$
037337	PROTERRA DIAGNOSTIC TOOL	1	5,000.00	5,000.00
014063	DIAGNOSTIC LAPTOP COMPUTER	1	2,500.00	2,500.00
026024	NEXIQ USB-Link (WiFi)	1	1,214.00	1,214.00
026025	NEXIQ J1962 Adaptor	1	100.00	100.00
037475	GLOVES, ELECTRICAL, SIZE 8	1	145.00	145.00
037476	GLOVES, ELECTRICAL, SIZE 9	1	145.00	145.00
037477	GLOVES, ELECTRICAL, SIZE 10	1	145.00	145.00
037478	GLOVES, ELECTRICAL, SIZE 11	1	145.00	145.00
037479	GLOVES, ELECTRICAL, SIZE 12	1	145.00	145.00
035873	SUIT, ARC FLASH, SIZE S	1	875.00	875.00
035874	SUIT, ARC FLASH, SIZE M	1	875.00	875.00
035875	SUIT, ARC FLASH, SIZE L	1	875.00	875.00
035876	SUIT, ARC FLASH, SIZE XL	1	875.00	875.00
035877	SUIT, ARC FLASH, SIZE 2XL	1	875.00	875.00
031438	Red Lockout Padlock	2	142.00	284.00
031440	Grip-Cinching Cable Lockout, 8FT	2	99.00	198.00
031439	Lockout Tag, Package of 10	2	39.00	78.00
035021	LIFT TABLE, E2 BATTERY		14500.00	14500.00
025199	KIT, DEUTSCH, COMPLETE	1	410.00	410.00
018759	HARNESS, OBD2 DIAGNOSTICS	1	172.00	172.00
040139	DIAGNOSTIC TOOL, VENTURA	1	617.50	617.50
015293	Deutsch Crimper	1	444.00	444.00
036779	MUX Crimper	1	242.00	242.00
015304	Deutsch Pin Removal Tool	1	18.00	18.00
036780	VOLTMETER, FLUKE 175	1	371.00	371.00
042536	Mixpac 400ml manual gun	1	383.50	383.50
042537	Mixpac 400ml pneumatic gun	1	643.50	643.50
042535	80pc master insulated tool set	1	2663.70	2663.70

Exhibit B

Project Delivery Schedule

Item	Days after Notice-to-Proceed
1) Submittal of Baseline Schedule and Management Work Plan	45
2) Submittal of Vehicle drawings, control, Reliability Program Plan and test plans	180
3) Submittal of training program (including lesson plans)	240
4) Delivery of prototype Coach ¹	336
5) Submittal of draft operations, maintenance, parts manuals, recommended spare parts	336
6) Approval of Prototype Coach (estimated)	396

Item	Days after Approval of Prototype
7a) Production starts	120
7b) Beginning of Coach delivery ²	175
8) Submittal of final operations, maintenance, and parts manual	160
9) Delivery of special tools ³	60
10) Completion of Coach delivery ⁴	196

- ¹ The SFMTA prefers that the prototype Coach be delivered in September 2020. Approval to deliver the prototype will not be granted until after receipt and approval of all Vehicle drawings, controls and test plans.
- ² Approval to deliver production Vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance, and parts manuals; all computer software, manuals, document and demonstrate their operation and after successful completion of all appropriate tests as described in Section 12.2, TEST REQUIREMENTS of the Technical Specification.
- ³ The delivery of the special tools is dependent on the shipping lead times agreed upon with the Suppliers after the SFMTA selects the final tool list.
- ⁴ The SFMTA prefers that the production Coaches are delivered before May 2021.

Exhibit C

Payment Milestones

The City will make progress payments for the Buses upon satisfactory completion of each milestone in accordance with the percentage allocation below.

Item 1- Coach Price

Milestone	Maximum Percent of Bid Item 1 as applicable
(a) Authorization by the SFMTA to ship each Vehicle and authorization by Contractor to release each Vehicle for shipment to the SFMTA, as described in Sections 12.2.3 of the Technical Specifications	25% of Unit Price
(b) Conditional Acceptance of each Vehicle by SFMTA	25% of Unit Price
(c) Full Acceptance of each Vehicle by SFMTA	48% of Unit Price
(d) All Contract Deliverables have been received and Accepted as satisfactory (except for Items 5 and 6)	2%

Item 2 - Spare Parts

The City will make payments for spare parts once they have been delivered and Accepted.

Item 3 – Training

City shall pay for training when 10 mechanics and 20 operators have been fully trained in the operation and maintenance of the vehicle.

Item 4 - Interactive Multimedia Training

City shall make progress payments for Interactive Multimedia Training upon satisfactory completion of each milestone in accordance with the percentage allocation below:

Milestone	Percentage of Bid Item 4
(a) SFMTA approval of design detail documentation	10%
(b) Delivery and approval of one prototype module	20%
(c) Delivery and approval of all pre-production modules	30%
(d) Delivery and approval of all production modules	40%

Item 5 - Operating, Maintenance, and Parts Manuals

When satisfactory draft operating, maintenance and parts manuals have been received, City will pay 30% of this payment item. The balance will be paid when final manuals have been Accepted. Contractor shall deliver to the SFMTA draft operating, maintenance and parts before the start of the first training session.

Item 6 – Special Tools Separate from Coach

City shall pay for special tools and other maintenance equipment upon their Acceptance by the SFMTA.

Exhibit D

FTA Requirements for Procurement Contracts

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

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

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 2 CFR § 200.333.

IV. DEBARMENT AND SUSPENSION (*Contracts over \$25,000*)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, by signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The

bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

VII. DBE/SBE ASSURANCES

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

VIII. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

IX. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

X. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of \$100,000)*

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

XI. CLEAN AIR *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)*

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

XII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIII. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XIV. TERMINATION FOR CONVENIENCE OF CITY *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XV. TERMINATION FOR DEFAULT *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XVI. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less)

made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVII. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XVIII. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XIX. BUS TESTING (*applies to contracts for rolling stock*)

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

B. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a

description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

XX. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

A. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

C. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) the manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) the manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XXII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXIII. NATIONAL ITS ARCHITECTURE POLICY *(applicable to contracts for ITS projects)*

If providing Intelligent Transportation Systems (ITS) property or services, Contractor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXVI. SEAT BELT USE

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States”, April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.