



City of Milwaukee
Department of Public Works

Milwaukee Streetcar Project

Vehicle Procurement Package

Request for Proposals

April 6, 2015

Solicitation No. 70-2015

Volume 1 - Commercial Provisions

Volume 2 – Technical Specifications

Volume 3 – 60% Plan & Profile Sheets

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**MILWAUKEE STREETCAR
REQUEST FOR BEST AND FINAL OFFER
VOLUME 1
COMMERCIAL PROVISIONS**

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SECTION 1

INSTRUCTIONS TO PROPOSERS

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1. INSTRUCTIONS TO PROPOSERS

1.1 Introduction

The City of Milwaukee Department of Public Works (“the City”) intends to initiate streetcar service in portions of the City as described herein (the Project). It issues this Request for Proposals (RFP) soliciting offers and with the intention of entering into a contract to supply four (4) low floor streetcars, with options for up to twenty (20) additional streetcars, and associated materials and services as described in the Contract Documents. This solicitation will be conducted in a two-phase process unless it is determined that a second phase is not necessary. In the first phase, all prospective Proposers must submit a Proposal in two parts, including a Technical Proposal and a Price Proposal as described in these Instructions for Proposers. Upon evaluation of the Proposals, the City will establish a competitive range of Proposers and will meet with each Proposer in the competitive range to conduct discussions and negotiations as it deems appropriate. In the second phase, the City will request Best and Final Offers again in accordance with these Instructions for Proposers, or as may be modified. Only Proposers within the competitive range will be eligible to submit a Best and Final Offer to the City. The City will then evaluate the Best and Final Offers and select the Proposal that is deemed to be in its best interest.

The City expressly reserves the right to reject any or all Proposals, to investigate the qualifications and experience of any Proposer, to reject any provisions in any Proposal, to amend this RFP or reissue a revised RFP, to cancel this solicitation, to re-procure the subject matter, and to waive informalities, minor irregularities and discrepancies. The City reserves the right to negotiate with any or all Proposers and to award a contract without a second phase. The City may cancel this RFP at any time. The City is not responsible for any costs incurred by Proposers in the preparation and presentation of Proposals submitted in response to this RFP.

The submission of a Proposal shall constitute an acknowledgement upon which the City may rely that the Proposer has thoroughly examined and is familiar with the RFP, the attachments, and the addenda (if any), the location and site conditions of the Project, and has reviewed and inspected all applicable laws, regulations, ordinances, and resolutions dealing with or related to this procurement. The failure or neglect of a Proposer to examine such documents, laws, regulations, ordinances, or resolutions shall in no way relieve the Proposer from any obligations with respect to the contract issued as a result of this RFP. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any aspect of the RFP, attachments, addenda (if any), laws, regulations, ordinances, or resolutions.

A pre-proposal conference is scheduled on Tuesday, April 14, 2015 at 9:00 am (CDT), Frank Zeidler Municipal Building, Room 501, 841 N. Broadway, Milwaukee, WI 53202., at which time any questions pertaining to this procurement may be discussed. It is recommended that prospective Proposers have a representative attend the pre-proposal meeting.

Written responses, if determined necessary, will be published in the form of an addendum to this RFP on the City’s procurement website as described in Section 1.10, Addenda



1.2 Schedule of Activities

The following is the anticipated schedule for this procurement. These dates may vary.

Date	Activity
April 6, 2015	Request for Proposals issued
April 14, 2015	Pre-proposal Conference, 9:00 a.m. Central Time
May 8, 2015	Last day to submit questions and/or clarifications
May 15, 2015	Responses to questions and/or clarifications posted on the project website
June 5, 2015	Proposals due, 4:00 p.m. Central Time
June 8 – July 2, 2015	Evaluation Committee determines competitive range, if necessary
July 13 – 17, 2015	Discussions with firms within competitive range
July 24, 2015	Best and Final Offers requested, if necessary
August 7, 2015	Best and Final Offers due
August 21, 2015	Evaluation Committee Recommendation
August 24 – September 4, 2015	Pre-Award Audit
August 24, 2015	Contract Award
September 14, 2015	Notice to Proceed Issued to Contractor

The City reserves the right to modify the procurement schedule as circumstances may warrant.

Any proposal, modification, or revision, that is received at the designated City office after the exact time specified for receipt of proposals is “late” and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition, and

- (a) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the City infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
- (b) There is acceptable evidence to establish that it was received at the City office designated for receipt of proposals and was under City’s control prior to the time set for receipt of proposals; or
- (c) It was the only proposal received.

However, a late modification of an otherwise successful proposal, that makes its terms more favorable to City, will be considered at any time it is received and may be accepted.

Acceptable evidence to establish the time of receipt at the City office includes a time/date stamp or handwritten notation of personnel in that office on the proposal wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of City personnel.

If an emergency or unanticipated event interrupts normal City processes so that proposals cannot be received at the City office designated for receipt of proposals by the exact time specified in the



solicitation, and urgent City requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the City office is open to the public.

Proposers may withdraw a proposal or modification thereof by written notice at any time prior to the time specified for receipt of proposals or modifications. Notice may be electronic, provided a hard copy of the notice is delivered within 24 hours of the electronic transmission. A proposal or modification may be resubmitted prior to the time specified for receipt.

1.3 Submission and Content of Proposals

1.3.1 General Requirements

Proposals shall be submitted electronically in .pdf format and in two separate folders as follows: PART A, Pricing Information (Price Proposal); and PART B, Technical and Qualifications Information (Technical Proposal), as described below. Additionally five paper copies shall be submitted. In case of discrepancies between the .pdf and paper copy of any nature, the .pdf shall govern.

- PART A shall be submitted as an electronic version in .pdf format and as five (5) paper copies. All PART A material shall be submitted as a separate file and all paper copies shall be enclosed and sealed in an envelope marked with: "PART A-Streetcars, City of Milwaukee," the RFP number indicated on the cover of this RFP, and the Proposer's official name.
- PART B shall be submitted as an electronic version in .pdf format and as five (5) paper copies in looseleaf binders. All PART B material shall be submitted as a separate file and also in binders marked with: "PART B - Streetcars, City of Milwaukee," the RFP number indicated on the cover of this RFP, and the Proposer's official name.
- Any Proposal that is not in conformity with the requirements of this RFP may render a Proposal non-responsive and may cause its rejection.
- The City reserves the right to waive minor irregularities in the Proposal.
- The Proposal shall be valid for one hundred eighty (180) days from date of Proposal submittal.

The paper copies shall be submitted in one (1) outer envelope or container that encloses both PART A and PART B in separate envelopes and which shall be labeled with the RFP number indicated on the cover of this RFP and the words: "Streetcars Proposal."

- Proposals must be received by 4 p.m. Central Time on date specified above.
- Proposals shall be submitted to:

Milwaukee's Department of Public Works
Attn: Mr. Jeffrey Polenske
Municipal Building, Room 701
841 North Broadway, Milwaukee, WI 53202

Proposer's Security is required in the amount of 5% of the Total Base Contract Price and shall be included in PART A.

1.3.2 Proposal PART A - Pricing Information

The Proposer shall submit PART A - Pricing Information upon the forms furnished by the City and described in Section 1.17, Proposer's Checklist.



Proposers must offer a price on all items shown on the Schedule of Prices. Failure to do so may result in rejection of the Proposal.

The Proposer shall specify a unit price in United States dollars for each item for which a quantity is given and shall show the products of the respective unit prices and quantities, written in the column provided for that purpose, and the total amount of the Proposal obtained by adding the amounts of the several items.

Where unit prices are called for on the Schedule of Prices, each Proposer must furnish prices that reflect all costs for the unit items to be manufactured, including full compensation for all materials, equipment, tools, labor, licenses, incidental work, overhead, profits, insurance, transportation and delivery costs, export duties (if applicable) and all other costs necessary to complete the items, including all taxes, charges, fees and assessments necessary for or related to the Work.

Proposers must complete the "Extension" price column by multiplying the "Quantity" by the "Unit Prices." In the event there is a discrepancy between the computed extended price and the unit price, the unit price shall control and the mathematical error will be corrected accordingly. Vendors are strongly encouraged to thoroughly review calculations on their pricing forms to ensure that no such discrepancies are reflected in their submittals.

The Proposer shall include a Proposal Security in accordance with Section 1.5, Proposal Security.

1.3.3 Proposal PART B - Technical and Qualifications Information

The Proposer shall submit PART B - Technical and Qualifications Information upon the forms furnished by the City and described in Section 1.17, Proposer's Checklist, and in accordance with the format and instructions described herein.

A Proposer that does not address all of the required submittals and associated documentation may be deemed non-responsive. A Proposer that does not provide a Proposal in accordance with the specified format and which is considered difficult to follow may be deemed non-responsive. A Proposer submitting a non-responsive Proposal will not be eligible for award.

Proposals shall be submitted in 8 1/2 in x 11 in size, no smaller than 12 point font, printed or typewritten, and no drawings shall be greater than 11 in x 17 in size. Proposals shall use English units of measure, and all text shall be in the English language. Proposals should not include any unnecessarily generic or elaborate promotional material.

Technical and Qualifications Information must include information in the categories listed below, arranged in separate sections corresponding to those categories. The Proposer shall demonstrate its ability to comply with the Technical Specifications within this Request for Proposal by response to the following items. The Proposal shall be formatted, numbered and lettered to exactly coincide with the paragraphs below.

Part B shall be divided into five major sections (B-1 through B-5) and sub-sections with content as follows:

Section B-1: Forms and Certificates

Proposer shall provide a fully completed copy of all forms listed under Part B in Section 1.17, Proposer's Checklist, including a fully completed Technical Summary Form.

In the initial Proposal submittal, Proposers may identify a maximum of three (3) suppliers or configurations for each major system and sub-system listed in the Technical Summary Form. For each



supplier or configuration that the Proposer proposes, the Proposer, in Part B-3 of its Technical Proposal, shall clearly describe the first supplier or configuration, immediately followed if necessary by a separate, marked description of the second and third supplier or configuration.

Proposals in the first phase will be evaluated and scored using an average of the scores for the suppliers or configurations proposed. During discussions, the City will inform the Proposer of the City's relative evaluation of each alternate proposed.

As part of the Best and Final Offer, a maximum of only two alternates will be permitted in the Technical Summary Form or within the Technical Proposal, and Proposals will be evaluated and scored using an average of the scores for the suppliers or configurations proposed.

Section B-2: Overall Vehicle Description

B-2.1 General Arrangement Drawings

- Provide six (6) general arrangement drawings to scale with appropriate dimensions that indicate the following:
 - Vehicle Plan View (external)
 - Vehicle Side View (external)
 - Vehicle Front View (external)
 - Vehicle Roof Equipment Arrangement (external)
 - Vehicle Seating and Cab Arrangement (internal plan view)
 - Vehicle Underframe Equipment Arrangement
- Provide five (5) transverse sections at the following locations:
 - High floor section (if applicable)
 - Low floor section end side door (if applicable)
 - Low floor section between side doors
 - Low floor section center side door
 - Low floor center section
- Provide artist renderings of the interior and exterior of the vehicle:
 - Exterior end view
 - Exterior side view
 - Exterior side view with doors open
 - Interior view of low floor area
 - Interior view of high floor area, if provided



B-2.3 Vehicle Weight Schedule

Provide passenger numbers and a gross vehicle weight schedule as follows (including train operator except for AW0):

	Passenger Criteria	Number of Passengers	Total Weight (at 154 lb per passenger)
AW0	Empty	0	
AW1	Fully seated load of passengers, plus one Operator		
AW2	AW1 + standees @ 4/m ²		
AW3	AW1 + standees @ 6/m ²		
AW4	AW1 + standees @ 8/m ²		

B-2.4 Dynamic Performance

Provide a dynamic performance simulation confirming the vehicle's capability to continually operate on the intended alignment. The simulation shall be performed over the alignment defined in Volume 3, 60% Plan & Profile Sheets. Provide a graph of basic vehicle performance for each propulsion system proposed, as follows:

Present basic vehicle propulsion and braking performance in a form of a graph; the data shall be based on a vehicle loaded to AW2 with an overhead contact wire voltage of 750 Vdc. Acceleration shall be at the specified maximum values of 3 mph/s (1.34 m/s²) for both propulsion and braking. The empty weight of the vehicle and AW2 weight used in the calculations shall be stated.

The graph shall be presented on an 8.5 in x 11 in sheet in landscape orientation. The horizontal axis shall show vehicle speed from 0 to 45 mph (75 km/h). Three vertical axes shall be provided, showing (1) tractive effort, (2) acceleration rate, and (3) catenary current. Tractive effort shall be shown as positive values for both propulsion and braking. Data shall be presented for the full indicated speed range.

Data presented shall be:

- Acceleration in braking and motoring
- Tractive effort for the propulsion equipment during motoring
- Tractive effort for the propulsion equipment during dynamic braking
- Tractive effort for the friction brake system
- Line current, including motoring and regeneration

In addition, the Proposer shall submit, for each candidate propulsion system, a computer simulation of vehicle performance of a round trip for the initial route identified as Phase 1 on the map below:





The simulations shall be based on the following parameters:

- 525, 750, and 900 VDC nominal catenary voltages
- New wheels
- AW2 passenger load
- 3.0 mph/sec acceleration and brake rate (acceleration may be voltage-limited as permitted in the Technical Specifications.)
- 8 second dwell time at each intermediate station
- 2 minute layover at each terminus (St. Paul Ave and 4th St; and Ogden Ave and Farwell Ave.)
- Maximum allowable speeds for alignment conditions, grades, curves, etc.

The computer model shall output the following which shall be provided in printed form:

- Station-to-station, and end-to-end round trip times
- Average schedule speed, and average and peak speeds in each station-to-station segment
- Total energy consumption (assume no regenerated energy)
- Average and peak RMS line current for each station-to-station segment
- Motor temperature
- Braking resistor temperature (assume no regenerated energy)
- Braking disc temperature

Section B-3: Vehicle Systems and Systems Suppliers

The Proposer may identify a maximum of three suppliers for each of the items listed in the thirteen vehicle systems in the Technical Summary Form and repeated below. (Note: Suppliers may be proposed subcontractors to the Proposer or the Proposer may list itself as a supplier of any of the items in the thirteen vehicle systems or subsystems). The City will notify the Proposer, as a result of the review of the initial Proposals and prior to Request for Request for Best and Final Offer (BAFO), of any suppliers who have been found not compliant with the specification; or who have insufficient experience; or who are not acceptable to the City due to poor performance on previous programs; or who are unacceptable for other reasons. The Proposer may only submit a maximum of two suppliers for each of the items in the thirteen systems or subsystems in its BAFO. After the submittal of BAFO, the Proposer may not substitute other system suppliers for those submitted in the BAFO without the City's written consent.

The thirteen major vehicle systems from the Technical Summary Form are defined as:

- Section 3: Vehicle-Body Structure
- Section 4: Coupler Assembly
- Section 5: Operator's Cab
- Section 6: Passenger Doors
- Section 7: Heating, Ventilating, and Air Conditioning



- Section 8: Lighting
- Section 9: Electrical Equipment
- Section 10: Propulsion System and Control
- Section 11: Trucks Assemblies
- Section 12: Friction Brake System
- Section 13: Vehicle Communication Systems
- Section 14: Interior and Exterior Appointments
- Systems Engineering and Final Assembly

Description of hardware items shall include the following:

- All appropriate system and component ratings
- Basic system configuration
- Model numbers of major components
- Service history of each proposed system, including:
 - Property references
 - Contact Person
 - Vehicle-miles and time in revenue service to date

The brief descriptions of the major systems shall be tabbed or denoted in the order listed.

The Proposer shall also answer the specific questions for each section as Form B.12 included in Commercial Provisions Section 5, Forms and Certificates, and the answers to questions shall be tabbed or denoted in the order listed, at the end of each respective section.

Section B-4: Qualifications

B-4.1 Previous Similar Experience and Streetcar Proposed to Milwaukee

The Proposer shall provide a description of its recent design and manufacturing experience in providing streetcars and light rail vehicles, including the vehicle proposed to Milwaukee, and fleets presently under design and/or construction and highlighting streetcars and low floor light rail vehicles in particular. Include the following for each vehicle order:

- Purchasing Agency
- Contact person (including name, title, phone number, and e-mail address) at the Purchasing Agency. The City may discuss any aspect of contract performance with each named individual. The City also reserves the right to discuss the Proposer's performance with other individuals at its discretion.
- Order size
- Schedule performance in delivery of the vehicles; i.e., original contract requirements v. actual delivery
- Differences between the vehicle supplied and the vehicle specified herein



- Revenue service miles accrued to date

B-4.2 Manufacturing Capacity and Capability

Proposer shall provide a comprehensive description of its manufacturing capability, including the following:

- Identification of current and expected workload, backlog, and capability to implement this order within the proposed schedule.
- Identification of the location where the vehicle shell will be manufactured (per Technical Summary Form B.3) and the experience level of this location in performing streetcar or light rail vehicle work.
- Identification of the location where the truck frames will be manufactured (per Technical Summary Form B.3) and the experience level of this location in performing truck frame fabrication work.
- Full description of the equipment, special machinery, and test facilities available at the vehicle shell manufacturing facility.
- Location of the following test facilities:
 - Vehicle-body compression test facility
 - Truck static load and fatigue test facility
- Identification of all locations where major subassembly Work will be performed
- Identification of the location of final assembly (per Technical Summary Form B.3) and the experience level of this location in performing this type of work.
- Identification of the location of truck assembly (per Technical Summary Form) and the experience level of this location in performing this type of work.
- Prime Contractor's present and expected manufacturing backlog, and how this order will "mesh" with existing and expected orders.

B-4.3 Staffing Plan and Resumes

Proposer shall demonstrate the adequacy of its staffing plan by providing the following:

- Project Organization Chart, including definitions of the functions shown thereupon, including as a minimum the place of the project management within the Proposer's overall organization and the organizations for the overall project, engineering, manufacturing, and quality assurance. The chart shall indicate the authority and placement of all key Project personnel, including the Contractor's Project Manager. Key subcontractor personnel who will interface regularly with the Prime Contractor, and who will be given significant program authority, shall also be shown on this chart.
- Engineering design manpower loading requirements vs. projected availability.
- Quality Assurance manpower loading requirements vs. projected availability.
- Manufacturing manpower loading requirements vs. projected availability.



The Proposer shall provide resumes for all key personnel listed on the organization chart (including subcontractor personnel, as appropriate). Each resume shall contain the following, in the order given below:

- Corporate Title and affiliation
- Program Title
- Relevant Education
- Relevant Experience
- Brief description of the Project function they will fulfill, including decision-making responsibilities
- Percentage of time to be dedicated to this Project, by year

B-4.4 Subcontractor Experience

For each subcontractor proposed for each of the thirteen major vehicle systems, the Proposer shall provide a description of the subcontractor's relevant experience in the design and supply of that type system on streetcars or light rail vehicles. Include the following for each major system order:

- Prime Contractor
- Purchasing Agency
- Contact persons at the purchasing agency, for reference purposes
- Model number (or other identifier) of the system provided
- Number of units provided
- Significant differences between the system to be supplied and the system specified by the City
- Schedule performance in delivery of the system, including original promised delivery and actual delivery of systems

B-4.5 Design Planning, Quality Assurance, and Work Flow

Proposer shall demonstrate, through a single flow chart and narrative, how the vehicle design effort will be managed. Narrative should be keyed to flow chart. Factors that should be addressed in both the flow chart and narrative include:

- Where the design effort for each major vehicle system and/or component will be effected.
- How the Proposer as Prime Contractor will ensure that the design (including subcontractor designs) incorporates all specification requirements.
- How the Prime Contractor will coordinate the design effort amongst the various subcontractors; that is, how the systems engineering and integration effort will be set up, managed, and carried out.
- How Quality Assurance of the design will be implemented.
- Description of checks and balances in place to ensure a safe design.
- How the City review comments will be fed back into the overall engineering design effort.



- How First Article and Design Qualification testing results will be fed back into the overall design effort.
- How will any language translation times be accounted for as part of the design, manufacturing, QA, and testing processes.

B-4.6 Manufacturing Planning, Quality Assurance, and Work Flow

Proposer shall demonstrate, through a single flow chart and narrative, how the manufacturing effort will be managed. A second flow chart and narrative shall be provided to describe the Proposer's Quality Assurance organization. The narrative in each case should be keyed to the flow chart. Factors to be addressed include:

- Interface and controls between the Prime Contractor's design and manufacturing groups
- Interface and controls between Prime Contractor's and subcontractor's manufacturing groups
- Vehicle-body assembly facility work flow and stationing
- Material control
- A complete description of the Proposer's Quality Assurance program. This description must include:
 - The structure of the Proposer's QA Department
 - The number of QA professionals expressed as a percentage of the total manufacturing workforce
 - How Quality Assurance maintains independence from manufacturing
 - How Quality Control inspectors maintain independence from manufacturing
 - How Quality Control problems are fed back into the manufacturing process and resolved
 - How Configuration Control is managed
- Proposer's documentation resources, including all specifications and standards identified in the Technical Specifications.

B-4.7 Schedule and Narrative

Schedule is of high importance in this procurement. Proposer shall submit a CPM schedule indicating reasonability of achieving the key milestone dates.

As a minimum, the events to be included in the Proposer's schedule are as follows (Proposer may include additional events as appropriate):

- Submittal of general arrangement drawings
- Each major subsystem contractor placed under contract
- Preliminary and final design reviews of each major subsystem
- First Article inspections of major subsystems and components
- Commence first vehicle shell parts manufacture
- Commence first vehicle shell major assembly
- Complete first bare vehicle shell prior to painting
- Vehicle shell static load test



- Complete first vehicle set of truck frames
- Truck frame fatigue test
- Ship first vehicle shell to final assembly site, if separate
- Commence first vehicle final assembly
- Complete equipment installation on first vehicle
- Final truck mounting on first vehicle
- First Article inspection of first vehicle
- Shipment of first vehicle to the City's facility
- Arrival of first vehicle at the City's facility
- Delivery of first vehicle to the City
- Complete design qualification test series on first vehicle
- Complete each vehicle shell
- Ship each vehicle to the City's facility
- Arrival of each vehicle at the City's facility
- Contractual delivery of each vehicle (turnover to the City)
- Reliability Demonstration Test

Section B-5: Deviations and Exceptions

The Proposer must certify that the proposed vehicle meets all the requirements of the specification except as noted below.

In the first phase (prior to any BAFO), deviations or exceptions or substitutions or approved equals or alternate requirements to the requirements in the RFP may be submitted for the City's consideration. A complete, descriptive list of any and all such substitutions or deviations or alternate requirements from the City's RFP shall be provided in a clear and concise format. The list and description must explain the reasons for each request for deviation or exception or substitution or alternate requirement, must identify the appropriate Section(s) of either Volume 1 Commercial Provisions or Volume 2 Technical Specifications, and must provide revised language or deletions.

Any such deviations will be discussed with the Proposer if the Proposer is found to be within the competitive range during the first phase. As a result of such discussions, the City may issue addenda incorporating such deviations it considers to have merit when it issues the Request for BAFO. No deviations or substitutions or alternate requirements will be allowed in the BAFO.

Proposers are advised that extensive deviations that change the basic characteristics or performance of the vehicle or the nature of the procurement may be grounds to render the Proposal non-responsive.

1.4 Multiple Proposals

A Proposer may submit a maximum of one Proposal. Alternate suppliers and system configurations may be offered as described in Section 1.3.3, Proposal Part B, Section B-3: Vehicle Systems and Systems Suppliers.



1.5 Proposal Security

Each Proposer shall submit with its Price Proposal a Proposal Security in the amount of 5% of the amount of the Total Base Contract Price. The Proposal Security shall be a proposal bond using Form A.2 entitled "Proposal Security Form," provided in Commercial Provisions Section 5, Forms and Certificates, which is properly executed by the Proposer and surety and is accompanied by corporate surety's power of attorney. The surety's signature shall be notarized and the surety shall be admitted and authorized to transact such business in the State of Wisconsin and listed in Treasury Circular 570 - Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.

Any alteration of the form of bond, or imperfection in its execution as required, may, at the option of the City, result in a rejection of the Proposal under which such bond is submitted. The Proposal Security shall be a guarantee that the Proposer, if notified it will be awarded the Contract, will execute the required Contract and bonds within ten (10) days after such Contract has been forwarded to it or such additional time as may be allowed by the City. If the Proposer fails or refuses to execute the required Contract and bonds within the time specified, the money and proceeds from the Proposer Security shall be applied towards payment of the damage to the City on account of the delay in the execution of the Contract and bonds and the performance of the Work there under, and the necessity of accepting a less desirable Proposal resulting from such failure or refusal to execute the Contract and bonds as required. The Proposal Security shall remain in full force and effect until a written Contract is executed and all required bonds are furnished.

The Proposal Security of the successful Proposer will be returned after execution of the Contract. The Proposal Security of the other Proposers will be held until complete Contract execution and then will be returned. The Proposal Security of any Proposer found unacceptable in the first phase will be returned when the Proposer is notified of unacceptability.

1.6 Proposal Evaluation Process

The City reserves, as in its sole discretion, the right to reject any and all Proposals and to waive informalities and minor irregularities in Proposals received, other provisions in the Contract Documents notwithstanding. The Request for Proposals does not commit the City to award a Contract or to pay any costs incurred in the preparation or submittal of a Proposal or participation in discussions and negotiations. Before Proposals are subjected to the evaluation process, the City's Public Works Department will determine if the Proposal meets the basic submittal requirements of these Instructions. Proposals not meeting the basic submittal requirements of these Instructions may be deemed non-responsive.

Proposals will be evaluated by a Proposal Evaluation Committee composed of Technical Evaluation, Aesthetic Evaluation, and Price Evaluation Subcommittees. Evaluations will be conducted as described herein and in accordance with the criteria discussed in Section 1.7, Evaluation Criteria.

1.6.1 Initial Review of Technical Proposals

The Technical Evaluation Subcommittee will perform an initial review of Technical Proposals, during which it will determine whether the Technical Proposal for each Proposer is basically responsive to the requirements of the Request for Proposals. Proposals that do not meet the basic requirements of this RFP will not be evaluated in detail. For any such non-responsive Proposal, the City will advise the Proposer in writing that the Proposal has been rejected and will not receive further consideration. Price Proposals will remain sealed during the initial review of the Technical Proposals, and the Price Proposal



for a Technical Proposal that is deemed non-responsive will be returned unopened and will not be subject to disclosure.

The Technical Evaluation Subcommittee will review all responsive Technical Proposals and, using the Evaluation Criteria per Section 1.7, establish an initial Technical Score.

The Technical Evaluation Subcommittees will evaluate the qualifications of responsive Proposers. As part of this evaluation, the Subcommittees may conduct interviews of the individuals identified as agency contacts provided by the Proposers. The evaluation may be jointly conducted and/or each Subcommittee may review different aspects of Qualifications. The Evaluation Committee will assign an initial Qualifications Score for each Proposal as a result of this review, using the Evaluation Criteria per Section 1.7.

The City may ask Proposers with responsive Proposals to clarify their Proposals with regard to minor irregularities, possible misunderstandings, informalities or apparent clerical mistakes in their Proposals. The City reserves the right to adjust any evaluations made with faulty or unclear information.

1.7 Evaluation Criteria

1.7.1 Evaluation Elements

The maximum score that a Proposal can receive is 1000 points. The four main criteria for Proposal evaluation will total 1000 points maximum and will be weighted in accordance with the Evaluation elements below.

A. Price Proposal Evaluation (weight = 350 points)

Price scores will be based on the Total Base Contract Price as presented on the Price Summary Form, Form A.1.

The Proposer with the lowest Total Base Contract Price will receive the maximum 350 points for its Price Score. All other Proposers' Price Scores will be calculated as follows:

$$\text{Proposer's Price Score} = 350 \text{ times } \frac{\text{Lowest Total Base Contract Price}}{\text{Proposer's Total Base Contract Price}}$$

B. Technical Evaluation (weight = 350 points)

The Proposer shall provide complete and comprehensive responses to all requests for information listed in Section 1.3, Submission and Content of Proposals, Parts B-1 through B-3, and as may be required elsewhere in this RFP. Each response shall be clearly separated by index tabs clearly identified with the section letter and item number.

C. Aesthetics Evaluation (weight = 100 points)

The Proposer shall provide artist renderings of the interior and exterior of the vehicle as requested in Section 1.3.3, Proposal Part B, Section B-2.1, General Arrangement Drawings.

D. Qualifications Evaluation (weight = 200 points)

The Proposer's Qualifications will be evaluated according to the seven overall criteria, listed in Section 1.3.3, Section B-4, Qualifications.

Scoring of Technical and Price Proposals will be combined by adding the Price, Technical, Aesthetics, and Qualifications Scores.



The City may investigate responsibility, responsiveness, or any aspect of the Proposer's Technical Proposal, cost, or price as necessary to determine a Proposer's qualifications and capabilities to perform this contract and to confirm the accuracy and/or validity of any of the information presented. A Proposer's failure to supply information promptly as requested by the City pursuant to that investigation shall be grounds for disqualification and rejection of its Proposal. The Evaluation Committee may visit the Proposer's facilities or witness the Proposer's vehicles in operation at other locations, and the Proposer shall cooperate in making any reasonable arrangements in these regards.

The City's Evaluation Committee may use more detailed unstated criteria as long as those criteria generally correlate with those stated.

The City may revise the evaluation criteria or weighting between the first phase and the second phase. Any revisions will be made by written addenda. All Proposers within the competitive range in the first phase will be allowed to supplement their Proposals in the second phase in response to any revisions in evaluation criteria.

1.7.2 Determination of Competitive Range

After the completion of the evaluation of Technical Proposals including Qualifications, the Price Evaluation Subcommittee will open and evaluate Price Proposals for all responsive Technical Proposals.

After the Price Proposal evaluations, the Proposal Evaluation Committee will assign a combined score to each responsive Proposal. Based on these scores, the Committee may recommend that award be made to the Proposer whose Proposal is deemed by the City to clearly offer the Best Value to the City in the event that such Proposal is significantly superior to other Proposals. Alternatively, the City may establish a competitive range and begin discussions with Proposers who have Proposals in the competitive range. The City will notify in writing any Proposer whose Proposal is outside of the competitive range that such Proposal has been rejected and will not receive further consideration.

A Proposal generally will be included within the competitive range if it is determined by the Proposal Evaluation Committee that the Proposal has a reasonable chance of offering the Best Value to the City, unless it is determined it is so inferior or its price is so high that meaningful discussions are precluded.

The City may meet individually with all Proposers within the competitive range. The extent of discussions will vary with the nature and the quality of the Proposals. The basic purposes of the discussions are to review any shortcomings or deficiencies in the Proposal, to discuss any listed deviations, to clarify any information or questions the Evaluation Committee may have concerning the Proposal, to discuss which of the requirements are relevant cost drivers, and to provide the Proposer with the opportunity to discuss any proposed changes to specific language or requirements in the RFP. Discussions may include meetings or telephone conversations between individual Proposers and all or part of the City's Evaluation Committee, or written correspondence between the City and Proposer regarding Proposals and supplements submitted by the Proposer. Individual Proposers shall not initiate contact with any individual member of the Evaluation Committee. The City may issue addenda and may receive Proposal supplements during the course of discussions.

1.7.3 Best and Final Offer

After discussions, the Committee may elect to request Best and Final Offers (BAFOs) for Price Proposals only, thereby leaving Technical Proposal submittals and technical scores unchanged.

After discussions, the Committee, alternatively, may elect to request complete BAFOs for both Technical Proposals and Price Proposals. The City will include with its request for BAFO an addendum identifying



any changes to either the Commercial Provisions or the Technical Specifications resulting from its discussions with Proposers.

The City may choose to incorporate addenda and revisions from the discussions phase into a conformed version of the RFP and issue that document as the Request for BAFO. BAFOs submitted to the City shall constitute an irrevocable offer to contract with the City under the terms of the Request for BAFOs and may not be withdrawn within the one hundred twenty (180) days after the due date for BAFOs.

After receipt, BAFOs will be reviewed, evaluated and ranked in accordance with the evaluation criteria in this RFP. However, the City will also use a qualitative evaluation offering the best value, as opposed to a strictly quantitative basis, for evaluation and ranking of the BAFOs. The Evaluation Committee will recommend that the City enter into negotiations with the Proposer whose Proposal offers the Best Value to the City.

The Proposal Evaluation Committee will recommend Contract award in accordance with Section 1.14, Award and Execution of Contract.

1.7.4 Award of Contract

Award of the Contract, if awarded, will be to the Proposer whose Proposal is determined to offer the Best Value to the City with price and other factors considered. Any such award will be made pursuant to a Notice of Award signed by the Commissioner of Public Works, or authorized representative, within one hundred eighty (180) days after submittal of the Proposals or one hundred twenty (120) days from submittal of the Best and Final Offers, if requested, whichever is later. If necessary, the period of time specified may be extended by written agreement between the City by and through its Commissioner of Public Works or authorized representative, and the Proposer or Proposers concerned. Award of the Contract will occur when a written Notice of Award, signed by the Commissioner of Public Works or authorized representative, is placed in the mail or otherwise transmitted to a Proposer.

The Evaluation Committee or a designated member of the committee may accept the offer, or as presented in the BAFO, or may negotiate with the highest ranked Proposer. In the event the City is unable to conclude a satisfactory Contract with the highest ranked firm, negotiations with that firm shall be formally terminated. The City will then undertake negotiations with the second highest ranked firm. Failing accord with the second highest ranked firm, the Committee shall terminate negotiations and may either re-solicit or proceed with negotiations with the third highest ranked firm.

1.7.5 Confidentiality of Proposals

Documents submitted as part of this Proposal may be subject to disclosure under the Wisconsin Public Records Laws. Information that Proposer believes is exempted from disclosure under the Wisconsin Public Records Laws, i.e. trade secrets, copyrighted material, infrastructure records, or security records, should be set apart within the Proposal (or BAFO) on separate pages with a heading that identifies the information and the reason Proposer believes it is exempt from disclosure. Any such separate pages designated for exempt information should not contain material that is subject to disclosure under the Wisconsin Public Records Laws. All information believed to be exempt under the Wisconsin Public Records Laws should be placed at the end of the designated section of the Proposal for easy reference and removal. Any page limits defined below will be adjusted if the exempt information creates extra pagination. Any blanket claim of exemption from disclosure or inclusion in a claim for disclosure of information which is patently subject to disclosure, or any other such claim which may constitute an abuse of the right of exemption may, at the discretion of the City, render the entire proposal subject to disclosure.



The City shall have no duty to defend the rights of Proposer, or any of its agents or affiliates, in any records requested to be disclosed. Upon receipt of a public records request, the City will notify Proposer of its intent to release records to the requestor. Proposer shall have a maximum of five (5) business days beginning with the date it receives notification to respond to the City by either accommodating the requestor, providing redacted copies of the documents, or pursuing legal remedies to stop the City's release of requested information. By submitting this Proposal, Proposer agrees that said notification shall relieve the City of any further obligation under any claim of Proposer, or any of its agents or affiliates, in any jurisdiction in connection with the disclosure of such records. Proposer and its agents and affiliates shall have the right to pursue legal and/or equitable remedies to stop or limit disclosure at their sole expense. Proposer agrees to defend City against any third party claim related to Proposer's designation of certain records as exempt from public disclosure ("Claim"), and will hold harmless the City for any award to a plaintiff for damages, costs and reasonable attorney's fees incurred by the City by reason of such Claim. City will promptly notify Proposer of the Claim, and will allow Proposer to control the defense and settlement thereof.

1.8 Single Proposal Procedures

In the event a single Proposal is received, the City will conduct a price and/or cost analysis of the Proposal. The Proposer may be required to furnish cost and pricing data to support this effort. Negotiations may be conducted with the single Proposer or the City may reject the Proposal.

1.9 Requests For Approved Equals

In order to establish a basis of quality and comparable cost to the City, certain materials, processes, tests, or types of machinery and equipment may be specified in the Contract Documents by describing the process, by designating a manufacturer by name, brand, or product number, or by specifying a kind of material. It is not the intent of these Contract Documents to exclude other processes, equipment or materials of equal value, utility or merit, which may be or have been approved by the City.

A Proposer may propose, in its Technical Proposal, any equipment, material, article, or process, which, in its opinion, is equal to that designated and not otherwise specifically prohibited. All requests for equivalents shall clearly and completely specify how the request meets or exceeds the required fit and/or function of Volume 2 Technical Specifications, and/or how the request is equal to or superior to Volume 2 Technical Specifications.

The City shall make a determination of each Proposer request. If the City's determination results in a change to the Contract Documents, including the Technical Specifications, all Proposers shall be advised by Addendum of the change.

The City shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, materials or processes, and its decision shall be final.

1.10 Addenda

The City may modify any part of the RFP at any time. The City will modify the RFP only by issuing a written addendum. Any oral communication is not binding on the City. Addenda will be consecutively numbered in the order they are issued.

The City will post addenda issued prior to the Proposal due date to the City's procurement website. The City will make efforts to provide courtesy announcements via direct e-mail to all recorded holders of the RFP that addenda have been posted. Notwithstanding efforts by the City to provide such notice to recorded holders of the RFP, it remains the obligation and responsibility of the Proposer to learn of any



addenda, responses, or notices issued by the City. Such efforts by the City to provide notice or to make it available on the website do not relieve the Proposer from the sole obligation for learning of such material.

After the Proposal due date, if the competitive range has not been established at the time an addendum is issued, the City will deliver the addendum to all Proposers. A Proposer is a person or firm that has timely delivered a Proposal to the City. If a competitive range has been established, the City will deliver addenda to all Proposers that are within the competitive range at the time the addendum is issued.

The City will issue an addendum if it wishes to make a change in the RFP or allow deviation from a requirement of the RFP or make explicit an approved equal that would be likely to induce a Proposer to change the substantive content of its Proposal. Those changes may include, but are not limited to, changes in the Proposal requirements and changes in evaluation criteria. The City also will issue an addendum to communicate to all Proposers information that the City has provided to one of them, if that information is necessary in submitting a Proposal, or if the City determines that an uninformed Proposer would be prejudiced if not given the information.

If a change is not complex, the written addendum may be preceded by oral notification or email. If an oral notification or email is issued, the City will notify those entitled to receive the addendum as nearly simultaneously as is reasonably possible, and will make a written record of the notification given. The requirement under this item for simultaneous oral notification shall be deemed satisfied if all Proposers are notified on the same day.

Proposers may clarify their Proposal in response to a written request by the City for supplemental information.

1.11 Waiver

The Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the Work or the furnishing of the labor, operating requirements and environment of the City's service territory, supplies, material or equipment called for in the Specifications, that it has checked its Proposal for errors and omissions, that the prices stated in its Proposal are correct and as intended, and are a complete and correct statement of its prices for performing the Work or furnishing the labor, supplies, materials or equipment required by the Contract Documents. The City will not pay additional compensation to the Contractor for any error or omission in the Specifications which should have been known to the Contractor prior to Contract award. The Proposer waives any claim for the return of its Proposal security if, on account of errors or omissions claimed to have been made by it in its Proposal, or for any other reason, it should refuse or fail to execute the Contract.

1.12 Protests and Appeals

1.12.1 Protests at the City level

This Protest Procedure is intended to comply with FTA Circular 4220.1F, Chapter 7.1, and is in no way intended as a substitute for resolution of any questions or concerns on the part of prospective proposers that may be addressed as outlined in this RFP, or informally through other appropriate means. The City Department of Public Works strives to ensure that all proposers are treated fairly and equitably.

Prior to proposal submission date:



Protests pertaining to this RFP may be made by a Proposer and shall be received by the Commissioner of Public Works, ("Commissioner"), on a date not less than five (5) calendar days prior to the date scheduled for proposal submission. Such protest shall be in writing and state the reason/s for it as well as the relief sought. Any supporting documentation should be included with this written protest. Failure to follow the deadlines set forth in this paragraph, to provide the protest in writing, or to state with specificity the reason(s) for the protest or the relief sought will result in summary rejection of such protest.

The Commissioner shall review protests and, if modification is deemed necessary, an addendum containing the changes shall be issued. If necessary, the proposal submission date shall be extended. If the protest is rejected, the protestor shall be notified in writing. Such notice shall be mailed no more than five (5) calendar days after receipt of the protest by the Commissioner. The decision of the Commissioner shall be final.

After proposal submission date:

The Commissioner shall make a written recommendation as to which Proposer appears to be the highest ranked proposer and notify all unsuccessful Proposers by mail of such recommendation. Protests pertaining to award recommendations may be made by an unsuccessful proposer and shall be received by the Commissioner within five (5) calendar days after receipt of the award recommendation. Such award recommendation will be deemed received two (2) days after mailing. Such protest shall be in writing and state the reason(s) for the protest, as well as the relief sought. Any supporting documentation must be included with the written protest. Failure to follow the deadlines set forth in this paragraph, to provide the protest in writing, or to state with specificity the reasons for the protest or the relief sought will result in summary rejection of such protest.

The Commissioner shall review the protest and issue a written decision, addressing each substantive issue raised by the protestor. The written decision will be mailed no more than five (5) calendar days after receipt of the protest by the Commissioner. If the protest is rejected, the Commissioner shall proceed to award the contract in accordance with his/her award recommendation. If the protest is granted, in whole or in part, the Commissioner shall take further action consistent with such decision and notify any interested parties, if necessary. No contract shall be awarded while a protest is pending. The decision of the Commissioner is final.

The Commissioner shall inform FTA of any protests received pursuant to this protest procedure, and keep the FTA apprised of the progress and resolution of any protests.

Any protest filed pursuant to this protest procedure shall be delivered to:

Commissioner, City of Milwaukee Department of Public Works
841 North Broadway, Room 501
Milwaukee, WI 53202

Review of any aspect of the procurement process must be sought under this protest procedure prior to an appeal to the FTA.



1.12.2 Protests at the FTA level

Protests made to the FTA will be limited to the City's failure to have or follow its protest procedures, or the City's failure to review a complaint or protest, or any alleged violation of Federal law or regulations. Any protest to the FTA must be made in accordance with the following guidelines:

- A protestor must exhaust its administrative remedies with the City, prior to filing an appeal with FTA.
- A protest must be filed with the FTA no later than five (5) working days after the protestor knows or has reason to know that the City has failed to render a final decision, has failed to follow the City's protest procedures, or has failed to review a complaint or protest, or has violated Federal law or regulations.
- A protest to FTA must be filed in accordance with FTA Circular 4220.1 F, as amended.

The City reserves the right to proceed with the procurement as set forth in FTA Circular 4220.1 F, if such action is deemed in the best interest of the City.

1.13 Buy America and Pre-Award Audit

The Proposer's attention is directed to the Buy America requirement set forth in 49 USC § 5323(j), FTA regulations at 49 CFR Parts 661 and 663, and any guidance issued by FTA. The Proposer agrees to comply with 49 USC § 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. Separate requirements for rolling stock are set out at 49 USC § 5323(j)(2)§ and 49 CFR § 661.11. Rolling stock not subject to a general waiver must have a 60 percent domestic content (components and subcomponents) and final assembly must occur in the United States.

A Buy America Certificate (see Form B.7) must be completed and submitted with the Proposal and each subsequent Proposal revision, including any Best and Final Offer. A Proposal or revision that does not include the applicable Buy America Certificate is non-responsive and will be rejected.

A Buy America Pre-Award Audit is required for rolling stock and will be conducted subsequent to the City's Notice of Intent to Award letter, but prior to execution of the contract. If the selected Proposer certifies compliance with the Buy America requirements but is unable to demonstrate compliance during the Pre-Award Audit to the satisfaction of the City, the Proposal will be deemed to be non-responsive and rejected.

If a Proposer certifies non-compliance with the Buy America requirements, the certification shall be accompanied by documentation identifying the Proposer's eligibility for a waiver from the Buy America requirement. The City, if it deems the request for a waiver to be appropriate, may request a waiver of Buy America compliance from the FTA. If the FTA does not grant a waiver, the Proposal will be deemed non-responsive and rejected.

For the procurement of rolling stock, the provisions of 49 USC § 5323(l) and implementing FTA regulations (49 CFR Part 663) pertaining to Pre-Award and Post-Delivery audits of rolling stock shall apply. Such audits shall be performed for the purpose of verifying compliance by the Proposer with applicable Buy America requirements (49 USC § 5323(j) and 49 CFR Part 661), relevant Federal Motor Vehicle Safety (FMVS) Standards, and for the purpose of verifying compliance with the City's Technical Specification requirements. These audits shall be performed before the award of a contract is effective



and again after delivery of the rolling stock, but before title transfer or revenue service begins, whichever occurs first.

At the BAFO stage or as requested, the Proposer shall complete Form A.3 and A.4 which requires the Proposer to provide all documentation requested in the Specifications and any other information reasonably necessary to enable the City to complete an audit and certify compliance with the RFP requirements and the manufacturer's responsibility as set forth in 49 CFR § 663.27.

If the Proposer indicates that it will comply with the Buy America requirements, the Proposer shall provide all documentation pertaining to the Buy America requirements as is reasonably required to allow the completion of an audit in sufficient detail to enable the City to certify compliance in the manner set forth in 49 CFR § 663.25. If the Proposer is willing to provide the necessary documentation only on a confidential basis to an independent contractor retained by the City, the Proposer shall include a signed declaration to that effect with its Proposal, which can be attached to Form A.3 and A.4. Within ten (10) calendar days after written request by the City, Proposer shall provide the City's independent contractor all such information, records, and data as is reasonably required by the independent contractor to complete the Buy America audit in sufficient detail to enable the City to certify compliance as required under 49 CFR § 663.25. Information provided by Proposer about the actual cost of components and subcomponents (other than costs expressed as a percentage of total vehicle cost) shall be kept confidential to the extent cost data is clearly marked as proprietary by Proposer and to the fullest extent permitted under applicable state or federal law.

1.14 Award and Execution of Contract

The City reserves the right to reject any and all Proposals, to postpone or decline to award a Contract or to waive any irregularity or informalities in any Proposal or in the Proposal procedures and to take all Proposals under advisement for a period of one hundred eighty (180) days and the BAFO under advisement for a period of one hundred twenty (120) days. No Proposer may withdraw or modify its Proposal for a period of one hundred eighty (180) days after the due date of the Proposals, except as may be requested by the City. Each Proposer will be notified of award.

The Contract will be awarded, if at all, to a Proposer whose Proposal conforms to the RFP requirements; who is deemed responsible; who demonstrates that it possesses the management, financial, technical and facility capabilities necessary to meet the requirements of the RFP; and is judged, by an overall assessment of the general considerations and specific factors identified in Sections 1.3, Submission and Content and Proposals, 1.6, Proposal Evaluation Process, and 1.7, Evaluation Criteria, to offer the Best Value for the City.

The City may rescind a Notice of Intent to Award at any time prior to the execution of the Contract by the City. The Contract shall be effective only upon execution by the Parties of properly executed Contract forms, including, but not limited to, execution by the Commissioner of Public Works, or authorized representative. The City's Notice to Proceed ("NTP") shall be conditioned upon Contractor delivery of a properly executed Performance Bond or other form of performance security meeting the requirements of Section 2.12, Performance Security, within ten (10) business days from the City NTP. The effective date of delivery of NTP shall be the date the Contractor satisfies the NTP performance security obligations under Section 2.12 of this Contract and delivers such security to the City. The Proposal Security required under Section 1.5, Proposal Security, of this Contract shall remain in full force and effect until a written Contract is executed and all required bonds are furnished.

Failure of the Contractor to execute the Contract and file the Performance Security within the time aforesaid shall be just cause for the annulment of the award and the forfeiture of the Proposal bond,



which shall become the property of the City, not as penalty but as liquidated damages. The award may then be made to another Proposer.

1.15 Assignment of Contract to Other Jurisdictions

The Contractor agrees that the City may assign its rights under this Contract to another jurisdiction, to exercise one or more options. The Contractor agrees to abide by the terms of this Contract as if the other jurisdiction stood fully in the place of the City. Any such assignment shall be in accordance with the "piggybacking" requirements in FTA Circular 4220.1F.

1.16 State of Wisconsin Requirements

Any corporation, partnership, joint venture, or other business entity submitting a Best and Final Offer for this Contract, shall be duly authorized to conduct business in accordance with the laws of the State of Wisconsin.

The City may require the Proposer (or the Contractor) to provide evidence of such authority, licenses, or other documents that establishes the Proposer's (or the Contractor's) ability to conduct business in the State of Wisconsin.

1.17 Proposer's Checklist

The following two checklists identify the Proposal Forms that **MUST** be submitted as part of any responsive Proposal. The forms are included in Volume I, Commercial Provisions, Section 5, Forms and Certificates.

Proposers are advised that said listings are provided as a convenience only for Proposal preparation and the City does not warrant that all data required for submittal are listed.

Part A – PRICING INFORMATION	
A.1	Schedule of Prices
	Price Summary Form
	Schedule A – System Support
	Schedule B – Spare Parts
	Schedule C – Special Tools
	Schedule D – Test Equipment
A.2	Proposal Security Form
A.3	Pre-Award Audit Form for Contractors
A.4	Pre-Award Audit Form for Subcontractors



PART B – TECHNICAL AND QUALIFICATIONS INFORMATION	
B.1	Proposal Form
B.2	Addenda Acknowledgement Form
B.3	Technical Summary Form
B.4	City of Milwaukee Certification of Restrictions on Lobbying
B.5	Federal Lobbying Disclosure Form
B.6	Certification Regarding Debarment, Suspension and Other Responsibility Matters for Lower Tier Participant to be submitted by Proposer
B.7	Buy America Certificate
B.8	Non-Collusion Affidavit
B.9	Cargo Preference Certificate
B.10	Certification of Disadvantaged Business Enterprise (DBE) Compliance
B.11	Non-Discrimination Certification Form
B.12	Questions for Technical Proposals

1.18 Performance Security

The successful Proposer shall furnish, at its own expense, bonds as specified in Section 2.12, Performance Security.

1.19 Definition of Terms

Acceptance Certificate: The certificate of the contracting officer certifying that the Contract has been satisfactorily completed and finally accepted as of the date of signature.

Addenda: Written interpretations, clarifications and revisions to the Request for Proposals or Request for Best and Final Offers issued by the City.

Advertisement: The public announcement, as required by law, inviting proposals for work to be performed, materials to be furnished, or both.

Apply: Attach or otherwise install following original equipment manufacturer instructions.

Approval: The written endorsement, sanction or authorization by the City of a proposal, plan, procedure, action, document, report, specification, design, or any part thereof, undertaken, promulgated or developed by the Contractor in accordance with the indicated requirements of the Contract.

Approved: Having received written approval from the City or its designated representative.

Award: The acceptance by the City of the most advantageous Proposal or Best and Final Offer and written notice of same to the tenderer of said Proposal or Best and Final Offer.

Base Order: Shall mean the supply of four (4) low-floor vehicles and the related system support, spare tools and test equipment contained in the Total Base Contract Price in connection with such vehicles



and meeting the requirements of the Contract Documents to accomplish such Work. The Base Order does not include the options for additional vehicles.

Best and Final Offer or "BAFO": A revised Proposal submitted in response to a specific request by the City at the end of the negotiation process. A Best and Final Offer should incorporate all modifications to earlier Proposals agreed to between the Proposer and the City, and the proposer's best pricing.

Buyer: City of Milwaukee (or "the City"). The City will be the contracting agency and signatory to the Contract.

Calendar Day: Each and every day shown on the calendar.

Certificate of Delivery: A document issued by the City to the Contractor following shipment of the vehicle from the Contractor's facility to the City property and the completion of required tests, inspections, and documentation required for Contractual Delivery per Special Provisions SP-21. See also, "Contractual Delivery".

Change Notice: A notice issued to the Contractor by the City specifying a proposed change to the Contract Documents.

Change Order: A written order issued by the contracting officer, or his authorized representative, to the Contractor delineating changes in the Contract, Drawings or Specifications, or all three, in conjunction with one or more Change Notices and establishing the basis of payment and time adjustments for the Work affected by the changes.

City: The City of Milwaukee, Wisconsin.

City OMF: The City's streetcar Operations and Maintenance Facility, which is located between North 4th Street and North 5th Street and just south of West Clybourn Street in Milwaukee, or another location in Milwaukee designated by the City for deliveries under this Contract.

Clean: To make free of dirt, impurities, pollutants and extraneous matter, following all manufacturing standards.

Conditional Acceptance: A vehicle shall achieve Conditional Acceptance when it has been Delivered, has successfully passed all of the tests set forth in Volume 2, Technical Specifications, has been certified by Contractor as fit for revenue service, is otherwise complete (except for those items specifically set forth on the Open Items List for such vehicle), and the City has determined the vehicle to be suitable for safe and reliable operation in revenue service.

Conditional Acceptance Notice: A written notice transmitted to the Contractor stating that the vehicle has completed all contractual requirements for Conditional Acceptance and, has been certified to the City by the Contractor as fit for revenue service and is therefore a candidate for Conditional Acceptance by the City. Each such Conditional Acceptance Notice shall have attached the agreed upon Open Items List, including a date for resolution for each open item.

Contract: The written agreement executed by the City and the Contractor which covers the performance of the Work, the furnishing of labor, materials, tools and equipment and the basis of payment, and which incorporates the various Contract Documents. The Contract includes any Change Orders executed by the City and the Contractor subsequent to award of the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes all prior discussions, negotiations, representations or agreements, either written or oral.

Contract Documents: Contract Documents means the Request for Proposals or Request for Best and Final Offers, Addenda, if any, General Provisions, Special Provisions, completed Proposal Forms,



Technical Specifications, Contractor's Proposal or Best and Final Offer, Contract Form, and Performance Bond. These Contract Documents are intended to describe and provide for the completed Work. In the event there are inconsistencies or discrepancies of terms and conditions between elements of these Contract documents, it shall be resolved by giving precedence in the following order, unless expressly provided otherwise in the Contract:

- A. Change Orders;
- B. Contract (contract form);
- C. Federal Requirements (CP3) as set forth in the conformed Request or BAFO, as applicable;
- D. Special Provisions (CP4) as set forth in the conformed Request or BAFO, as applicable;
- E. General Provisions (CP2) as set forth in the conformed Request or BAFO, as applicable;
- F. City of Milwaukee General Terms and Provisions (CP6) as set forth in the conformed Request or BAFO, as applicable; and
- G. Technical Specifications as set forth in the conformed Request or BAFO, as applicable;
- H. Design drawings and/or manufacturing drawings produced as a result of the Technical Specifications or otherwise;
- I. Instructions for Proposers (CP1); and
- J. The Contractor's Proposal or BAFO as applicable.

Contract Drawings: The official plans, sections, elevations and details in the Contract Documents or amendments thereto and supplemental drawings approved by the City which show the locations, character, dimensions and details of the Work to be performed.

Contract Item (Pay Item): A specifically described product or unit of Work for which a price is provided by the Contract.

Contracts Manager: Means the Manager of Contracts of the City of Milwaukee who is the administrator of the proposal process, prior to Contract award.

Contract Time: The number of calendar days or specified date set forth in the Contract Documents for completion of the Work or any defined portion thereof, including authorized amendments thereto. Also referred to as Time of Completion.

Contracting Officer: The Commissioner of Public Works or authorized representative, authorized and empowered to execute contracts and agreements on behalf of the City.

Contractor: The individual, firm, partnership, corporation, joint venture or any combination thereof, who, as an independent Contractor has entered into the Contract with the City, as party or parties of the second part and who is referred to throughout the Contract Documents by singular number and masculine gender.

Contractual Delivery: As applicable to vehicles, means the date on which a vehicle meets the requirements of Special Provisions SP-21. See also "Delivery."

Days: Days as used in the Contract Documents shall be understood to mean calendar days unless otherwise designated.

Deemed Contractual Delivery: This term shall have the meaning given to it at SP-21.

Deemed Contractual Delivery Contingency Plan: This term shall have the meaning given to it at SP-21.



Delivery: As applicable to vehicles that have been Deemed Contractually Delivered, shall mean the date a vehicle is assembled on the yard track of the City OMF in Milwaukee, Wisconsin, having successfully completed all pre-delivery inspections and tests and being ready-to-run for the operational testing program per Section 15 of the Technical Specifications. The definition of Delivery includes Contractual Delivery and does not include Deemed Contractual Delivery.

As applicable to other materials and/or equipment, shall mean the date on which the City acknowledges receipt of such material and/or equipment as having been properly delivered.

Equipment: All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper and acceptable completion of the Work.

Equivalent: An approved substitution, of equal engineering design, function, performance and service life to that item specified by the Project Manager.

Execution of the Contract: The signing of the Contract by the Contracting Officer and the authorized representative of the Contractor.

Extra Work: An item of work not provided for in the Contract as awarded but found essential to the acceptable completion of the Contract within its intended scope.

Failure (Defect): Inability of a component, equipment or system to function or perform in accordance with the indicated requirements.

Federal Transit Administration (FTA): The FTA is the operating agency of the United States Department of Transportation providing partial funding for the Project.

Final Acceptance Notice: The form issued by the City to the Contractor upon Final Acceptance of a vehicle, in connection with each vehicle, and Final Acceptance of the Project, in connection with the Project.

Final Acceptance of a Vehicle: Final Acceptance of a vehicle shall occur upon Conditional Acceptance and successful completion by Contractor of all Work identified on the Open Items List for such vehicle.

Final Acceptance of the Project: Final Acceptance of the Project shall mean acceptance by the City of all the Work, including, but not limited to, vehicles, all plans, schedules, procedures, reports, drawings, forms, training, manuals, modifications, spare parts, special tools, special test equipment, including those deemed necessary during the General Warranty period, and certification as required by the Contract Documents. Final Acceptance of the Project shall not take place until expiration of the General Warranty period. There shall be separate Final Acceptance for the Base Order and each Option Order.

Form, Fit and Function: The technical documentation describing the physical and functional characteristics of the elements making up the item.

General Warranty: Shall have the meaning given to such term at SP-29.

Government: The Government of the United States of America.

Holidays: Specific days on which the City is not open for business.

Inspector: The Project Manager's authorized representative assigned to make detailed inspections of Contract performance and materials furnished by the Contractor.

Install: Contractor shall design whatever structural supports are required to make a complete, finished installation of the device called for in the Specifications. "Construct" shall have the same meaning. The



Contractor shall be responsible for the design of any new structures added to the unit. The Contractor is also responsible to properly setup for use or service.

Job/Project Site: The geographical area of the property at which the Work is to be delivered under this Contract, as authorized by the City.

Joint: Involving mutually the Contractor and the City.

Joint Inspection/Receiving Report: Description of all defects, shipping damage and missing parts upon vehicle delivery at the designated delivery point.

Limited Notice to Proceed (or "LNTP"): The LNTP means a Notice to Proceed for only a specific portion of the Work to be performed. Any additional Work performed by Contractor that goes beyond the Work defined in the LNTP will be done so at Contractor's risk.

Like New: Equivalent, to new in terms of warranty and projected service life.

Manufacturer: Original equipment manufacturer supplying materials, components or apparatus whatsoever for use on the vehicle.

Materials: Substances specified for use in the Work.

New: Component manufactured from raw materials and has not been fabricated from salvaged, reconstructed or repaired material and has never known service.

Notice of Arrival: Written notification to the Contractor from the City that a given vehicle has arrived on the City's property.

Notice to Proceed (or "NTP"): The NTP is the written notice from the City's Department of Public Works (DPW) initiating the start of Work. Any work performed prior to Notice to Proceed shall be at Contractor's expense and risk. The effective date of delivery of NTP shall be the date the Contractor satisfies the NTP performance security obligations under Section 2.12, Performance Security, of this Contract and delivers such security to the City.

Or Approved Equivalent ("OAE"): Where a specific brand name is mentioned, it must be assumed that it is followed by "or approved equivalent."

Open Items List: The list of items of the Work that have been noted to be missing, deficient, either in design, manufacture, installation, or test, or a combination of these items, and require the Contractor to correct such deficiencies.

The Open Items List that accompanies each vehicle shall be prepared and agreed upon by the Parties at the time of Conditional Acceptance of each vehicle and shall contain only items that do not impact the safe and reliable operation of such vehicle. All items that impact safe and reliable operation must be resolved prior to Conditional Acceptance.

Option: Not according to Specification but a viable alternate or an amendment to the Specification with the approval of the Project Manager. Also, the legal right of the City to purchase additional vehicles or spare parts under the terms and conditions stipulated in the Contract. The City has the right to assign options to third parties under the same terms and conditions stipulated in this Contract.

Option Order: The supply of additional vehicles, system support, spare tools, test equipment as a result of the City exercising the Option to purchase additional vehicles. The price of each Option Order shall be calculated according to the provisions of SP-12.

Party and Parties: Party shall mean each of the City and Contractor and Parties shall mean both the City and Contractor.



Performance Bonds: The approved form of security furnished by the Contractor and its surety guaranteeing complete performance of the Contract in conformity with the Contract Documents and the payment of legal obligations pertaining to the performance of the Contract.

Project Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, performance and test data, test procedures, existing drawings, operational manuals, maintenance manuals, spare parts lists and data, descriptive literature, catalogs, catalog cuts and other information furnished by the Contractor to illustrate a material, product or equipment and to support its test, installation, operation or maintenance.

Project: The specific Work required to be performed by the Contractor as described in the Contract Documents.

Project Manager: The duly authorized representative acting, directly or through his duly authorized City representatives, within the scope of the particular duties assigned to him on behalf of the City. The Project Manager shall also be the Engineer.

Project Manager, Contractor: The Contractor's authorized representative in responsible charge of the Work.

Proposal: An offer submitted to the City to enter into a contract, containing technical methodology and costs.

Provide: Contractor to furnish, install and make ready for service.

Referenced Standards: All materials, equipment and workmanship, specified by the number, symbol or title of a referenced standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date when the Notice to Proceed is given to the Contractor, except where a particular issue is indicated in the reference. In case of conflicting requirements between Referenced Standards and the Technical Specifications, the Technical Specifications shall govern.

Reliability: The probability that equipment or a system will perform its intended functions without failure and within design parameters under specified operating conditions for which designed and for a specific period of time.

Revenue Operation Date (or "ROD"): ROD is the date the revenue service is scheduled to commence for the City's streetcar line.

Samples: Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Seller: Manufacturer or vendor furnishing the equipment and materials described in the Technical Specifications.

Shop Drawings: Layout drawings, general arrangement drawings, wiring diagrams, schematics, installation drawings, equipment drawings, etc. submitted to the City in accordance with the Technical Specifications.

Specific Warranty and Specific Warranties: Shall have the meaning given to such terms at SP-29.

Specifications: The directions, provisions and requirements contained or referred to in the General Provisions, Federal Requirements, Special Provisions, Technical Specifications, and any Addenda or amendments thereof, together with all written agreements made or to be made pertaining to the manner of performing the Work, or to the quantities and qualities of materials to be furnished or the quantities and qualities of Work to be performed under the Contract.



State: State of Wisconsin.

Subcontractor: Any individual, partnership, firm or corporation who undertakes the partial or total manufacture of one or more items of Work under the terms of the Contract, or who performs other services for the Contractor as required to fulfill the terms of this Contract by virtue of an agreement with the Contractor.

Supplier: Any individual, partnership, firm or corporation which provides materials or equipment but not labor or services to the Contractor in partial fulfillment of the Work and who is responsible to the Contractor by virtue of an agreement.

Surety: The corporate body authorized to issue surety bonds in Wisconsin and listed in the current U.S. Department of the Treasury's Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, which is bound with and for the Contractor for the satisfactory performance of the Work by the Contractor, and the prompt payment in full for materials, labor, equipment, rentals, utility services and debts and obligations, as provided in the bonds.

Technical Data: Written, typed or printed material prepared by the Contractor whether or not copyrighted, and submitted by the Contractor in response to the requirements set forth in the Technical Specifications. Technical data include, but are not limited to: product data, shop drawings, pictorial representations, reports, schedules, studies and assessments.

Technical Specifications: The Technical Specifications are specific requirements setting forth the materials and methods required to accomplish the Work and are contained in Volume 2.

Total Base Contract Price: The total not-to-exceed monetary amount in US dollars and cents for the performance of the Work required in connection with the Base Order, at the execution of the Contract (same meaning as "Contract Amount" in Contract form) .

Total Contract Price: At any point in time, the Total Base Contract Price plus the price of any changes or options exercised during the Contract period of performance.

Upgrade: To raise and improve the quality, classification and usefulness.

USDOT: The United States Department of Transportation

Work: Work shall mean the furnishing of labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of the duties and obligations imposed by the Contract Documents, including alterations, amendments or extensions thereto made by Change Order.

Working Days: The days that the City is open for business between 8:00 a.m. and 5:00 p.m., Eastern Time. Saturdays, Sundays, and holidays do not count as "working days."

END OF SECTION



SECTION 2

GENERAL PROVISIONS

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2. GENERAL PROVISIONS

2.1 Agreement

The Contractor agrees to perform the Work. In consideration for the complete and proper performance of thereof by the Contractor, the City agrees to pay the Contractor the sums of money hereinafter mentioned at the time and in the manner upon the terms and conditions hereinafter set forth.

2.2 Use of English Language

If English is not the prevalent language used at the Contractor or subcontractor facilities, the Contractor shall make an interpreter available to any City personnel during all working hours. All documentation shall be supplied in American English including, but not limited to design drawings, working drawings, test reports, submittals, schedules, inspection reports, maintenance and service manuals, software manuals, training documentation and any other Contract documentation.

2.3 Contractor's Representative(s)

At the time of Contract award, the Contractor shall appoint a representative as a point of contact for the City. The Contractor shall immediately supply the name, address, phone number, email address, and fax number of this person to the City.

2.4 Contractor's Plant, Equipment and Employees

The Contractor shall at all times be responsible for the availability, adequacy, efficiency, and sufficiency of its and its subcontractor's plant, equipment and employees.

The City, including any inspectors, auditors or other contractors or consultants employed by it, will have at all times during the performance of this Contract and any extensions thereof the right to full access to the Contractor's facilities. The Contractor shall furnish every reasonable facility to enable the City staff to ascertain that materials and workmanship are in accordance with the requirements and intent of the Contract Documents, including, for example, office space and access to at least two independent telephone lines (not through the Contractor's telephone system, copiers, facsimile machines, internet access (independent of the Contractor's internet connection), and restroom facilities.

2.5 Successor's Obligation

All grants, covenants, provisos, and claims, rights, powers, privileges and liabilities contained in the Contract Documents shall be read and held as made by and with and granted to and imposed upon the Contractor and the City and their respective heirs, executors, administrators, successors and assigns.

2.6 Assignment of Contract

The Contractor, except with written consent of the City, may not assign the Contract in whole or in part, except as provided in Section 2.24, Legal Relations, Paragraph D. Although the City will not unreasonably withhold its consent, the City reserves the right to assure that any proposed assignee has the financial capability and experience to carry out all remaining responsibilities under the Contract.

The City may assign the Contract in whole or part, including assignment of option vehicles, and such assignment shall be subject to the consent of Contractor, and such consent shall not be unreasonably withheld. Any assignment of option vehicles to third parties hereunder shall be subject to FTA's guidance regarding "piggybacking" as set forth in Circular 4220.1F.



2.7 Subcontracts

No subcontractor or supplier will be recognized as having a Contract with the City and all persons engaged in the Work will be considered employees, subcontractors, suppliers or agents of the Contractor. All subcontractor and supplier Work shall be subject to the provisions of the Contract through the terms and provisions of their subcontracts which shall comply, in all pertinent respects, with these Contract Documents. Contractor shall be responsible to the City for Work performed by such subcontractors, suppliers and agents as if it were performed by Contractor's own employees.

2.8 Service of Notices

Any notice, order, direction, request or other written communication given by the City to the Contractor under the Contract shall be deemed to be well and sufficiently given the Contractor if delivered to the Contractor's appointed representative, or if hand carried, sent by mail, or sent by electronic means to the Contractor at the address, email address or fax number designated as that of the Contractor's appointed representative with receipt thereof acknowledged. Notice shall also be deemed to be well and sufficiently given three (3) working days after mailing said notice by registered mail to the Contractor's last known place of business.

2.9 Suggestions to Contractor

Any plan or method of work suggested by the City to the Contractor, but not specified or required in writing under the Contract, if adopted or followed by the Contractor in whole or part shall be used at the risk and responsibility of the Contractor, and the City shall assume no responsibility.

2.10 Compliance with State and Federal Law

The Contractor shall give the notices, file information and pay taxes, deductions and premiums as may be required by law and shall comply with all laws, ordinances, permit requirements, rules and regulations pertaining to the conduct of the Work, wherever performed. The Contractor shall be liable for violations of same in connection with Work provided by the Contractor; and the Contractor shall cooperate with all governmental entities regarding inspection of the Work and compliance with such requirements.

2.11 Joint Venture

In the event the Contractor is a joint venture of two or more Contractors, all grants, covenants, provisions and claims, rights, powers, privileges, and liabilities of the Contract shall be construed and held to be several as well as joint. Any notice, order direction, request or other communications required to be or that may be given by the City to the Contractor under this Contract shall be well and sufficiently given to the joint venture if given to the Contractor's liaison or other designated contact.

2.12 Performance Security

The Contractor shall furnish, at its own expense, the following bonds that are to be satisfactory to the City. The Contractor may propose alternate forms of performance security to the City that may be accepted by the City at the City's sole discretion. All bonds must be provided by a surety listed acceptable to the City as listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority and listed on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) and licensed to do business in the State of Wisconsin. The City must give its written consent to any substitution of surety and maintains the right to reject a proposed substitution.



- A. Performance Bond
 - 1. Performance Bond equal to one hundred percent (100%) of the Total Base Contract Price as a guarantee of good faith on behalf of the Contractor that the terms of this Contract shall be complied with in every particular. The bond shall remain in full force and effect from Notice-to-Proceed until the Delivery of the 4th vehicle in the Base Order; provided, however, that if one or more of the four (4) vehicles in the Base Order have achieved Deemed Contractual Delivery, then the City shall reimburse Contractor for its direct expenses incurred in continuing to maintain such Performance Bond in place until the City is able to receive Delivery of the vehicles. On Delivery of the 4th vehicle in the Base Order the Performance Bond amount shall reduce automatically to ten percent (10%) of the Total Base Contract Price and shall remain in full force and effect for the duration of the General Warranty Period in respect to the last vehicle to reach Delivery as part of the Base Order.
 - 2. Performance Bond, as defined above shall apply in the same manner and under the same circumstances with regard to any vehicles purchased under an option pursuant to this Contract.

For the avoidance of doubt, the Contractor's failure to provide any bonds described above in connection with any vehicle ordered pursuant to the exercise of an option hereunder shall not be considered a failure to perform or breach of the Base Order, and the City shall not have a right to make a claim on any bond provided by Contractor in connection with the Base Order for such failure to bond any option vehicle.

2.13 Quality Assurance Plan/Quality Control (QA/QC) Plan

The Contractor must submit within the time provided in Technical Specification Section 18, System Support, a QA/QC plan that shall comply with the requirements of Section 2.15, Quality Assurance/Quality Control Program (QA/QC), which in general, provides the following information (and, more specifically, meets the requirements of the Technical Specification):

- A. How the Contractor will provide quality assurance in its overall organization, independent of the staff managing this Contract,
- B. What procedure the Contractor has established to monitor and remedy any deficiencies in, the quality of materials and workmanship, whether performed in-house or by subcontractors,
- C. How the Contractor will document its quality assurance/quality control efforts,
- D. The Contractor's experiences in procuring material suppliers who are required to comply with the terms of a contract such as this Contract;
- E. How the Contractor is going to staff its QA/QC effort. The names of the persons who will fulfill this effort and what are their qualifications, and
- F. Whether the Contractor has the ability to systematically assure the quality performance of key subcontractors and suppliers.



2.14 Materials and Workmanship

- A. Unless specifically provided for in the Specifications, all materials, parts and equipment furnished by the Contractor shall be new and free from defects. The Contractor shall disclose, in writing to the City, its intention to use any materials that are not new, for discussion, review and approval by the City. Any materials not so disclosed, discussed, reviewed and approved may not be used. The Contractor shall establish and maintain quality assurance policies and adequately control procedures to ensure compliance with the Contract Documents. The Contractor shall extend to the City full access to its manufacturing facilities, and those of its subcontractors and suppliers, during normal working hours so that the City can inspect and monitor the Contractor's compliance with its established quality assurance/control procedures and the City's Contract Documents.
- B. The Contractor guarantees and warrants that all Work performed and items supplied under this Contract shall conform to the Technical Specifications and all other requirements of this Contract and be free of all patent and latent defects in materials and workmanship.
- C. The Contractor, without additional cost to the City, shall replace any materials or equipment not conforming to the requirement of these Contract Documents or found to be damaged or defective.
- D. If the Contractor fails after written request of the City to promptly replace or repair damaged or defective material, equipment or Work, the City's Project Manager shall, upon written notice to the Contractor, have the City deduct the cost of such replacement or repair from any compensation due or to become due the Contractor.

2.15 Quality Assurance/Quality Control Program (QA/QC)

- A. The Contractor and its subcontractors and suppliers providing manufactured equipment or parts shall have a quality assurance/quality control program containing as a minimum, the following elements:
 - 1. Fully complete, reproducible engineering documentation, including records that will identify and record the methods used to determine and the results of the following activities:
 - a. Production inspections by station or specific location;
 - b. Incoming material inspections and sampling methods used;
 - c. Tests on materials, manufacturing techniques and critical tools;
 - d. Certification of manufacturing processes and specialized personnel skills;
 - e. Complete tracking on discrepant materials (including disposition);
 - 2. Written and detailed in-house materials procurement and testing specifications.
 - 3. Written and detailed procedures for transmission of Contractor's quality requirements and standards to subcontractors and suppliers, and contractual and other means to assure subcontractor compliance with these quality



requirements. These procedures shall include methods, which shall identify the means for:

- a. Selection of qualified materials and/or component sources;
 - b. Evaluation and assessment of subcontractor's quality assurance system;
 - c. Transmission of all design and quality requirements to procurement sources;
 - d. Monitoring of subcontractor quality performance;
 - e. Verification of procured articles against purchase order and quality requirements.
- B. The Contractor shall have total control over the manufacturing process to ensure equipment meets the design, contract and inspection requirements of the Contract.
- C. Inspection or non-inspection, or witnessing or non-witnessing, by the City's' inspector(s) shall not be construed as acceptance of any part of the Work or an assumption of risks or liability by the City nor as relieving the Contractor of its responsibilities for compliance with the Contract.

2.16 Spare Parts

The City reserves the right to procure parts from other sources and to conduct a cost/price analysis on specific spare parts if pricing appears to be in excess of standard industry pricing for similar parts. Such parts purchased from other sources will be in conformity with the requirements of such parts as contained in the as-built drawings, maintenance and/or parts manuals for the vehicles.

2.17 Possession of Equipment Prior to Final Acceptance

The City shall have the right to take possession of or use any completed or partially completed vehicle prior to Final Acceptance of such vehicle. Such possession or use will not be deemed an acceptance of Work not completed in accordance with the Contract. While the City is in such possession, the Contractor will be relieved of the responsibility for loss or damages to the Work other than that resulting from the Contractor's fault, negligence, or breach of warranty. If such prior possession or use by the City delays the progress of the Work or causes additional expenses to the Contractor, an equitable adjustment in the Contract Price and/or the time of completion will be made and the Contract will be modified in writing accordingly.

2.18 Risk of Loss

- A. The Contractor shall be solely responsible for the risk of loss for materials and vehicles delivered and Work performed prior to Delivery, including, but not limited to, any damage incurred during transportation to the City's designated point of delivery. To the extent that Contractor continues to bear the risk of loss, it shall promptly rebuild, repair, replace or restore such Work, equipment or materials that have been damaged or destroyed.
- B. If any loss or damage occurs to the equipment for which the Contractor is responsible hereunder, the Contractor shall immediately repair or replace and make good any such loss or damage, and in the event of the Contractor refusing or neglecting to do so, the City may itself or by the employment of some other person repair or replace and make



good any such loss or damage, and the cost and expense of so doing shall be charged to the Contractor. The Contractor shall reimburse the City such costs within thirty (30) days of written demand from the City. If the Contractor refuses or fails to pay these costs within thirty (30) days, the City may withhold said costs from any payments then due or to become due, to the Contractor.

- C. The Contractor's responsibility for protecting and preserving equipment or material shall be the same as for any City-furnished equipment or material in the Contractor's possession under this Contract as for Contractor-furnished material.

2.19 Progress Payments

- A. Contractor shall be paid in milestone-based performance of particular Work, as outlined in the Special Provisions. Invoices shall take into consideration any executed Change Orders affecting the equipment invoiced, all allowable escalation, and all other adjustments (liquidated damages, etc.) as provided for in the Contract. If the City determines that security interests must be reserved in materials, work in progress, inventory or equipment being used or provided under the Contract Documents, the Contractor shall fully cooperate with the City in documenting and perfecting such security interests.
- B. The City shall make payment to the Contractor, in accordance with invoices that reflect the items furnished, delivered and accepted, within thirty (30) calendar days of approval of such invoices, and the City shall not unreasonably disapprove any such invoices.
- C. No progress payments will be made for Work not in accordance with the Contract.
- D. This Contract is subject to applicable Wisconsin Sales Tax in accordance with the Wisconsin Revised Code, § 5739.02 Levy of sales tax - purpose - rate - exemptions, which shall be included on invoices as a separate line item, if applicable.
- E. Invoices shall be supported by evidence and such other documentation as the City may require. The Contractor shall certify that the equipment and other deliverables for which payment is requested comply with all City requirements for payment. Work performed under Change Orders will be subject to audit review of the Contractor's records supporting the payment for the Change Orders. Audits will not interfere with timely processing of pay applications. If an audit indicates the Contractor has been overpaid under a previous payment application, that overpayment will be credited against current progress payment applications.
- F. The City may deduct from each progress payment the following:
 - 1. Any liquidated damages that have accrued as of the date of the application for payment;
 - 2. Any sums expended by the City in performing any of the Contractor's obligations under this Contract which Contractor has failed to perform;
 - 3. Any other sums that the City is entitled to recover from Contractor under the terms of this Contract.
 - 4. Retainage, as provided in Section SP-04, Progress Payment Schedule.
- G. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.



- H. The Contractor shall pay its employees in accordance with any applicable minimum wage, prevailing wage, and living wage requirements and all accounts for labor including, to the extent applicable, Workers' Compensation premiums, State Unemployment, and Federal Social Security payments and all other wage and salary deductions required by law, regulation, or the Contractor's labor agreements, if any, for services and material used by the Contractor and its subcontractors during the fulfillment of the Contract as and when such accounts become due and payable.

2.20 Entire Contract

These Contract Documents contain all terms and conditions agreed upon by the Parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the Parties hereto or to vary any of the terms contained herein, unless conducted in accordance with Section 2.22, Changes in Contract Work.

2.21 Price Adjustment

See Special Provisions, Section SP-08, Economic Price Adjustments.

2.22 Changes in Contract Work

- A. The City may issue additive Change Orders in the event that there are changes within the same general scope of Work required by the City that cause additional Work to be performed, materials or equipment to be provided that is not mentioned, specified, indicated or otherwise provided for in the Contract Documents. In this event, the Contractor shall undertake the performance of such additional Work or the furnishing of such additional materials or equipment. Change Orders may be issued to compensate the Contractor for (1) additional cost only, (2) additional cost and time, or (3) additional time only. If additional costs are to be paid, the amount to be paid to the Contractor shall be increased in an amount determined as follows and Contractor shall provide detailed cost and pricing information for the change.

The City and the Contractor shall determine and mutually agree to the reasonable value of such additional work, materials or equipment and any extensions of time that may be required. Such determination and agreement shall be final and conclusive upon the Contractor. For changes costing less than \$2,500, The City may, at its sole discretion, agree to a reasonable value with more limited pricing and cost information. In the event that an agreement is not reached between the Contractor and the City prior to the need to commence work, the Contractor may be directed to proceed with the change and Contractor will be paid for the work at the City-estimated amount and the City-estimated payment schedule, pending full agreement between Contractor and the City, at which time any additional balance due the Contractor will be paid in accordance with the agreed upon payment schedule. Costs and time required to implement the change shall be segregated from the original scope of work and will be used to assist the Contractor and the City in reaching agreement as to cost and schedule adjustments after the change is completed.

- B. Deductive Change Orders may also be issued in an event where work, materials or equipment that are mentioned, specified or indicated or otherwise provided for in the Contract or in the Specifications forming a part of the Contract shall be required to be omitted from, in or about the work; provided however, that a deductive Change Order



may not be issued to reduce the Base Order of four (4) vehicles subject of this Contract. In this event, the Contractor shall omit the performance of such work and the furnishing of such materials or equipment. There shall be deducted from the amount to be paid to the Contractor the amount that the City and the Contractor shall determine and mutually agree to be the reasonable value of such work, materials or equipment and such determination and agreement shall be final and conclusive upon the Contractor. Any schedule adjustments will be determined likewise.

- C. Any claim by the Contractor for a Change Order must be asserted in writing within thirty (30) days after the Contractor knows or should have known of the basis for a claim, whichever is earlier. The City may reject any claim not so filed in writing.
- D. From time to time, situations may arise in which services are necessary to be performed and the execution of a Change Order is not immediately practical prior to the commencement of the Contractor's performance of the requested services. In such a case, the Contractor shall perform such services upon receipt of a written Request to Perform Additional Work, pending execution of a Change Order.
- E. In the event that agreement is not reached regarding the value of an additive or deductive Change Order or the schedule impact resulting therefrom, the issue shall be resolved in accordance with Sections 2.23, Claims, and 2.24, Legal Relations.

2.23 Claims

2.23.1 Determination by the Project Manager

Questions regarding the meaning and intent of the Contract shall be referred by the Contractor in writing to the City's Project Manager for decision within five (5) working days of the date in which the Contractor knows or should reasonably have known of a potential claim. A full description of the claim, including any asserted cost or time impacts, shall be submitted to the City's Project Manager within fifteen (15) working days after the initial notice of a potential claim. If the Contractor believes that any act or omission by the City caused an increase to the cost of the Work or the time required for the Work, the Contractor shall submit a detailed description of the basis for the claim and complete supporting documentation for cost and time increases to the City within twenty (20) working days of the initial notice of claim. The Project Manager will ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) working day following receipt by the Project Manager of the question or claim and the supporting documentation. Failure by the Contractor to either timely file or document a claim constitutes a complete waiver of the Contractor's right thereafter to pursue that claim in any forum. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the City.

2.23.2 Appeals

In the event the Contractor disagrees with any determination or decision of the Project Manager, the Contractor may, within thirty (30) days of the date of such determination or decision, appeal the determination or decision in writing to the Director of Transportation Engineering (DOTE) (the "Director"). Failure of the Contractor to appeal the decision or determination of the Project Manager within said thirty (30) day period shall constitute a waiver of the Contractor's right to thereafter assert



any claim resulting from such determination or decision. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal.

The Director or designee will review the appeal and will transmit a decision in writing to the Contractor within thirty (30) days from the date of receipt of the appeal, or the appeal will be deemed denied on the thirty-first (31st) day.

The decision of the Director may be appealed to the Commissioner of Public Works or authorized representative, whose decision shall be final and conclusive on the claim and appeal. Appeal to the Commissioner of Public Works or authorized representative shall be a condition precedent to litigation. The Commissioner of Public Works or authorized representative shall transmit a decision in writing to the Contractor within thirty (30) days from the date of receipt of the appeal, or the appeal will be deemed denied on the thirty first (31st) day.

2.23.3 Mediation

Refer to Special Provisions SP-52, Alternate Dispute Resolution Provisions.

2.24 Legal Relations

- A. The Contractor shall comply, and to the best of its ability shall ensure its subcontractors comply, with all federal, state, and local laws, regulations, and ordinances applicable to the Work and services to be performed under this Contract.
- B. In performing Work and services hereunder, the Contractor and its subcontractors, employees, agents, and representatives shall be acting as independent Contractors and shall not be deemed or construed to be employees or agents of the City in any manner whatsoever. The Contractor shall not hold itself out as, nor claim to be an officer or employee of the City by reason hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the City. The Contractor shall be solely responsible for any claims for wages or compensation by Contractor employees, agents, and representatives, including subcontractors, and shall indemnify, save and hold the City harmless therefrom.
- C. To the maximum extent permitted by law and subject to the other terms and conditions of the Contract Documents, the Contractor agrees to indemnify and save harmless the City, its officers, officials, employees and/or agents from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind or nature to the extent arising out of, in connection with, or incident to work or services under this Contract provided by or on behalf of the Contractor, and for any failure to satisfy the Contractor's contractual obligations under this Contract, except to the extent caused by the negligence of the City or its agents. The Contractor further agrees to assume the defense of the City and its officers, officials, and employees, with legal counsel acceptable to the City, which acceptance shall not be unreasonably withheld, in all legal or claim proceedings arising out of, in connection with, or incident to such work or services, and the Contractor shall pay all defense expenses, including attorneys' fees, expert fees, and expenses and costs (collectively "defense costs") incurred directly or indirectly on account of such litigation or claims, and the Contractor shall satisfy any judgment rendered in connection therewith. The Contractor may settle any suit, claim, action, loss, cost, penalty, or damages, subject to the approval of the City, which approval shall not be unreasonably withheld, if such settlement completely and forever



extinguishes any and all liability of the City. In the event of litigation between the Parties to enforce the rights under this Section, reasonable attorney fees shall be allowed to the prevailing Party.

THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST THE CITY BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CONTRACTOR OR ITS SUBCONTRACTORS, AND, AFTER MUTUAL NEGOTIATION WITH THE CITY, THE CONTRACTOR EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER THE WISCONSIN REVISED CODE, THE WORKERS' COMPENSATION ACT, OR ANY OTHER FEDERAL OR STATE INDUSTRIAL INSURANCE ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION THAT WOULD OTHERWISE BE APPLICABLE TO ANY CLAIM ARISING OUT OF THE CONTRACTOR'S PERFORMANCE OF THIS AGREEMENT.

- D. The Contractor shall not assign any interest, obligation, or benefit in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent by the City; provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such claim assignment shall be furnished promptly to the City.
- E. Each of the City's and Contractor's rights and remedies in this Contract are in addition to any other rights and remedies provided by law.
- F. This Contract and all provisions hereof shall be interpreted in accordance with the laws of the State of Wisconsin. Subject to the provisions herein regarding exhaustion of administrative remedies, the Circuit Court of Milwaukee County, Wisconsin, or the U.S. District Court for the Eastern District of Wisconsin, located in Milwaukee, Wisconsin, shall have exclusive jurisdiction and venue over any legal action arising under this Contract.
- G. The Contractor covenants that neither the Contractor, nor any officer or controlling interest holder of the Contractor, is currently on any debarred bidders list maintained by the United States Government.
- H. **Limitation of Damages.** To the extent permitted by law, neither Party shall be liable to the other Party for consequential, indirect, special damages, lost profits or attorneys' fees in connection with any matter relating to this Contract (except as provided in the indemnity provisions hereof), provided that reasonable costs incurred by the City in repairing or avoiding damages to the streetcar system caused by Contractor's breach or negligent or wrongful act are deemed to be direct damages for purposes of this Contract. The Contractor's maximum liability to the City under this Contract arising under any theory or cause (including the payment of liquidated damages) shall be limited to an amount equal to one hundred percent (100%) of the Total Contract Price.

The parties further stipulate and agree that they do not intend for punitive or treble damages to be considered consequential, indirect or special damages for purposes of this Contract.

2.25 Changes in Governmental Regulations

- A. In the event local, state or federal laws or regulations, that were not announced or enacted at the time of the Contract award are either enacted, adopted, promulgated or



modified (including via a written change in interpretation by a governmental authority or judicial body), or repealed after the Contract award, and such laws or regulations make standards more stringent or compliance more costly under this Contract or delay Contractor's performance of the Contract, the Contractor shall notify the City in writing of such laws or regulations and their effects on the pricing or delivery schedule promptly after the Contractor first becomes aware of the laws and regulations and prior to incurring any such expenses.

- B. In the event of a change as specified in part A, above, the City will consult with Contractor in good faith to determine the terms of any Change Orders required to reimburse Contractor for any such expenses and/or grant any time extensions in accordance with the provisions of Section 2.22, Changes in Contract Work.
- C. The Contractor shall be deemed to have had notice of any Federal law or regulation publicly enacted at the time of Contract award, even though such law or regulation did not take effect or become operative until after the Contract award.
- D. The Contractor shall, as soon as reasonably practicable after becoming aware of any such imposition or change of requirement, provide the City with full and detailed particulars of the changes required in the equipment and of costs involved therein, or shall be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed or changed in any way after the date of Contract award so as to make the Contractor's performance less expensive, or less difficult, then the City shall have the option either to require the Contractor to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the equipment affected for all savings in direct costs which may be realized by the Contractor by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Contractor. The City will give the Contractor notice of its determination and anticipated savings.

2.26 Insurance

The Contractor shall carry, as a minimum, the following types and amounts of insurance as required by the Contract:

- A. **Workers' Compensation Insurance:** Meeting the statutory requirements of the State of Wisconsin and Employers Liability, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit, providing coverage for employees and owners. In any subcontract let as a result of this Project, the Contractor shall require the subcontractor to maintain such insurance for all subcontractor's employees who are so engaged.
- B. **Commercial General Liability:** Bodily injury and property damage liability insurance as shall protect the Contractor and any subcontractor performing Work under this Contract from claims of bodily injury or property damage which arise from operation of this Contract whether such operations are performed by Contractor, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$5,000,000 bodily injury each occurrence/aggregate and \$5,000,000 property damage each occurrence/aggregate or \$5,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include



- coverage for products/completed operations, personal injury liability, and contractual liability assumed under the indemnity provision of this Contract.
- C. The City shall be named as an Additional Insured under the commercial general liability insurance. The Contractor's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Contractor's operations under this Contract.
 - D. The forms of policies called for by this Section and the companies issuing same shall be satisfactory to the City and the insurance so provided shall be carried until all Work (including warranty Work) required to be performed under the terms of this Contract has been finally accepted by the City. These insurance provisions do not release the Contractor from any of its obligations under the terms of the Contract. Insurance policies, as required above, shall be issued by an insurance company satisfactory to the City and one licensed to do business in the State of Wisconsin.
 - E. The Contractor shall furnish the City with proof of the required insurance and shall contain the provision that the City will be given 30 days written notice of any intent to terminate, substantially change or amend the insurance coverage in any way by either the insured or the insuring company.
 - F. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions or any part of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.
 - G. The Contractor's obligations under Section 2.24, Legal Relations, shall not be deemed to be limited by any insurance contained in this Contract.
 - H. Automobile Liability: Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$2,000,000 bodily injury each person, each accident and \$2,000,000 property damage, or \$2,000,000 combined single limit each occurrence/aggregate.
 - I. The Contractor is advised that if any part of the Work under the Contract is sublet, he should require the subcontractor(s) to carry insurance as required above. However, this will in no way relieve the Contractor from providing full insurance coverage on all phases of the Contract, including any that are sublet.
 - J. Railroad Protective Insurance: In the event that during the term of this Contract, the Contractor needs Railroad Protective Insurance for any reason, this insurance shall be provided by the Contractor. Contractor may obtain this insurance through the appropriate railroad directly, may choose to purchase this insurance through its own policy(ies), or may be able to obtain it from the City. All costs associated with this insurance must be included in the Contract price.
 - K. In the event Contractor is required to perform design or engineering Work requiring the seal of a licensed professional and it is performed by an employee of Contractor, Contractor shall provide professional liability (errors and omissions) insurance in an amount not less than \$2,000,000 if the licensed professional is not employed by it, the Contractor shall require the licensed professional or his employer to provide the same insurance.



2.27 Drug-Free Workplace

The following Federal requirements apply to this Agreement and are hereby incorporated by reference.

The Parties to this Contract do here by agree that the Contractor shall provide a drug-free work place during the performance of this Agreement. This obligation is met by:

- Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Contractor's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in this Section and (ii) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
- Notifying the City within ten (10) days after receiving from an employee a notice of a criminal drug statute conviction unless otherwise forbidden to communicate such information to third parties under the Contractor's drug-free awareness program or other restrictions;
- Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of drug crime;
- Making a good faith effort to continue to maintain a drug-free workplace for employees; and
- Requiring any party to which it subcontracts any portion of the Work under the Contract to comply with the provisions above.

If the Contractor is an individual, the requirements are met by not engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of this Contract.

Failure to comply with the above drug-free workplace requirements during the performance of the Contract shall be grounds for suspension, termination or debarment.

2.28 Work Product and Intellectual Property

In the event the services to be performed by the Contractor under this Agreement include the development or delivery of a work of authorship or any materials which may be protectable under intellectual property laws ("Work Product"), the following terms and conditions shall apply to the City's interests in intellectual property rights:

The City agrees that Work Product, even that which may be specially ordered, commissioned by, and created for the City, is based on the Contractor's body of knowledge and the Contractor's proprietary information. Accordingly, the City agrees to rescind any ownership rights that the City may have pursuant to the "work for hire" doctrine in said Work Product. The Contractor hereby grants to the City, its authorized successors and assigns, a fully paid, royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the Work Product for the City's sole and limited purposes of operating, maintaining and repairing the Vehicles.



2.28.1 Assistance

At the City's expense, the Contractor shall execute and deliver such instruments and take such other action as may be requested by the City to perfect the license(s) contemplated in the paragraph above.

2.28.2 Representations and Warranties

The Contractor hereby represents and warrants that:

- It has the full power to enter into this Agreement and grant the license set forth herein;
- The Work Product does not infringe or violate any copyright, trade secret, trademark, patent or other proprietary or personal right held by any third party;
- In addition to the City's ownership in property rights, the Federal Government has interests in intellectual property rights.

2.29 Indemnification for Patent Infringement Claims

The Contractor shall indemnify, defend and hold harmless the City and its officers, agents and employees against liability, including costs, for infringement of any United States patent arising out of or in any way connected with the design, manufacture, delivery or repair of vehicles under this Contract.

The City will inform the Contractor as soon as is practicable of any claim, suit or other action alleging infringement of patent rights and shall give the Contractor authority, assistance and information at the Contractor's expense for the defense or settlement of same.

Should the Contractor be enjoined from furnishing, or the City, their officers, agents or employees or any of them be enjoined from using any item supplied or required to be supplied under the Contract, the Contractor shall, at its option, either:

- Substitute as soon as is practicable other non-infringing items of equivalent type and quality satisfactory to the City; or
- Pay such royalties and secure such licenses as may be requisite and necessary for the Contractor to furnish and the City, their officers, agents or employees to use such items without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.

Should the Contractor neglect or refuse to make the substitution within a reasonable time or to pay such royalties or secure such licenses as may be necessary for the City to use or dispose of the item, then in that event, the City shall after thirty (30) days of giving written notice to the Contractor have the right to make such substitution or pay such royalties and secure such licenses and charge and recover the amount from the Contractor, even though final payment under the Contract may have been made. The Contractor shall reimburse the City such costs within thirty (30) days of written demand from the City. If the Contractor refuses or fails to pay these costs within thirty (30) days, the City may withhold said costs from any payments then due or to become due to the Contractor.

2.30 Conservation

Contractor shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).



2.31 Environmental Standards

The Contractor agrees to comply with all applicable laws, regulations, standards, orders or requirements.

2.32 Hazardous Chemicals and Wastes

- A. The Contractor shall be responsible for damages arising from the release of hazardous or non-hazardous chemicals or substances that are directly attributable to or caused by Contractor and its subcontractors during the course of the performance of this Contract. The Contractor shall immediately report any such release to the Project Manager. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the City by any agency as a result of such release and shall hold harmless, indemnify and defend the City from any claims arising from such release. For purposes of this Section only, the term "claims" shall include (i) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (ii) any claim, cause of action, or administrative or judicial proceeding brought against the City, its directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including the City. This indemnification shall survive the termination of the Contract.
- B. If the performance of the Work outlined by these Contract specifications creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state and local laws at the expense of the Contractor. The Contractor shall dispose of the wastes under its own EPA Generator Number. In no event shall the City be identified as the generator. The Contractor shall notify the Project Manager of any such hazardous wastes and the City reserves the right to a copy of the results of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to their disposition.

2.33 Termination of Agreement

2.33.1 Termination for Convenience

The City may terminate this Contract in whole or in part, at any time it deems such termination is in the best interests of the City, including non-appropriation of funds, upon giving no less than 30 calendar days written Notice of Intent to Terminate to the Contractor, by certified mail, return receipt requested. In the event of a complete or partial Termination for Convenience, the City will consult with the Contractor for the purposes of developing a Project Closeout Plan for the portion of Work so terminated, for which a scope, schedule and budget shall be determined. The Contractor shall be paid its costs, including Contract close-out costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

If the termination is partial, the Parties shall agree upon an appropriate adjustment to the Total Contract Price, and Contractor shall continue to pursue all Work not so terminated without delay.



The City agrees to pay the following Termination Settlement Costs to the Contractor:

- The Contract unit prices, as itemized on the Price Summary Form and other bid forms, for all equipment delivered;
- For "all other costs" incurred by the Contractor which are properly allocated in whole or in part to this Contract under generally accepted accounting practices. These costs:
 - Must be documented and certified by the Contractor's independent auditing firm;
 - Must be directly related to the performance to the date of termination or the termination of this Contract;
 - May include the cost of discharging liabilities (including cancellation charges, fees and liquidated damages of any subcontractor, supplier or vendor) which are allocated in whole or in part to this Contract; and
 - May include a reasonable profit and overhead.

The total value of "all other costs" as described herein shall be determined in accordance with Federal Acquisition Regulations 49 CFR Part 31.

The City will pay no other costs, claims or damages not specifically enumerated above claimed by the Contractor, its subcontractors, vendors, service providers or another other third party claimant.

Any item (equipment, material, part, supplies, drawing, etc.) that the City is obligated to purchase as a result of this termination shall become the property of the City and shall be delivered to the City at no additional charge.

2.33.2 Termination for Default

The City may terminate this Contract, in whole or in part, if the Contractor fails to make deliveries in accordance with the Contract Delivery Schedule, or, if the Contractor fails to perform in the manner called for in the Contract, or fails to fulfill any or all of its material obligations under this Contract through no fault of the City, upon giving (1) written notice, of a Notice of Default delivered by certified mail, return receipt requested, and (2) advising the Contractor of an opportunity to cure the default as provided below.

In the event of Termination for Default, the City will pay the following to the Contractor:

- The unit cost of material and/or equipment delivered to the City prior to and including the effective date of the Termination for Default.
- Any payment due to the Contractor at the time of termination shall be determined in accordance with Federal Acquisition Regulations (FAR) Part 31, and may be adjusted to the extent of any additional costs the City incurs because of the Contractor's default.

In determining the amount to be paid to the Contractor, the City shall consider the actual costs incurred by the Contractor in performing the Project Work to the date of termination, the amount of Work originally required that was satisfactorily completed to the date of termination, whether that Work is in a form or of a type that is usable and suitable to the City at the date of termination, the cost to the City of completing the Work itself or of employing another firm to complete it and the inconvenience and time that may be required to do so, and other factors that affect the value to the City of the Work performed to the date of termination.



This provision shall not preclude the City from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by Contract retainage or other withheld payments.

In the event of any termination, but subject to the intellectual property and confidentiality provisions set forth herein, the City has the right to require the Contractor to deliver to the City all inventory, materials, components, equipment, tooling, jigs, fixtures, work-in-process, and assignment of subcontracts; and all drawings, schematics, test results and test plans, QA/QC records, prints, product support documentation, production planning and scheduling systems and software, manufacturing process sheets, configuration records; and industrial engineering, to the extent and at such time as the City may direct.

Such deliveries shall be at no cost to the City and shall become its property as a partial offset to the damages suffered by the City because of default. Such material may be used at the City's discretion to complete the Work or reduce its costs in some other manner, subject to the restrictions and limitations contained herein with respect to use or disclosure of trade secret, security, proprietary or otherwise confidential information. However, the City shall not be required to assume any liability for material delivered and accepted by the Contractor, but not paid for prior to default, nor shall the deliveries to the City be encumbered by any lien from a subcontractor.

Upon receipt of a Notice of Intent to Terminate whether for convenience or for default, the Contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) promptly deliver or otherwise make available to the City all "subject data" as the Contractor, subcontractors or suppliers may have accumulated in performing this Contract, whether completed or in progress, and all equipment/materials purchased specifically for the Project where the City has reimbursed the Contractor for such costs.

Upon Termination, for Convenience or Default, the City may take over the Work and prosecute the same to completion by agreement with another party or otherwise.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue Work, or treat the termination as a termination for convenience.

The Contractor may terminate this Contract, in whole or in part, if the City fails to make any payment to Contractor that is due and payable in accordance with the Contract Documents upon giving (1) written notice delivered by certified mail, return receipt requested, of a Notice of Default; and, (2) advising the City of an opportunity to cure the payment default within one hundred eighty (180) days of such notice.

2.33.3 Opportunity to Cure

The City shall, in the case of a termination for breach or default, allow the Contractor fourteen (14) days in which to cure the defect or to initiate a cure if the defect cannot reasonably be cured within fourteen (14) days. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions and unless such default is rectified or the Contractor demonstrates continuous progress for a cure to the satisfaction of the City within fourteen (14) days of receipt of such Default Notice, the Contractor shall be in default; except that in the sole discretion of the City, the City may extend such fourteen (14) day period for such additional period as the City shall deem appropriate without waiver of any of its rights hereunder, provided that the Contractor has commenced and maintains continuous progress toward a cure. The Notice of Default shall specify the date the Contractor is to discontinue all Work and thereupon, unless previously rescinded by the City, the Contractor shall



discontinue the Work upon the termination date. If the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other provisions of the Contract in accordance with Section 2.33.2, Termination for Default, the City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on the Contractor by certified mail, return receipt requested, setting forth the manner in which the Contractor is in default. In the case of a termination for default hereunder, Contractor will only be paid that portion of the Total Contract Price for Work performed, supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract through the date of such termination.

Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

2.34 Stop Work Orders

- A. The City may, at any time by written order, require the Contractor to stop all, or any part, of the Work called for by the Contract for an aggregate period of ninety (90) days, or any lesser period, after the order is delivered, or for any further period to which the Parties may agree. Any order given under this Section shall be issued only by the City Project Manager and shall be specifically identified as a "Stop Work Order." A Stop Work Order will include the following in writing:
 - 1. A clear description of the Work to be suspended;
 - 2. Instructions as to the issuance of further subcontracts by the Contractor for materials or services;
 - 3. Guidance as to action to be taken on subcontracts;
 - 4. Other recommendations to the Contractor for minimizing costs; and
 - 5. Copy of the authorization for the Stop Work Order by a responsible official of the City.

- B. Upon receipt of any Stop Work Order, the Contractor shall comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within the period of ninety (90) days, or the lesser period specified, after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the Parties shall have agreed, the City shall either:
 - 1. Terminate the Work covered by the Stop Work Order by notice, in writing, of Termination for Convenience or Termination for Default as the case may be; or
 - 2. Permit the Stop Work Order to expire; or
 - 3. Rescind the Stop Work Order.

- C. If a Stop Work Order issued under this Section expires or is rescinded, the Contractor shall resume the Work. A Change Order will be issued for purposes of making an equitable adjustment in the Schedule and Mandatory Milestones as set out at SP-01, Time of Completion, or Total Contract Price, or both if:
 - 1. The Stop Work Order results in an alteration in the Schedule and Mandatory Milestones, or an increase in the Contractor's cost allocable to the performance of any part of the Work; and



2. The Contractor notifies the City of its intent to assert a claim for adjustment within sixty (60) days after the end of the period of Work stoppage. The Parties shall seek to agree on the required alterations to the Schedule and Mandatory Milestones and Total Contract Price, if any, and if they are unable to agree, the provisions of Section 2.23, Claims, shall apply.
- D. During any period that a Stop Work Order is in effect, the Contractor shall not be eligible to charge for extended overhead.

2.35 Value Engineering Change Proposals (VECPs)

- A. This Section sets forth the requirements applicable to preparation, review and approval of Value Engineering Change Proposals (VECPs) submitted by the Contractor for the purpose of enabling the Contractor and the City to take advantage of potential cost savings from changes in the Specifications or Drawings. The City encourages the Contractor to submit VECPs. The Contractor and the City will share any savings in accordance with this Section.
- B. The Contractor shall submit VECPs directly to the City. As a minimum, the following information shall be submitted by the Contractor with each VECP:
 1. Description of the existing Specifications or Drawings that are involved in the proposed change;
 2. Description of the proposed change;
 3. Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages;
 4. Itemization of the Specifications or Drawings that shall be changed if the VECP is accepted (e.g., drawing numbers and specification);
 5. Justification for changes in function or characteristics of each affected item, and effect of the change on performance of the end item;
 6. Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs and life expectancy;
 7. Date or time by which a Change Order adopting the VECP shall be issued in order to obtain the maximum cost reduction, noting any effect on Contract completion time or delivery schedule.
- C. Cost estimate for existing Specifications or Drawings correlated to the Contractor's unit price or lump sum breakdown and the proposed changes in those requirements. Costs of development and implementation by the Contractor shall be provided. Additional costs to the City (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.
- D. The City retains the right to reject a VECP without review, without recourse by the Contractor if a similar change is already under review; or if in the City's sole opinion, the potential savings are unlikely to justify the cost of the review; or if the proposed change is otherwise unacceptable to the City.
- E. The City shall process VECPs accepted for review but shall not be liable for any delay in acting upon any VECP submitted pursuant to this Section. The City may accept, in whole



or in part, by Change Order, any VECP submitted pursuant to this Section. Until an order to proceed is issued on a VECP, the Contractor shall remain obligated to perform in accordance with this Contract. Change Orders made pursuant to this Section will be identified as a VECP. The City's decisions as to acceptance or rejection of any VECP shall be at the City's sole discretion and shall be final and not subject to review by a disputes process or otherwise.

- F. If a VECP submitted by Contractor pursuant to this Paragraph is accepted, the Total Contract Price shall be adjusted in accordance with the following provisions:
1. Definitions
 - a. Estimated gross savings to Contractor (GS) means the difference between the cost of performing the Work according to the existing requirement and the cost to perform it according to the proposed change. In each instance, Contractor's profit shall not be considered part of the cost.
 - b. Contractor cost (CC) means reasonable costs incurred by Contractor in preparing the VECP and making the change, such as cancellation or restocking charges.
 - c. Estimated net savings to Contractor (NS) means gross savings (GS) less Contractor costs (CC).
 - d. The City's Costs (OC) means reasonable costs incurred by the City in evaluating and implementing the VECP, such as testing, redesign, and effect on other contracts.
 2. Calculations:

The Total Contract Price shall be reduced by an amount equal to fifty percent (50%) of (NS) plus fifty percent (50%) of (OC), expressed by the formula:

$$\text{Reduction} = 0.5 (\text{NS}) + 0.5 (\text{OC})$$
 3. Contractor's profit shall not be reduced by application of the VECP.
- G. The Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$100,000 or greater, and may include those provisions in any subcontract. In determining Estimated Net Savings for cost reduction proposals that involve a subcontractor, only actual costs to the Contractor and subcontractor, as defined in Paragraph F. above, will be allowed as Contractor Costs. Incentive payments made to the subcontractor by the Contractor in connection with the cost reduction proposal will not be allowed in determining Net Savings.
- H. The City is subject to public disclosure of records in accordance with Wisconsin State law and applicable Federal requirements.
- I. The compensation provisions of this Section shall constitute the Contractor's exclusive and complete compensation for the City's use of the VECP, and the Contractor shall have no right to additional compensation for future or additional uses of the VECP. The City shall have an absolute and unrestricted right to use the VECP for any purpose other than on the Contract or contracts for which it was submitted.



2.36 Warranty of Title

- A. Upon making each progress payment, the City shall obtain a security interest in the property (material, work in progress, inventory, finished goods, etc.) shown on each invoice. Title shall be in the name of the City and shall be transferred to the City free of any liens or encumbrances, and in accordance with the Special Provisions. However, the Contractor shall bear the risk of any loss or damage to the property, even though the City holds title, until Delivery of such property to the City. Nothing in this Paragraph shall undermine any rights that the City has under the Performance Security required by Section 2.12, Performance Security.
- B. The Contractor warrants that the title conveyed under the terms of this Contract shall be good and its transfer rightful and that all goods, supplies, systems and equipment shall be delivered free from all security interests or other liens or encumbrances whatsoever.

2.37 Code of Ethics/Prohibited Interests

No officer, employee, agent, member of the governing body, or other public official of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Contract pertains shall have any personal interest, direct or indirect, in this Contract.

Contractor covenants that no person described in the foregoing paragraph who presently exercises any functions or responsibilities in connection with the Contract has any personal financial interest, direct or indirect, in this Contract. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any conflicting interest shall be employed. An interest on the part of the Contractor or its employees must be disclosed to the City, provided however that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the policy that maximum opportunity be provided for employment of any participation by residents of the area.

2.38 Non-Collusion Affidavit

The Contractor agrees with and has executed the Affidavit of Non-Collusion and has included it as part of this Contract.

2.39 Collusion

If at any time it shall be found that the person, firm or corporation to whom a Contract has been awarded has colluded with any other party or parties in order to obtain award of the Contract, then the Contract so awarded shall be null and void and the Contractor and its sureties shall be liable to the City for all loss or damage which the City may suffer thereby; and the City's Board of Directors may advertise for a new Contract and for the labor, supplies, materials or equipment called for in this Contract.

2.40 Contingent Fees, Gratuities & Conflicts of Interest

- A. The Contractor warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting



bona fide employees. For breach of violation of this warranty the City shall have the right to annul this Contract without liability.

- B. The Contractor warrants and covenants that no gratuities, in the form of entertainment, gifts, or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees, or representatives to any official member or employee of the City in an attempt to secure a Contract or favorable treatment in awarding, amending, or making any determination related to the performance of this Contract.
- C. The Contractor warrants and covenants it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the performance of the services required to be performed under this Contract, and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest, the Contractor shall immediately disclose such interest to the City and take action immediately to eliminate the conflict or to withdraw from the Contract as the City may require.
- D. If the City has reason to believe that the covenants set forth in Paragraphs A, B or C above have been breached, the City shall so notify the Contractor in writing. The Contractor shall respond to said notice within ten (10) days of receipt with a detailed written explanation or answer to any facts, allegations, or questions contained or referenced in said notice. The Contractor may request a hearing on the matter by the City that shall be conducted within fifteen (15) days of the receipt by the City of the request unless a later date is concurred in by the City and the Contractor. If, after consideration of the Contractor's response and any hearing, the City determines that the covenants have been breached, the City shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Contract in the event of said breach and/or prohibited conflicts of interest.

2.41 False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the City in connection with this Project, the City reserves the right to pursue the procedures and impose on the Contractor or subcontractor the penalties of 18 USC § 1001, 31 USC §§ 3801, et seq., and 49 USC § 5307(n)(1), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies Act of 1986," 49 CFR Part 31, are applicable to this Project. Upon execution of a Contract with the City, Contractor certifies and affirms the truthfulness and accuracy of all statements made and material submitted pertaining to the Contract.

2.42 State of Wisconsin Requirements Solicitation Requirement

- A. Prior to Award, the Contractor shall be duly authorized to conduct business in accordance with the laws of the State of Wisconsin.
- B. The City may require the Contractor to provide evidence of such authority, licenses, or other documents that establishes the Contractor's ability to conduct business in the State of Wisconsin.



2.43 Waiver of Conditions/Severability

- A. Waiver of Conditions. The waiver of any provision, term or condition in these Contract Documents by the City on any particular occasion shall not constitute a general waiver of said provision, term or condition, or a release from the Contractor's obligation to otherwise perform or observe such condition or any other term or condition of the Contract.
- B. Severability. The Contractor and the City agree that, if any provision of this Contract shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if the remaining provisions continue to conform to the purposes of this Contract and the terms and requirements of law.

2.44 Workers' Compensation

The Contractor shall comply with the Worker's Compensation laws and regulations where any portion of the Work is performed. In addition, if a portion of the Work is performed from a barge or ship or requires unloading material from a barge or ship on a navigable waterway of the United States, it is the responsibility of the Contractor to arrange coverage for that portion of the Work under the Longshore and Harborworkers' Compensation Act [33 USC Section 901 et seq.] and the Jones Act [5 USC Section 751 et seq.] and provide proof of coverage to the Department.

2.45 Delays

- A. The Contractor will be granted an extension of time for any delay on the critical path to completion of any Contract Milestone, based on the latest approved Progress Schedule, arising from acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, earthquake, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or wrongful acts of owners or occupants of property adjoining the Work Site, provided that the aforesaid causes were not reasonably foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has notified the City in writing of the cause or causes of delay within seven (7) calendar days from the earlier of the date Contractor became aware of such delay or the date Contractor should reasonably have become aware of such delay. Such delay shall not be the basis for a claim for additional compensation. For the purposes of this Paragraph, weather conditions shall not be deemed unusually severe if they fall within two standard deviations from the mean of data recorded by NOAA area over the past twenty (20) years at locations at which Work is being performed under this Contract.
- B. If Contractor is delayed in the progress of the Work by an act, omission, or neglect of the City, its agents or representatives, or an act or omission of another contractor in the performance of a Contract with the City, Contractor shall, within seven (7) calendar days after the earlier of the date Contractor became aware of such delay or the date Contractor should reasonably have become aware of such delay, file with the City a written notice of delay together with a request for an extension of the Contract period for the portion of the Work so delayed. The notice shall set forth in detail the reasons for the delay and the period for which an extension is requested. If the delay results in unforeseen and additional expenses to Contractor in performing the Work, Contractor shall file with the written notice of such delay, a request for additional compensation,



together with the Contractor's estimate of anticipated additional expense for which compensation is requested. Contractor may submit a revised request for an extension of time and/or additional compensation within fourteen (14) calendar days following the cessation of such delay.

- C. When such a request is received, the City will ascertain the reasons for and extent of such delay. If the City determines that the cause was beyond the control and without the fault or negligence of Contractor and the facts justify an extension of time, or additional compensation, or both, the Contract will be modified accordingly, in writing, by a Change Order. Unless the above notice and appropriate requests are filed with the City pursuant to this Section within seven (7) working days after the earlier of the date Contractor became aware of such delay or the date Contractor should reasonably have become aware of the delay, or such other times as may be prescribed herein, no extension of time will be made or additional compensation allowed. In the case of a continuing cause of delay, only one request is necessary. If the City determines that the facts do not justify an extension of time or additional compensation, such request will be denied. The City's findings of fact for either determination will be delivered to Contractor in writing. Contractor agrees that any extension of time and/or additional compensation granted under this Section shall be its sole and exclusive remedy for the consequences of any delay described above; provided, however, that nothing herein shall be deemed to limit or waive Contractor's rights to dispute any City determination hereunder pursuant to GP 2.23 or otherwise limit its rights under law.
- D. Unusually severe weather delays shall apply only if they affect particular portions of the Work and operations of the Contractor, as determined by the City. The effects of weather less severe than the norm based on the criteria stated in Paragraph A of this Section may be taken into account in granting time extensions.
- E. An extension of time will not be granted for a delay caused by a shortage of materials, except the City-furnished materials, unless the Contractor furnishes to the City documented proof that it has made every effort to obtain such materials or approved substitutions from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of network analysis data, that the inability to obtain such material when originally planned, did in fact cause a delay in completion of any Contract Milestone which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the City that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.
- F. No extension of time will be granted under this Section for any delay to the extent: (1) that performance would have been so delayed by any Contractor-induced causes, including but not limited to the fault or negligence of the Contractor or its subcontractors; or (2) for which remedies are provided or excluded by any other provision of the Contract. Only the actual delay necessarily resulting from the causes specified in this Section shall be grounds for extension of time. In case the Contractor is



delayed at any time or for any period by two or more of the causes specified in this Section, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension will be granted for the delay.

- G. An extension of time granted shall not release the Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until the Final Acceptance of the Project covered by the Contract unless terminated in accordance with the terms of the Contract. Permitting the Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to the Contractor after any such periods shall not constitute a waiver on the part of the City of any rights under this Contract.
- H. Neither the granting of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by the Contract after the time specified for the completion of the Work, shall be deemed to be a waiver by the City of the City's right to abrogate this Contract for abandonment or failure to complete within the time specified or to impose and deduct damages as may be provided.
- I. In the event of any such delay, for any cause, the Contractor shall make every effort to mitigate the delay and to maintain the Contract schedule.

2.46 Subcontractors and Suppliers

- A. No subcontract shall relieve Contractor of any of Contractor's obligations or liabilities under the Contract. Contractor shall be fully responsible and liable for the acts or omissions of all subcontractors and suppliers including persons directly or indirectly employed by them, their guests and invitees. The Contractor shall have sole responsibility for managing and coordinating the operations of its subcontractors and suppliers, including the settlement of disputes with or between them.
- B. Nothing contained in this Contract shall be deemed to create a contractual relationship between any subcontractor or supplier and the City.

2.47 Identification and Approval of Subcontractors

- A. Within ten (10) working days after Contract execution, and thereafter as may be requested by the City, Contractor shall submit to the City a list of all proposed subcontractors, including those previously identified in the Best and Final Offer. The list shall identify the name of each subcontractor, whether the subcontractor is a certified USDOT Disadvantaged Business Enterprise or other type of registered disadvantaged business, and the portion of the Work to be performed by each subcontractor
- B. The City shall promptly review the proposed subcontractors and may disapprove a proposed subcontractor based upon the criteria stated below.
- C. If Contractor proposes to subcontract a portion of the Work following submittal of the initial subcontractor list, or to substitute for a subcontractor, or to self-perform Work previously identified as subcontract Work, Contractor shall obtain the City's approval prior to implementing the change. If Contractor wishes to replace a DBE subcontractor,



Contractor shall use good faith efforts to substitute another qualified DBE subcontractor. Substitute subcontractors will be evaluated in the same manner as subcontractors identified in the Best and Final Offer.

- D. A subcontractor may be rejected by the City if it has breached a contractual obligation or if that subcontractor failed to substantially perform the obligation, regardless of whether that failure was formally designated a breach of Contract by the City. Failure to complete performance of an obligation on time, including, but not limited to, failure to meet a Contract Milestone date on a prior City Contract, shall be deemed a failure to substantially perform that obligation

2.48 Subcontract Provisions

Contractor shall include in each subcontract, and require each subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of this Contract fully effective, specifically, but not by way of limitation, the inclusion of all FTA-mandated "flow-down" clauses. Contractor shall timely provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their Work.

2.49 Discipline and Order

The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned. Any person employed on the Project by the Contractor or any of his Subcontractors who, in the opinion of the City does not perform his Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the City, be removed forthwith by his employer, and shall not be again employed on the Project without the approval of the City.

2.50 Withholding of Payments by the City

The City may withhold all or part of a payment to the extent deemed necessary to protect the City from loss because of:

- A. Defective Work not remedied;
- B. Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;
- C. Failure of Contractor to make payments properly to subcontractors, or to make payments for labor, materials, or equipment pursuant to the terms of the respective subcontract or purchase order;
- D. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract sum;
- E. Damage to the City or another Contractor;
- F. Contractor's failure to carry out the Work in accordance with the Contract;
- G. Contractor's failure to comply with any material provision or requirement of the Contract;
- H. Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor;



- I. Contractor's failure to provide the required progress schedules in accordance with the Contract;
- J. Any sums expended by the City in performing any of the Contractor's Work under the Contract which the Contractor has failed to perform; or
- K. Liquidated damages due and payable pursuant to the terms of the Contract.

2.51 Payment for Changes

- A. Subject to Section 2.22, Changes in Contract Work, if any post-award change in this Contract results in a change in the quantity, scope, or nature of Work from that specified in the Contract, the change in Contract compensation shall be paid in accordance with the Change Order.
- B. Nothing in this Section shall be deemed to require a change in Contract compensation when additional, extra, or changed Work is the result of an estimating, contracting or engineering error by Contractor.
- C. In no event shall Contractor be entitled to compensation for loss of anticipated profits or for consequential damages resulting from changes made in accordance with Section 2.22, Changes in Contract Work.

2.52 Non-Discrimination

In all hiring or employment made possible by or resulting from this Contract, the Contractor agrees not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with, any of these protected categories. This requirement shall apply, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment notices required setting forth the provisions of this clause. The Contractor will cause the foregoing provisions to be inserted in all subcontracts, if any, for work covered by this Contract, so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply in contracts or subcontracts for standard commercial services or raw materials.

2.53 Final Acceptance of the Project and Final Payment

- A. Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the City in writing. Upon receipt of Contractor's notice, the City shall inspect the Work and within fifteen (15) working days after receiving Contractor's notice either finally accept the Work or notify the Contractor in writing of Work yet to be performed on the Contract. Upon receipt of the City's written final acceptance of the Work, Contractor may invoice the City for any amounts due under the Contract, including retainage. The City shall pay Contractor all such amounts within thirty working (30) days after receipt of the approved final invoice.
- B. Neither the final payment nor any remaining retained percentage shall become due until Contractor submits to the City (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or



otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) if required by the City, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by the City.

- C. If, after substantial completion of the entire Contract, Final Acceptance of the Project is materially delayed through no fault of Contractor or by the issuance of Change Orders affecting such Final Acceptance of the Project, the City, without terminating the Contract, shall pay the balance due for that portion of the Work that is eligible for Final Acceptance of the Project. If the remaining balance of Work is less than any remaining retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Acceptance of the Project shall be submitted by Contractor prior to payment. Payment under this Paragraph shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- D. The making of final payment by the City shall constitute a waiver of claims by the City except those arising from:
 - 1. Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
 - 2. Failure of the Work to comply with the requirements of the Contract; or
 - 3. Terms of all warranties required by the Contract.
- E. Acceptance of final payment by the Contractor, a subcontractor, or a material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of application for final payment. Such waivers shall be in addition to the waiver provided in this Section.

2.54 Audit and Inspection of Records

- A. Contractor and its subcontractors shall maintain a complete set of records relating to this Contract in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of the City, the U.S. Department of Transportation, and the Comptroller General of the United States, and any other entity providing funding for this project to inspect and audit all Work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this Contract until the expiration of three (3) years after final payment under this Agreement. The Contractor shall maintain an index of such records to facilitate access and recovery of such records.
- B. The City shall also have access to such books, records, and documents during the performance of Project Work if deemed necessary by the City to verify Contractor Work and invoices, to assist in negotiations for additional work, and to resolve claims and disputes. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- C. Subject to Contractor's rights of confidentiality and the protection of its intellectual and proprietary information set forth herein, the Contractor agrees to the disclosure of all



information and reports resulting from access to records under Paragraphs A and B of this Section, provided that the Contractor is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Contractor.

- D. Contractor further agrees to include in all of its subcontracts under this Contract a provision to the effect that the subcontractor agrees that the City, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Section excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- E. The periods of access and examination described in Paragraphs A and B of this Section for records that relate to (1) disputes between the City and Contractor, (2) litigation or settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.
- F. The Contractor shall ensure that substantially the foregoing Paragraphs are included in each subcontract for Work on the Project.

2.55 Funding Limitation

Contractor understands that funds to pay for Contractor's performance under this Contract are anticipated to be made available in part from the United States Department of Transportation through the Federal Transit Administration (FTA), as well as State and local funding sources. If funds are not allocated, or ultimately are disapproved, the City may terminate or suspend Contractor's services without penalty, except for the City's obligations pursuant to the final sentence of this Section 2.55. The City shall notify Contractor promptly in writing of the non-allocation, delay, or disapproval of funding. In the event of any such termination or suspension, Contractor shall be compensated as applicable, as provided in Sections 2.33.1, Termination for Convenience, or Section 2.34, Stop Work Orders.

2.56 Certified Current Cost or Pricing Data

- A. If the aggregate increases and/or decreases in costs, plus applicable profits, of any modification to this Contract exceed \$100,000, the Contractor shall submit, in addition to the other information required to be submitted under Paragraph D of Section 2.22, Changes in Contract Work, a certificate of current cost or pricing data. The certificate shall be submitted as soon as possible after agreement is reached on the Contract price adjustment.



The certificate shall be in the following form:

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the City or to the City's representative in support of #-----* are accurate, complete, and current as of -----**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing date agreements between the offeror and the City that are part of the offer or Best and Final Offer if applicable.

Firm _____
Name _____
Title _____
Date of execution*** _____

* Identify the Best and Final Offer, quotation, Change Order, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., C.O. No.).
** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.
*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the Contract price was agreed to.

- B. No certificate is required for Contract modifications where the price adjustment is:
1. Based on unit prices or lump sum prices established in the Contract.
 2. Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 3. Set by law or regulation.

2.57 Price

- A. This Section shall apply only for any modification to this Contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than \$100,000, except that this Section does not apply to any modification for which the price is:
1. Based on unit prices or lump sum prices established in the Contract.
 2. Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 3. Set by law or regulation.
- B. If any price, including profit, negotiated in connection with any modification of this Contract to which this Section applies was increased by a significant amount because:
1. The Contractor or a subcontractor furnished cost or pricing data that was not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;



2. A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that was not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
3. Any of these parties furnished data or any description that were not accurate.

The price shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this Section becomes operative under Paragraph A above.

- C. Any reduction in the Contract price under Paragraph B above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

1. If the City determines under Paragraph B of this Section that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - a. The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
 - b. The City should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the City;
 - c. The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract; or
 - d. The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
2. Except as prohibited by subdivision C.3 of this clause, an offset in an amount determined appropriate by the City based upon the facts shall be allowed against the amount of a Contract price reduction if:
 - a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - b. The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.



3. An offset shall not be allowed if:
 - a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - b. The City proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- D. If any reduction in the Contract price under this Section reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to the City for such overpayment. The Contractor shall pay the City at the time such overpayment is repaid simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the City is repaid by the Contractor at the applicable rate for overdue payments to a Contractor as prescribed by Wisconsin law.

2.58 Subcontractor Cost or Pricing Data

- A. The requirements of Paragraphs B and C of this Section shall apply only to any modification to this Contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000 and shall be limited to such modifications.
- B. Before awarding any subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data unless the price is:
 1. Based on unit prices or lump sum prices established in the Contract;
 2. Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 3. Set by law or regulation.
- C. The Contractor shall require the subcontractor to certify in substantially the form prescribed in Section 2.56, Certified Cost or Pricing Data, that, to the best of its knowledge and belief, the data submitted under Paragraph B above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- D. The Contractor shall insert the substance of this clause, including this Paragraph D, in each subcontract that exceeds \$100,000 when entered into.

2.59 Publicity and Public Relations

The Contractor, its subcontractors, assignees, employees or agents shall not release or publish any information or material generated from this Contract to others outside the City without the express written permission of the City. The Contractor shall refrain from meeting with the media without the City's authorization and shall direct all questions from the media to the City's' Project Manager.

The sensitivity of the need to minimize the impact on the community during on-site testing and Contractor on-site operations cannot be over-emphasized. The Contractor shall consider community



issues related to testing/operations to have the highest priority and shall conduct its Work accordingly. The Contractor shall commit the necessary resources to assist the City's Project Manager in resolving community impact issues that may arise.

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SECTION 3

FEDERAL REQUIREMENTS

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3. FEDERAL REQUIREMENTS

3.1 Applicability of Federal Grant Contract

This procurement may be subject to one or more financial assistance contracts between the City of Milwaukee (the City) and the U.S. Department of Transportation, Federal Transit Administration (FTA) which incorporate the current FTA Master Agreement and Circular 4220.1F. The Contractor is required to comply with all terms and conditions prescribed for third party contracts in these documents.

Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Contract is established and may apply to this Contract. To assure compliance with changing federal requirements, Contract Award indicates that the Contractor agrees to accept all changed requirements that apply to this Contract.

3.2 No Federal Government Obligations to Third Parties

In connection with the Project, the Contractor agrees that, absent the express written consent of the United States of America or any executive department or agency thereof (collectively, the "Federal Government"), the Federal Government shall not be subject to any obligations or liabilities to the Contractor, any subcontractor, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity other than the City, to the extent that the City enters into a grant agreement or similar agreement with the Federal Government for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subcontract, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the City, including the Contractor, any subcontractor, lessee, third party contractor, or other participant at any tier of the Project.

3.3 False or Fraudulent Statements or Claims

The Contractor acknowledges and agrees that:

- (a) **Civil Fraud.** The Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 et seq., and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to the Contractor's activities in connection with the Project. By executing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
- (b) **Criminal Fraud.** If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 USC Chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Contractor the penalties of 49 USC § 5323(l), 18 USC § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.



3.4 Access to Third Party Contract Records

The Contractor agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 USC § 5325(g). The Contractor further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

3.5 Changes to Federal Requirements

Federal laws, regulations and directives governing the Project may change, and the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing.

3.6 Termination

The Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the City has violated the terms of a grant agreement or similar agreement with the Federal Government for the Project, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Contractor understands and agrees that any failure to make reasonable progress on the Project or any violation of the City's grant agreement or similar agreement with the Federal Government for the Project that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the City's grant agreement or similar agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the City's grant agreement or similar agreement with the Federal Government for the Project.

3.7 Civil Rights

The Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following subsections.

3.7.1 Nondiscrimination in Federal Public Transportation Programs

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 USC § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

3.7.2 Nondiscrimination - Title VI of the Civil Rights Act

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 USC §§ 2000d et seq., and with USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act," 49 CFR



Part 21. Except to the extent FTA determines otherwise in writing, the Contractor agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," and any other applicable Federal directives that may be issued.

3.7.3 Equal Employment Opportunity

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity ("EEO") provisions of 49 USC § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Contractor also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

- (a) General. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. 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, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor ("U.S. DOL") to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq.; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

3.7.4 Disadvantaged Business Enterprise

To the extent authorized by Federal law, the Contractor agrees to facilitate participation by Disadvantaged Business Enterprises (each, a "DBE") in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

- (a) The Contractor agrees and assures that it shall comply with section 1101(b) of MAP 21, 23 USC § 101 note, and USDOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26.
- (b) The Contractor agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subcontract, lease, third party contract, or other arrangement supported with Federal assistance derived from USDOT in the administration of its DBE program and shall comply with the



requirements of 49 CFR Part 26. The Contractor agrees to take all necessary and reasonable steps as set forth in 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all subcontracts, leases, third party contracts, and other arrangements supported with Federal assistance derived from USDOT. As required by 49 CFR Part 26, the Contractor's DBE program approved by USDOT, if any, is incorporated by reference and made part of the Contract. The Contractor agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Contract. Upon notification by USDOT to the Contractor of the Contractor's failure to implement its approved DBE program, USDOT may impose the sanctions as set forth in 49 CFR Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 USC § 1001, or the Program Fraud Civil Remedies Act, 31 USC §§ 3801 et seq., or both.

3.7.5 Nondiscrimination on the Basis of Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC §§ 1681 et seq., and with implementing USDOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

3.7.6 Nondiscrimination on the Basis of Age

The Contractor agrees to comply with all applicable requirements of:

- (a) The Age Discrimination Act of 1975, as amended, 42 USC §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.
- (b) The Age Discrimination in Employment Act ("ADEA") 29 USC §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission ("U.S. EEOC") regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, which prohibits discrimination against individuals on the basis of age.

3.7.7 Access for Individuals with Disabilities

The Contractor agrees to comply with 49 USC § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 USC §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may



be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (a) USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (b) USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (c) Joint U.S. Architectural and Transportation Barriers Compliance Board ("U.S. ATBCB")/USDOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- (d) U.S. Department of Justice ("U.S. DOJ") regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (f) U.S. General Services Administration ("U.S. GSA") regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
- (k) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

3.7.8 Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 USC §§ 290dd through 290dd-2, and any amendments thereto.

3.7.9 Access to Services for Persons with Limited English Proficiency

The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 USC § 2000d-1 note, and follow applicable provisions of USDOT Notice, "DOT Policy Guidance Concerning Recipients'



Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

3.7.10 Environmental Justice

The Contractor agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 USC § 4321 note; and USDOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

3.7.11 Other Nondiscrimination Laws

The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

3.8 Incorporation of FTA Terms

The Contractor agrees to comply with applicable third party procurement requirements of 49 USC Chapter 53 and Federal laws in effect now or subsequently enacted; with applicable USDOT third party procurement regulations at 49 CFR § 18.36 or 49 CFR §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Contractor understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

3.9 Suspension and Debarment

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note, and USDOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget ("U.S. OMB") "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. To the extent required by these USDOT regulations and U.S. OMB guidance, the Contractor agrees to, and assures that its subcontractors, lessees, third party contractors, and other participants at any tier of the Project will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subcontract, lease, third party contract, or other arrangement in connection with the Project.

3.10 Buy America

The Contractor agrees to comply with 49 USC § 5323(j) and FTA regulations, "Buy America Requirements," 49 CFR Part 661, and any amendments thereto.



3.11 Cargo Preference

To the extent applicable, the Contractor agrees to comply with 46 USC § 55305 and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 CFR Part 381.

3.12 Fly America

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131 through 301-10.143.

3.13 Resolution of Disputes, Breaches, or Other Litigation

The Contractor agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- (a) Notification to FTA. The Contractor agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Contractor seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Contractor agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under this section shall be provided to the FTA Regional Counsel within whose Region the Contractor implements the Project.
- (b) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the City may return liquidated damages recovered to its project account in lieu of returning the Federal share to the Federal Government.
- (c) Enforcement. The Contractor agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.
- (d) FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Contractor.
- (e) Alternative Dispute Resolution. FTA encourages the Contractor to use alternative dispute resolution procedures, as may be appropriate.

3.14 Lobbying

The Contractor agrees that:

- (a) In compliance with 31 USC § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Contract;
- (b) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State



legislature with respect to legislation or appropriations, except through proper, official channels; and

- (c) It will comply, and will assure the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project with USDOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, modified as necessary by 31 USC § 1352, as amended.

3.15 Clean Air

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 USC §§ 7401 through 7671q. Specifically:

- (a) The Contractor agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 USC § 7506(c); to comply with U.S. Environmental Protection Agency ("U.S. EPA") regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR Part 93, Subpart A; and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying approval of the Project. The Contractor further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
- (b) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Contractor agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 CFR Part 600, and any revisions thereto.
- (c) The Contractor agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 USC § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 USC § 7606 note.

3.16 Clean Water

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 USC §§ 1251 through 1377. Specifically:

- (a) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300f through 300j-6.
- (b) The Contractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 USC § 1368, and facilitate compliance with



Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 USC § 7606 note.

3.17 Construction Employee Protections

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees:

- (a) Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 3701 et seq., specifically, the wage and hour requirements of Section 102 of that Act at 40 USC § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5; and the safety requirements of Section 107 of that Act at 40 USC § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

3.18 Bonding for Construction Activities Exceeding \$100,000

The Contractor agrees to provide bid guarantee and contract performance bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

3.19 Energy Conservation

The Contractor agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 USC §§ 6321 et seq., except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, Subpart C.

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SPECIAL PROVISIONS
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4. SPECIAL PROVISIONS

4.1 Schedule

SP-01 Time of Completion

Contractor shall commence performance of the Work immediately upon receipt of the Notice to Proceed (NTP) or Limited Notice to Proceed (LNTP) issued pursuant to the General Provisions.

Time is of the essence in this Contract with regard to the achievement of the Contract actions and deliverables identified in Exhibit SP-01 ("Key Actions and Deliverables") hereto. Contractor shall complete all Work necessary to satisfy the requirements of the Contract milestones listed herein, within the periods of time stated in this Section.

The City of Milwaukee’s Streetcar Procurement: Schedule and Mandatory Milestones	
Milestone	Time from NTP
Contractual Delivery of first vehicle	No earlier than 18 months after NTP, and no later than 24 months after NTP
Contractual Delivery of second vehicle through the fourth vehicle	At a nominal rate of two vehicles per month, starting no later than 25 months after NTP
Contractual Delivery of Spare Parts (Delivery of all spare parts)	No later than 27 months after NTP. Spare Parts Delivery shall not commence earlier than 18 months after NTP
Completion of Contractual Training	No later than 26 months after NTP
Delivery of Final Draft of all Manuals	No later than 25 months after NTP
Contractual Delivery of Completed Manuals	No later than 27 months after NTP
Contractual Delivery of Special Tools and Test Equipment	No later than 27 months after NTP
Contractual Delivery of all As-Built Drawings	No later than 28 months after NTP

Contractor shall work such hours including overtime operations and/or extra shifts, within the parameters of permitted working days and hours, as may be necessary to meet its performance obligations under the Contract at no additional cost.

Pursuant to the General Provisions, the City requires all Contractors working in the same areas to schedule their work in close coordination and cooperation with each other to ensure mutually satisfactory performance of their respective contractual performance obligations.

During the vehicle delivery period as listed above, the City will grant all reasonable requests from the Contractor for access to maintenance facility bays and test track facilities. During these periods, other Contractors may also be permitted access by the City to these facilities. Meetings will be scheduled by the City’s Project Manager on a continuing basis to establish access priorities.

The vehicles shall be delivered at a nominal rate of two vehicles per month after delivery of the second vehicle. No vehicles may be shipped to the City for arrival on Saturdays, Sundays, or City holidays unless otherwise approved by the City’s Project Manager. The Contractor shall notify the City’s Project



Manager at least five (5) calendar days in advance of anticipated arrival dates. Hours of Vehicle arrival shall be 8:00 AM through 3:00 PM unless otherwise approved by the City.

Contractual Delivery of vehicles shall be as defined in SP-21.

Contractual Delivery of spare parts, special tools, test equipment, and manuals shall be as defined in SP-22.

SP-02 Liquidated Damages

The City will sustain significant damages as a result of the Contractor's failure to complete the Contract Milestones listed below within the time periods stated in SP-01 Delivery and Time of Completion. These damages may include, but are not necessarily limited to the following:

- Delays in completion and operation of the City's streetcar transit system;
- Increased costs of Contract Administration;
- Cost resulting from delays to interfacing Contractors;
- Cost associated with delays to operation training.

Because the actual amount of these damages is and will be difficult to accurately determine, the parties agree to the liquidated damages specified below.

For delay in completion of any of the following Contract Milestones, the Contractor shall pay to the City as liquidated damages, and not as a penalty, the following sums for each Day of delay or any fraction thereof.

Milestones	Amount per Day
Contractual Delivery of first vehicle	\$1,000
Contractual Delivery of each production vehicle	\$500 per vehicle
Completion of Delivery of spare parts	\$200
Completion of Delivery of Operation	\$200
Acceptance of Maintenance and Parts Manuals	\$200
Completion of Delivery of special tools, and diagnostic test equipment	\$200
Completion of training	\$200

If completion of more than one milestone is delayed, whether concurrently with other milestones or not, the total amount of liquidated damages due shall be the sum of the amounts due for each milestone.

The total amount for liquidated damages in this Section shall not exceed ten percent (10%) of the Total Base Contract Price. The City may deduct the sum of liquidated damages from progress payments due under this Contract.

The City reserves the right to waive the liquidated damages for late completion where circumstances causing the late completion are clearly beyond the control of the Contractor (see Section 2.45, Delays) or where it is in the interest of the City to do so.



4.2 Financial Considerations

SP-03 Payment Terms

The Contractor shall submit invoices to the City according to the progress payment schedule in SP-04. The Contractor shall submit no more than one invoice a month, and each invoice may include any number and combination of milestone payments that are payable that month. Invoices need not be based on sequential milestones. Each invoice shall be in triplicate, in a form acceptable to the City, and shall include:

Contract No. _____

City of Milwaukee Streetcars

Applicable milestone(s) and vehicle(s)

Back-up documentation confirming payment milestones have been achieved

Unit and total prices by milestone

Certification by Contractor that all major Subcontractors and major Suppliers have been paid through the achievement of the applicable milestone, but only to the extent such amounts are due and payable in accordance with the terms and conditions of the applicable subcontract or purchase order.

Total invoice amount

Payment will be made within thirty (30) days after both approval of properly prepared invoices and Delivery of the procured items or completion of the milestone work as indicated, in a condition satisfactory to the City's Project Manager. Payment shall constitute full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the Work involved under the Contract.

The City may withhold all or part of a payment to the extent deemed necessary by the City to protect the City from loss because of:

- (a) Defective work not remedied;
- (b) Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;
- (c) Failure of the Contractor to make payments properly to subcontractors or suppliers, or for labor, materials, or equipment;
- (d) Reasonable evidence that the work cannot be completed for unpaid balance of the Contract sum;
- (e) Damage to the City;
- (f) Reasonable evidence that the work or any portion of work will not be completed in accordance with the approved progress schedule;
- (g) The Contractor's failure to carry out the work in accordance with the Contract; or
- (h) The Contractor's failure to comply with any provision or requirement of the Contract.



Notwithstanding the payment provisions of this Contract, the City may make partial payment against any milestone when the City deems such payment to be appropriate and in the best interest of the City. The City may withhold accrued liquidated damages from progress payments.

No approval for payment, nor any payment by the City, shall constitute an acceptance of any vehicles or other Contract deliverables that are not in accordance with the Contract.

SP-04 Progress Payment Schedule

Progress Payments are specified percentages for each milestone listed and are based on the Total Contract Award Price for vehicles as shown on Schedule of Prices, Form A.1.

As additional security for the faithful performance of this Contract, the City shall deduct and retain from all milestone payments contained in this Provision, five percent (5%) of the amount certified to be due hereunder. The City shall release 50% of the retainage applicable to each vehicle upon such vehicle’s achievement of Final Acceptance of a vehicle with the remaining 50% to be released upon final payment under SP-06.

The Contractor’s invoices shall account the Work events described in the progress payment schedule below. Progress payment invoices shall not exceed the following stated percentages of the Contract price at the time of the following stated Work events:

Milestone	Description	Cumulative % Total Base Price
A	Ten (10) percent of the Total Base Contract Price following Contract execution for mobilization.	10
B	Ten (10) percent of the Total Base Contract Price upon: Approval of Management Plan (TS 18); Approval of all CDRLs specified in the Technical Specifications to be submitted within 180 days after NTP; No sooner than six (6) months after NTP.	20
C	Five (5) percent of the Total Base Contract Price upon: Approval of all major sub-assemblies First Article Inspections (TS 18); Approval of Qualification Test results (TS 15) No sooner than twelve (12) months after NTP.	25
D	Six and one-quarter percent (6.25%) of the Total Base Contract Price upon: Approval of each assembled vehicle-shell body after painting (TS 18); No sooner than fifteen (15) months after NTP	50



E	Seven and one-half percent (7.5%) percent of the Total Base Contract Price upon: The earlier of Contractual Delivery or Deemed Contractual Delivery, as applicable, of each vehicle. No sooner than twenty (20) months after NTP.	80
F	Ten percent (10%) of the Total Base Contract Price upon: Delivery of all Final Manuals and Catalogs (TS 18.1.1); Delivery of Spare Parts. No sooner than twenty-four (24) months after NTP	90
G	Two and one-half percent (2.5%) of the Total Base Contract Price upon Final Acceptance of each vehicle in connection with the Base Order.	100

SP-05 Progress Payment to Subcontractors or Suppliers

As may be governed by federal regulation (49 CFR 26.29) and subcontract agreements between the Contractor and its subcontractors and/or suppliers, the Contractor shall pay promptly each subcontractor (including supplier), out of the amount paid to the Contractor on account of the subcontractor’s Work, the amount to which the subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of the subcontractor’s Work. The Contractor shall, by an appropriate agreement in each subcontract, require each subcontractor to make payments to its subcontractors in a similar manner. This provision shall not be deemed to authorize the Contractor to withhold retainage from the final payment to a subcontractor or pending final payment or partial final payment by the City.

The City may, on request and at its discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the payments invoiced by the Contractor and the action taken on the invoices by the City on account of Work done by the subcontractor.

SP-06 Final Acceptance of the Project and Final Payment

Before applying for final payment, if any, the Contractor shall complete all Work, and shall correct any deficiencies in the Work and any Work rejected by the City.

Upon receipt of the Contractor’s notice that all deliverables due under the Contract have been furnished, and after completion of all milestones set forth in SP-01, Time of Completion, and SP-04, Progress Payment Schedule, the City shall make inspection, and when the City finds all such deliverables acceptable under the Contract and the Contract fully performed, the City shall make final payment to the Contractor.

The final payment shall not become due until the Contractor submits to the City (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) if required by the City, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by the City. If any subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a



bond satisfactory to the City to indemnify the City against the claim. If a claim remains unsatisfied after all payments are made, the Contractor shall reimburse the City for all moneys that the City may be compelled to pay in discharging the claim, including all costs and reasonable attorney's fees.

SP-07 Units of Currency

All Contractor invoices for payment shall be accounted in U.S. dollars, and all City payments to the Contractor shall be in U.S. dollars. There shall be no adjustments to any Contract prices or payments due to currency fluctuations.

SP-08 Economic Price Adjustments

No Economic Price Adjustment (EPA) shall be applied to any of the Price Items or progress payments for the Base Order of four vehicles, System Support, Spare Tools, or Test Equipment contained in the Total Base Contract Price.

SP-09 Not Used

SP-10 City's Obligation to Purchase Spare Parts

The City shall be under no obligation purchase any or all of the spare parts listed in Schedules B, C, and D. The City may select spare parts from Schedules B, C, and D and purchase in quantities it requires. The City shall provide the Contractor with a list of spare parts it wishes to purchase no sooner than 120 days and no later than 180 days after NTP, but not sooner than 90 days after Contractor provides the City with a recommended operating plan and recommended spare parts list. Within 18 months after NTP Contractor shall also supply a list of recommended spare parts for use during the first two years of revenue service, as provided in TS 17.4.1.

4.3 Options

SP-11 Options for Additional Vehicles

At the option of the City, the Contractor shall provide additional vehicles at the Escalated Option Unit Price per additional vehicle as defined in SP-12, except that the City may order one time up to five (5) additional vehicles at the Base Contract Unit Price per item I.1 of the Price Summary Form until six (6) months after NTP. The City shall order additional vehicles by written notice to the Contractor. The notice shall specify the quantity of additional vehicles being ordered. The City may place one or more orders for additional vehicles, or none, but in no event shall the City order more than a total of 20 additional vehicles unless the amount is mutually extended.

An option to order additional vehicles may be exercised at any time of the City's' choosing within the time limits listed in Section 5, Form A.1, Schedule of Prices, Price Summary Form, Item II. Option for Additional Vehicles.

Contractual Delivery of additional vehicles shall be in accordance with the following: The first additional vehicle shall be delivered not more than twenty-four (24) months after exercising of the option, but in no case before Delivery of the last vehicle of the Base Order or a previous option order. All following vehicles procured under this provision shall be delivered at a rate of not more than three (3) vehicles per month and not less than two (2) vehicles per month following Contractual Delivery of the first option vehicle.



SP-12 Prices of Option Vehicles

The price of option vehicles shall reflect applicable prior Change Orders and an Economic Price Adjustment (EPA) due to escalation. The initial price of option vehicles, when the option is exercised, will reflect prior and applicable Change Orders while the final price of option vehicles will also reflect the EPA. The pricing for each option vehicle shall be determined based on the following rules:

- If up to twenty (20) total option vehicles are exercised more than 6 months and no more than 24 months after NTP, then the price for each vehicle shall be based on Line Item II.2 of Form A.1 Schedule of Prices.
- If up to twenty (20) total option vehicles are exercised more than 24 months and no more than 42 months after NTP, then the price for each vehicle shall be based on Line Item II.3 of Form A.1 Schedule of Prices.
- If up to twenty (20) total option vehicles are exercised more than 42 months and no more than 60 months after NTP, then the price for each vehicle shall be based on Line Item II.4 of Form A.1 Schedule of Prices.
- If up to twenty (20) total option vehicles are exercised more than 60 months and no more than 84 months after NTP, then the price for each vehicle shall be based on Line Item II.5 of Form A.1 Schedule of Prices.

First, the price of option vehicles shall be calculated using the applicable Option Unit Price before Escalation contained on the Price Summary Form of the Schedule of Prices. This price shall include any price increase or decrease adjustment on a per-vehicle basis due to executed and applicable Change Orders to the base Contract accrued at the time of exercising the option, excluding Change Orders relating to Price Item 3 or to any prior option.

Second, exclusive and independent of any price adjustment described above for executed Change Orders, the milestone payments associated with the option prices on the Price Summary Form shall be subject to an Economic Price Adjustment (EPA) using the procedure described below. The Economic Price Adjustment shall be the sole remedy for increases in the Contractor's costs for option vehicles due to inflation and shall be applied independently to the scheduled milestone payment for each option exercised. There shall be no adjustments to option prices for currency fluctuations throughout the term of the Contract.

Within thirty (30) days of the date of exercising an option, the City and the Contractor will mutually establish the schedule for the options milestone payments per SP-13; absent a mutual agreement of such schedule within 30 days, the City will establish the schedule within sixty (60) days.

Each and every options milestone payment, except as noted below, will be subject to an EPA and adjusted up or down according to an Adjustment Ratio based upon index values at the scheduled date, and at NTP. For purposes of this calculation, the actual date shall not be used, unless it is the same as the scheduled date.

The Adjustment Ratio will be calculated using the Producer Price Index for Transportation Equipment (37), published monthly in the Producer Price Indexes by the United States Department of Labor Bureau of Labor Statistics. Regardless of actual costs, this index and only this index shall be used for determining the amount of adjustment to be made, if any.

If the Bureau of Labor Statistics discontinues determining the index cited herein, the parties shall mutually agree on an appropriate substitute for the discontinued index.



If the Bureau of Labor Statistics alters its method of calculating any of the indices, appropriate adjustments in the affected index shall be agreed upon by the parties in order to put it on a comparable basis with the index before the change.

The following procedure shall be used to calculate the amount of adjustment to a milestone payment:

The Adjustment Ratio rounded to four (4) decimal places shall be determined by the following formula:

$$\text{Adjustment Ratio} = \frac{\text{Adjustment Index}}{\text{Original Index}}$$

The Adjustment Index shall be the most current Four Month Revised index value at the time of the scheduled milestone payment, NOT at the time of the actual milestone payment.

The Original Index shall be the most current Four Month Revised index value as of the month of NTP of the Contract.

The adjusted milestone payment price shall equal the Adjustment Ratio multiplied by the respective original milestone payment price from the Price Summary Form and SP-13 Progress Payment Schedule.

There shall be no EPA applied retroactively for Change Orders.

There shall be NO EPA applied to the one time only, up-to-five-vehicle option that must be exercised within six (6) months after NTP of the Contract.

SP-13 Progress Payments for Option Vehicles

Progress payments for options shall be made in accordance with requirements and procedures set forth in SP-03 and SP-04, except that the progress payment schedule set forth below shall be used instead of the progress payment schedule set forth in SP-04.

Progress payment invoices for option vehicles shall not exceed the following stated percentages of the total option price at the time of the following stated Work events:

Milestone	Description	Cumulative % Total Option Price
A	Ten percent (10%) of the total option price immediately following execution of the option	10%
B	Ten percent (10%) of total option price upon approval of the Contractor's progress and delivery schedule for option vehicles.	20%
C	Fifteen percent (15%) of the total option price paid on a pro rata basis for each option vehicle upon completion of the vehicle shell.	35%
D	Twenty percent (20%) of the total option price paid on a pro rata basis for each option vehicle upon installation and completion of all vehicle wiring of the vehicle-body mounted components of the following major sub-systems: Propulsion System, Friction Brake System, General Electrical Equipment, HVAC, Doors, Monitoring and Diagnostics, Communications, and Lighting.	55%



E	Twenty percent (20%) of the total option price paid on a pro rata basis for each option vehicle on shipment of each vehicle from the Contractor’s plant to the City.	75%
F	Ten percent (10%) of the total option price paid on a pro rata basis for each option vehicle upon issuance of delivery receipt by the City.	85%
G	Ten percent (10%) of the total option price paid on a pro rata basis for each vehicle upon Conditional Acceptance of the vehicle by the City.	95%
H	Five percent (5%) of the total option price paid on a pro rata basis for each vehicle upon Final Acceptance of a vehicle by the City for the vehicle in question.	100%

SP-14 Option for Additional Spare Parts, Special Tools, and Test Equipment

At the option of the City, the Contractor shall provide additional spare parts, special tools, and test equipment set forth in Schedule B, C, and D respectively of the Schedule of Prices at the unit prices contained thereon, and for quantities not to exceed fifty percent (50%) of the Base Order quantity. The City shall order additional spare parts, special tools or test equipment by written notice to the Contractor. The notice shall specify the quantity of additional materials being ordered. The City may place one or more such orders for additional materials, or none.

An option to order additional spare parts, special tools and test equipment may be exercised at any time of the City’s choosing up to the date of Delivery of the last Base Order vehicle.

Additional spare parts, special tools and test equipment ordered under this provision shall be delivered not more than twenty-four (24) months after exercising of the option, except that no parts or equipment shall be delivered earlier than eighteen (18) months after Notice to Proceed, or as mutually agreed upon by Contractor and the City.

SP-15 Prices for Option Spare Parts, Special Tools and Test Equipment

Prices of any option spare parts, special tools, and test equipment shall be at the prices set forth in Schedule B, C, and D respectively of the Schedule of Prices,



SP-16 Progress Payments for Option Spare Parts, Special Tools and Test Equipment

Payments for optional spare parts, special tools and test equipment shall be made in accordance with SP-03 and with the following payment schedule:

Milestone	Description	Cumulative % Total Option Price
A	Ten percent (10%) of the total option price immediately following execution of the option.	10%
B	Forty percent (40%) of the total option price upon Delivery of fifty percent (50%) of the total value of spare parts, special tools and diagnostic test equipment ordered under the option.	50%
C	Fifty percent (50%) of the total option price upon Delivery of one hundred percent (100%) of the total value of spare parts, special tools and diagnostic test equipment ordered under the option.	100%

4.4 Shipping, Delivery, and Acceptance

SP-17 Shipment Authorization

Each vehicle shipped from the Contractor’s plant to the City shall be complete, ready to run, and in compliance with all provisions of the specification, except as noted below. Prior to shipment of each vehicle, the Contractor shall obtain a shipping release ("Release for Shipment") signed by the City’s Project Manager or his or her designee. The Release for Shipment shall certify that the vehicle is complete, has passed all pre-shipment tests described in Section 15 of the Technical Specification and complies with approved Contractor’s drawings, samples and other agreed upon conditions for shipping. The City’s Project Manager, at his or her sole discretion, may permit shipment of a vehicle with minor defects that will not affect testing and can easily be corrected after shipment. All known defects shall be submitted by the Contractor with the request for shipping release. The Release for Shipment shall not be construed nor inferred to constitute to any degree of vehicle acceptance by the City. If the City is unable to receive the vehicle at the City OMF, the Release for Shipment will indicate that the vehicle shall be shipped in place, triggering achievement of Deemed Contractual Delivery by Contractor, as defined in SP-21.B.

SP-18 Shipment

If shipped by sea, all vehicles or vehicle components shall be below deck and shall be enclosed to protect against damage from handling and from exposure to the marine environment.

The Contractor shall arrange for shipment of vehicles and vehicle components to be controlled so as to prevent damage to vehicles and vehicle components. The vehicles shall not be shipped by traveling on their own wheels. During shipment, the vehicle body shall be supported by the vehicle-body jacking pads, and not by the vehicle trucks (bogies) or other trucks, for all and any portion of shipment. Trucks may be shipped resting on their own wheels. All sub-systems shall be protected from damage during shipment. All rotating equipment shall be shipped with brushes removed from commutators and with



moving parts blocked to prevent bearing damage. All parts that are removed for shipment shall be boxed securely and shipped with the vehicle to which they belong.

During shipment, each vehicle shall be equipped with an impact recorder provided by the Contractor and approved by the City. The recorder shall record all handling impacts. All records shall become the property of the City and shall be appended to the Vehicle History Book.

The Contractor shall require shippers to log and record any incidents of damage or potential damage to the vehicles and vehicle components, and of interruption of shipments. The Contractor shall report such shipment incidents to the City promptly upon the Contractor's receipt of such information, describing the nature of the shipment damage, potential damage or interruption, and the actions taken and to be taken to complete the shipment and repair any damage.

The Contractor shall be responsible for safely and efficiently maintaining traffic in all areas affected by its shipment of vehicles on public roadways or by any other activities of the Contractor affecting roadway traffic, and shall comply with all requirements of any authority having jurisdiction over the roadway.

SP-19 Shipping Destination

All vehicles shall be shipped to the City OMF in Milwaukee, Wisconsin, or as otherwise directed by the City. Presently it is uncertain that railroad access to the Operations and Maintenance Facility will be available.

The Contractor shall be responsible for all Work and all related costs attendant to the placing of vehicles in a ready to run condition on the rails of the City's Streetcar System.

SP-20 Unloading

The Contractor shall provide its own ramp or other means for unloading of the vehicles onto the City's track. The Contractor shall notify the City's Project Manager of readiness for vehicle unloading at least 72 hours prior to such unloading. The Contractor shall furnish all personnel, supplies, tools, equipment, electric power, motive power, and any other requirements to perform unloading of vehicles.

The Contractor shall be responsible for delivering the vehicles directly to the rails at the City OMF. The City will furnish the Contractor motive power to tow each vehicle from the unloading location to the Contractor's vehicle work position at the Operations and Maintenance Facility. While the City shall exercise reasonable care in any such pre-delivery movements of the vehicles on its streetcar system, any such movements shall be at the Contractor's sole risk and liability.

After arrival at the City OMF, each vehicle shall be examined jointly by representatives of the City and the Contractor. The City and Contractor will issue the Joint Inspection/Receiving Report, which will describe any missing parts or visible damage noted during this examination.

Contractor shall make provisions for re-loading vehicles onto a transport vehicle for return of vehicles to the Contractor's final assembly point or other location as may be required to fix, repair, modify, retrofit, or otherwise make the vehicle compliant with the Contract requirements. Such loading/unloading and re-transportation shall be at Contractor's cost.

SP-21 Contractual Delivery and Deemed Contractual Delivery of Vehicles

- A. Contractual Delivery. Contractual Delivery of a vehicle is defined as a completely assembled vehicle on the yard track of the City OMF in Milwaukee, Wisconsin, and having successfully completed all tests and being ready-to-run for the operational testing program per Section 15 of



the Technical Specifications. The Contractor shall furnish all required documentation for the vehicle, including the Vehicle History Book per Section 18 of the Technical Specifications, at the time of Contractual Delivery.

If the above requirements are met, the City's Project Manager will acknowledge and authorize Contractual Delivery of each vehicle with a signed Certificate of Delivery.

At no time shall the City be obligated to accept delivery of vehicles if there are more than four vehicles delivered and not yet accepted.

- B. Deemed Contractual Delivery. Notwithstanding anything to the contrary herein, if the Contractor has requested a "Release of Shipment" for such vehicle from the City, the requirements for a Release for Shipment under SP-17 (Shipping Authorization) are met, and Contractor is ready to ship a vehicle to the City but the City's Release of Shipment directs the Contractor to "ship in place" and delay Delivery of such vehicle, then for all purposes herein relating to such vehicle, including in connection with any liability for delay liquidated damages that would have accrued after the date such vehicle would have been Contractually Delivered to City it shall be deemed to have achieved Contractual Delivery ("Deemed Contractual Delivery"); provided, however, that Contractor shall remain responsible for Delivery of such vehicle to the City OMF once the City advises Contractor of its readiness to accept Delivery of such vehicle.

The Parties acknowledge that if Delivery is delayed due to Contractor achieving Deemed Contractual Delivery of a vehicle for the reasons described herein, Contractor will incur additional costs for continuing to store and maintain the vehicle that are not contemplated within the Total Contract Price. As a result, the City agrees to pay Contractor for actual costs incurred by Contractor for storage and maintenance in accordance with the outline of potential costs set forth in the attached Exhibit SP-21 (the "Deemed Contractual Delivery Contingency Plan"), as applicable for each vehicle for which the Contractor achieves Deemed Contractual Delivery. The Parties agree to calculate in good faith the cost of the Deemed Contractual Delivery Contingency Plan under the circumstances, which costs shall be administered as a Change Order under Section GP-2.22 of this Agreement. The term of the Deemed Contractual Delivery Contingency Plan shall commence as of the date of Deemed Contractual Delivery and continue until such time as Contractor ships such vehicle to the City OMF. The City's payment obligation under the Contractual Delivery Contingency Plan shall terminate no more than 30 days after Contractor receives a Release for Shipment authorizing Delivery to the City OMF.

SP-22 Delivery of Spare Parts, Special Tools, Test Equipment, and Manuals

The Contractor shall notify the City's Project Manager at least 21 calendar days in advance of delivery of all Spare Parts, Special Tools and Test Equipment, and Manuals. All such materials shall be delivered to the City OMF. Shipping documents shall accompany delivery of all materials. The shipping documents shall identify all Spare Parts, Special Tools, or Test Equipment by part number, serial number, and the applicable Schedule number (from the contractual Schedule of Quantities and Prices).

The City will inspect all materials to confirm the accuracy of the shipping documents and to check for damage, etc. to the materials. The City will then issue a delivery receipt if the documentation and materials are in order, and no materials will be considered delivered or eligible for payment until delivery receipts have been issued by the City.



SP-23 Conditional Acceptance

- A. Conditional Acceptance Process upon Contractual Delivery. The City may Conditionally Accept a vehicle with a Conditional Acceptance Notice if it determines after inspection and acceptance testing that such vehicle has met the requirements for Conditional Acceptance. Conditionally Accepted vehicles shall be available to the City for revenue service until the Contractor is able to correct the items on the Open Items List for such vehicle. The General and Specific Warranty periods for such vehicle shall begin with its Conditional Acceptance, except in connection with any parts and systems which may require corrective action. Any Conditional Acceptance of a vehicle for revenue service does not relieve the Contractor of the liability to correct defects as required by this Contract.
- B. Conditional Acceptance Process upon Deemed Contractual Delivery. Notwithstanding anything else to the contrary herein, if the Contractor meets the requirements for Deemed Contractual Delivery under SP-21 for a vehicle, then the Parties agree that the following provisions shall apply even though Conditional Acceptance has not yet occurred:
1. General and Specific Warranties. Contractor shall take steps necessary to ensure that General Warranty and Specific Warranties described in SP-29 commence after Delivery for the full periods described in SP-29. Consistently with the provisions of SP-21 and Exhibit SP-21 (Deemed Contractual Delivery Contingency Plan), the City shall be responsible for Contractor's costs of extending the start of General and Specific Warranties during the term of the Deemed Contractual Delivery Contingency Plan.
 2. The City shall pay Contractor the Progress Payment for Milestone E 7.5% of the Total Base Contract Price) as if Contractor had transferred title (for each vehicle that achieves Deemed Contractual Delivery).
 3. If within one hundred eighty (180) days of achieving Deemed Contractual Delivery for all four (4) vehicles in the Base Order the City has not yet rescinded the "ship in place" directive and resumed Delivery, then the City shall pay Contractor an additional ten percent (10%) of the Total Base Contract Price. The payment shall be accounted for through a fifty percent (50%) reduction in the progress payment for Milestone F and a fifty percent (50%) reduction in the progress payment for Milestone G; provided, however, that Contractor shall remain responsible for performance of the Work, including, but not limited to, performance of the remaining acceptance testing of Deemed Contractually Delivered vehicles upon Delivery and any Open Items List generated pursuant to Conditional Acceptance of the Deemed Contractually Delivered vehicles by the City.
 4. For an additional period not to exceed one hundred eighty (180) days after the Deemed Contractual Delivery of a vehicle, Contractor agrees to negotiate in good faith with the City any additional terms and conditions necessary to perform any remaining Work, including, but not limited to, performance of the remaining acceptance testing and any adjustments that may be required to address delays during the Deemed Contractual Delivery Contingency Plan period. Contractor shall remain responsible for the ordinary costs of the Work required to complete the Project; the City agrees to negotiate in good faith any Change Orders due to the delay in Delivery and Conditional Acceptance.



SP-24 Transfer of Title and Risk of Loss

Title to a vehicle shall pass to the City when the City's Project Manager issues Certificate of Delivery for such vehicle. Risk of loss shall pass to the City when the City's Project Manager issues a Certificate of Delivery, except that the Contractor retains responsibility caused by any defects in materials or workmanship or failures to meet the terms of the Contract.

SP-25 Final Acceptance of Each Vehicle

Final Acceptance of a vehicle will occur when the City determines that all Contract requirements have been satisfactorily completed by the Contractor for that vehicle.

4.5 Testing

SP-26 Use of the City's Track for Testing

The Contractor shall conduct post-delivery tests on each vehicle on the City's streetcar system as described in Section 15 of the Technical Specifications. The City will make available to the Contractor vehicle operating personnel and access to yard and line tracks of the City's streetcar system for the Contractor's post-delivery testing, to the extent and at such times possible for non-interference with and safety of the City's streetcar system operations, as determined in the sole discretion of the City. Operation or movement of vehicles on the City's streetcar system at any location other than at the vehicle work position made available to the Contractor within the vehicle shop shall be only by the City's operating personnel. The City shall exercise reasonable care in operation of vehicles for the Contractor's post-delivery testing. The Contractor shall be liable for any damage to the vehicles, unless the damage is clearly and directly attributable to a fault of judgment of the City. Any other such pre-delivery and acceptance operations shall be at the Contractor's sole risk and liability. The Contractor shall furnish all personnel, supplies, tools, equipment and other requirements for the vehicle pre-delivery and acceptance tests, except as provided in this paragraph. The Contractor shall provide the City's Project Manager at least 24 hours of advance notice of the scheduled date and time of each vehicle test, so that the City may witness each test and provide necessary operating personnel, as may be required.

SP-27 Not Used

4.6 Warranty

SP-28 Scope of Warranty

All materials, components and parts furnished under this Contract shall be new and of high quality, and all vehicle workmanship shall be of high quality, and in conformance with the Contract.

The Contractor warrants all materials, components, parts and workmanship of each vehicle, each vehicle spare part or assembly, and all special tools and diagnostic test equipment provided under this Contract to be new, free of defects and faults in material, design and workmanship. Such warranties by the Contractor shall apply to all vehicle components, parts and workmanship, whether performed or provided by the Contractor, subcontractors, or suppliers at any tier. Such warranties shall not apply to a vehicle or vehicle components abused, neglected or not maintained and operated in material conformance with original equipment manufacturer manuals, training, normal wear-and-tear and good industry practices by the City or its other contractors, or damaged by some unusual and unforeseeable supervening cause occurring after acceptance.



The Contractor shall furnish, at its own expense, all materials, parts, labor, shipping costs and other expenses to fulfill its vehicle warranty obligations.

SP-29 Warranty Period

The warranty periods shall be as set forth below:

- A. General Warranty: Two (2) years after Conditional Acceptance of each vehicle (the “General Warranty”).
- B. Specific Warranties:
 - 1. (10) years after Conditional Acceptance of a vehicle for each vehicle shell, including under frame, side walls and cladding (including adhesive), and
 - 2. Five (5) years after Conditional Acceptance of a vehicle for roof and support brackets, truck frame, axles, and exterior painting, and open frame traction motors (if used).
 - 3. Two (2) years after installation, but not more than three (3) years after delivery, for spare parts.
 - 4. Three (3) years after delivery for special tools and test equipment.

Each of the warranties provided above in this SP-29 under the heading “Specific Warranties” shall be referred to individually as a “Specific Warranty” and together as the “Specific Warranties.”

Any warranty from a subcontractor or supplier to the Contractor exceeding the periods described herein shall be extended to the City for the same period of time as given to the Contractor.

SP-30 Repair and Replacement

For each vehicle component or workmanship failure during the applicable warranty period, the City shall determine whether to correct the failure by repair or replacement of part(s) within an assembly, or by replacement of the entire assembly, based upon minimization of time for return of the affected vehicle for operation, or consideration that the life of the assembly has or may have been adversely affected by the failure of one or more of its component parts.

The City will perform removal of failed parts or assemblies and installation of repaired or replacement parts or assemblies for accepted vehicles under warranty, unless the City and the Contractor agree to other arrangements for such Work; however, the City retains the right to have the Contractor perform any or all warranty Work. The Contractor may provide technical supervision for such removal or installation Work by the City. The Contractor shall receive such removed failed vehicle parts or assemblies at the City OMF, unless the Contractor requests shipment of such failed parts or assemblies to its facilities; in such case, the City will ship such failed parts or assemblies at the Contractor’s expense. The Contractor shall deliver to the City a replacement or repaired vehicle part or assembly for each such returned failed part or assembly within thirty (30) calendar days of the Contractor’s receipt of each failed part or assembly. In the event that a failed part or assembly is manufactured to order only and cannot be repaired or replaced within the thirty (30) day period, the Contractor and the City mutually shall consider whether the defective unit is to be repaired or replaced. The decision as to which alternative will be used shall be based on minimizing down time of the vehicle, and the Contractor shall return the repaired or replaced unit at the earliest possible date.

If the City and the Contractor arrange for the City to perform repair or replacement of failed vehicle parts or assemblies, the Contractor shall retain full responsibility for warranty of such repaired parts or assemblies.



The Contractor shall pay the City within thirty (30) calendar days of the City billing any and all amounts billed by the City at its actual labor, material and shipping costs, plus applicable overhead costs, for its removal of failed vehicle parts or assemblies and installation of replacement or repaired vehicle parts or assemblies pursuant to the warranty program.

SP-31 Failure Analysis Report

All parts or material returned to the Contractor for repair or replacement shall be accompanied by a Failure Analysis Report Form, which will be provided by the City. The Contractor shall complete this form and shall deliver to the City a full and complete report of the exact nature and probable cause of each vehicle component failure within 21 calendar days of the Contractor's receipt of such failed component.

SP-32 Fleet Defects / Systemic Failures

In the event that, during the applicable warranty period, component failures (a) with regard to components that are installed fewer than three (3) times per vehicle, such component failures arising from the same cause occur to an extent in excess of thirty percent (30%) of the same components used for the same function in the same assembly or subsystem among all vehicles furnished under this Contract; and (b) with regard to components that are installed three (3) or more times per vehicle, such component failures arising from the same cause occur to an extent in excess of fifteen percent (15%) of the same components used for the same function in the same assembly or subsystem among all vehicles furnished under this Contract, then the Contractor shall, within thirty (30) calendar days of notification of such instance, commence a modification program to repair or replace all such components, including those that have passed beyond the applicable warranty period, to correct the cause(s) of such failures. The design of the repair or replacement for the component(s) involved in each such modification program shall be developed by the Contractor to remedy the nature and probable cause of the component failures and shall be approved by the City. Repair and/or replacement of components pursuant to each modification program shall be according to the same provisions herein as if such components were failed components requiring warranty repair and/or replacement, whether or not actual failures for some or most of the involved components have occurred following notification of a requirement for a modification program.

In no case shall the correction of defects in design, material or workmanship result in an increase in maintenance requirement beyond that specified in the Contract Documents.

SP-33 Warranty on Replaced Parts

Any materials, parts or components which are used for replacement under the initial applicable warranty period shall be warranted again for either half the total original applicable warranty period of the replaced particular component, or for the remainder of the original warranty period of the replaced component, whichever is greater. The remainder of the original applicable warranty period for each such particular component shall be computed from the date of failure of such component as recorded in the City's vehicle maintenance records. In the case of components that are to be replaced pursuant to a modification program but have not yet failed, the remainder of the original applicable warranty period shall be computed from the date of the City's notification to the Contractor of a requirement for the particular modification program.

If the Contractor fails to comply with the warranty/modification provisions herein, or within the times specified for such performance, the City may have the component failures or defects corrected. The Contractor and the Contractor's surety shall be liable for all expense incurred. In case of emergency where, in the opinion of the City's Project Manager, correction of component failures or defects



pursuant to the procedures and durations specified for the warranty/modification programs may cause serious loss or damage, repairs or corrections may be made without notice to the Contractor, and the Contractor shall pay the cost of the repairs or corrections.

4.7 Project Management

SP-34 Contractor's Project Manager and Integration Engineer

During performance of the Contract, the Contractor shall assign a competent Project Manager who shall have full authority to act on behalf of the Contractor and all of the Contractor's subcontractors at all tiers in all matters within the scope of the Contract. The Project Manager shall have experience acceptable to the City. The Project Manager must be thoroughly familiar with all procedures involved in vehicle production. As part of its Offer or BAFO, if applicable, the Proposer shall submit to the City the resume of its candidates for the positions of Project Manager and Integration Engineer.

With Notice to Proceed, the candidate submitted with the Proposer's Offer or BAFO, if applicable, shall become the Contractor's Project Manager. If for any reason, and at any time, the candidate submitted by the Contractor is not acceptable to the City, or becomes unacceptable, the Contractor shall propose additional candidates. If the Contractor wishes to replace its Project Manager at any time during the performance of this Contract, it first shall submit the resume of its new candidate to the City for the City's approval and shall not make the substitution without the City's approval.

SP-35 Subcontractors and Suppliers

The Contractor shall be fully responsible and liable for the products and actions of all subcontractors and suppliers at any tier.

SP-36 City Project Manager

The City Project Manager for this Contract will be the formal contact between the City and the Contractor. The City Project Manager will be responsible for all matters relating to this Contract, on behalf of the City, except changes to the Contract involving scope, cost, or time. Such changes will be made with the approval of the Project Manager, but must be executed by the Commissioner of Public Works or authorized representative. Refer to General Provisions Section 2.22.

The Contractor shall not rely on representations or orders of any other City representative, unless so authorized in writing by the Project Manager.

The City Project Manager's primary functions will include:

- Conduct periodic meetings with the Contractor;
- Interpret the technical requirements of the Contract and reject Work of the Contractor that does not conform to the Contract;
- Review the Contractor's submittals for conformance with the Contract requirements, approve submittals that are in conformance, or take other action upon review;
- Review Contractor's invoices and approve payment or take other action upon review;
- Prepare Change Orders for the City and the Contractor's approval and execution, and evaluate the cost and benefit of any proposed changes;
- Order changes in the Work not involving adjustment of the Contract price or an extension of the Contract time. Those changes shall be consistent with the intent of the Contract;



- Conduct inspections and tests required for vehicle shipment, delivery, and acceptance;
- Authorize shipment, authorize delivery and issue delivery receipt, and grant Conditional Acceptance and acceptance of vehicles; and
- Issue Stop Work orders in accordance with Section 2.34 of the General Provisions.

SP-37 Project Meetings

The City Project Manager will schedule and preside over pre-production, periodic, and special meetings throughout the progress of the Work. Agendas for the meetings may include, but are not necessarily limited to, discussions of in-plant observations, problems, conflicts, production schedules, delivery schedules, supplier fabrication, quality standards, design review, Contract modifications, and any other topics that the City Project Manager determines to be relevant to the project. Refer to Section 18 of the Technical Specification for detailed requirements for project meetings.

SP-38 Product Options, Supplier Approval and Substitutions

For products specified by brand name or manufacturer, whether or not followed by the words “or approved equal,” the Contractor shall select any product or manufacturer named, or shall submit a request to substitute an equal product or manufacturer. The Contractor may not make a substitution without the City’s prior approval.

The City may, at its option, approve requests from the Contractor for substitution of products in place of those specified if the Contractor demonstrates satisfaction of at least one of the following criteria:

- The substitution is required for compliance with a final interpretation of code requirements or insurance regulations that was not available or reasonably known to the Contractor prior to execution of Contract;
- The substitution is due to the unavailability of the specified products, and the unavailability is not the Contractor’s fault and was unknown to the Contractor prior to execution of Contract;
- The specified product will not perform properly or fit into the designated space;
- The manufacturer or fabricator does not certify or warrant performance of the specified product as required for the intended purpose; or
- The substitution is, in the City’s judgment, in the best interest of the City

The Contractor shall submit a separate request for each substitution. Each request shall include complete data substantiating compliance of the proposed substitution with the Contract; product identification, including manufacturer’s name and address; manufacturer’s literature, including product description, performance and test data, and reference standards; samples, if appropriate; name and address of similar vehicle deliveries on which the product was used and date of installation; itemized comparison of proposed substitution with product or method specified; and data relating to changes in production schedules.

In making a request for substitution, the Contractor shall represent that:

- It has investigated the proposed product, and has determined, that it is equal or superior in all respects to that specified;
- It will provide the same or greater warranty for the substitution as for the product specified;



- It will coordinate installation of the accepted substitution into the Work, making changes as may be required for the Work to be complete in all respects; and
- It waives all claims for additional costs and changes to schedule related to the substitution that subsequently become apparent.

The City shall approve or disapprove the Contractor's requests for substitution of suppliers or products within fifteen (15) calendar days of the City's receipt of all information required by the City for such determination according to the provisions set forth in this Section. In the event of City disapproval of the Contractor's request for substitution of a supplier or product, the Contractor shall utilize the supplier or product specified in the Technical Specifications and/or in the Contractor's Best and Final Offer, or may request substitution of another supplier or product.

The City may not approve substitutions if they are indicated or implied on Shop Drawings or product data submittals without a request submitted in accordance with this Section, or if approval will result in significant non-conformance of the vehicle with the Technical Specifications, or if approval will require extensive revision of the Contract, or if approval is not in the best interest of the City.

Regardless of approval of any substitution, the Contractor shall remain obligated to conform to the Buy America requirements set forth in this Agreement.

SP-39 Post-Delivery Buy America Certification

The City is required by 49 CFR 663 to certify to the FTA that a post-delivery audit has been performed and that compliance with Buy America requirements has been verified.

Before Delivery of the last Base Order vehicle, the Contractor shall provide cost information of sufficient detail to allow an auditor to determine that federal Buy America requirements are met. The cost information shall be submitted by the Contractor and by the Contractor's sub-contractors directly to an independent auditor selected and engaged by the City. To assure confidentiality, the auditor will submit to the City only summary data, but not cost and pricing data of individual components.

SP-40 Ownership and Use of Documents

All drawings, specifications, and copies thereof furnished by the City shall remain the property of the City. They are to be used only with respect to this Contract. With the exception of one contract set for each party to the Contract, these documents are to be returned (or suitably accounted for) to the City upon request at the completion of the Work.

SP-41 Shop Drawings, Product Data and Samples

Shop drawings are drawings, diagrams, schedules, or other data prepared for the Work by the Contractor or any subcontractor of any tier, manufacturer, supplier, or distributor to illustrate or detail some portion of the Work.

Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, or other information furnished by the Contractor to illustrate materials, products, systems, or equipment for some portion of the Work.

Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work shall be judged.

Shop drawings, product data, samples, and similar submittals shall not modify any Contract requirement, except as expressly allowed by this Contract. The purpose of their submittal is to



demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the Technical Specifications expressed in this Contract.

The Contractor shall review, approve, and submit to the City's Project Manager with reasonable promptness and in a sequence that causes no delay in the Work, or in the Work of the City or any other City contractor, all shop drawings, product data, samples, or similar submittals required by this Contract, or that are necessary for its proper completion.

By approving and submitting shop drawings, product data, samples, or similar submittals, the Contractor represents that it has determined and verified all related materials, measurements, and construction criteria, and that it has checked and coordinated the information contained within its submittals with the requirements of the Work and this Contract.

The Contractor shall not be relieved of responsibility for any deviation from the requirements of this Contract by the City's approval of shop drawings, product data, samples, or similar submittals unless the Contractor has specifically informed the City at the time of submission in writing of the deviation and the City has given written approval of the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples, or similar submittals by the City's approval of the submittal. The Contractor shall not deviate from approved shop drawings, product data, samples, or similar submittals without the City's written approval.

The Contractor shall not commence any portion of the Work requiring submission of shop drawings, product data, samples, or similar submittals until the required submittal has been approved by the City.

The Contractor shall direct specific attention to revisions other than those required by the City's Project Manager on previous submittals. These revisions shall be denoted in writing or by means of annotations on resubmitted shop drawings, product data, samples, or similar submittals.

SP-42 Interpretation of Drawings and Specifications

Omissions from the Contract specifications, or the mis-description of details of Work that are manifestly necessary to carry out the intent of the Contract specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted Work or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described.

In the event of differences between small and large scale drawings, the large scale drawings shall govern. In the event of discrepancies between any drawing and a dimension written on it, the written dimension shall govern over scaled dimensions.

In the event of discrepancies between information on any drawing and the written specifications, the discrepancy shall be resolved in favor of the written specifications.

SP-43 Noise Control

The Contractor shall comply with all applicable federal, state, and local laws, ordinances and regulations regarding noise control. All equipment shall comply with the Technical Specifications and pertinent equipment noise standards of the U.S. Environmental Protection Agency.

SP-44 Permits, Fees, and Notices

Prior to commencing any Work requiring a permit or similar authorization, the Contractor shall secure and pay for all necessary licenses, fees, inspections, permits, and similar authorizations from



governmental authorities required to fulfill the Contract requirements and the Contractor's obligations. All such fees and charges shall be paid for by the Contractor.

SP-45 Taxes

Unless otherwise provided in this Contract, the Contractor shall pay all sales, use, and other similar taxes.

SP-46 Consultant Conflict of Interest

Unless specifically approved by the City, the Contractor shall not use any consultant who concurrently is employed by the City or by the City's consultants, including, but not limited to, engineers and testing laboratories.

SP-47 Progress Schedule

Within 90 days after Notice to Proceed, the Contractor shall furnish to the City for the City's approval a detailed written progress schedule in accordance with requirements of Section 18 of the Technical Specification identifying critical events of design, procurement and manufacture, and identifying delivery dates of each vehicle. During the entire term of Contract performance, the Contractor shall report to the City in writing at least monthly on the progress of performance.

If any of the Contractor's monthly reports indicates any potential delay in any of the critically dependent events identified on the schedule, the Contractor shall submit a detailed statement of action it intends to take to avoid the delay. The City will consider approving a revised schedule for completion of the critical events only if the Contractor satisfies the City that the delivery of vehicles and other Contract Work will be completed on time, or that the Contractor's failure to perform constitutes an excusable delay as defined in the General Provisions.

SP-48 Inspectors

The City may employ inspectors, who will be representatives of the City Project Manager. They shall have access to the design, fabrication, assembly, and testing of the vehicles at all times, wherever in progress at the Contractor's, Contractor's subcontractors', or the City's facilities. Inspectors are employed solely for the City's benefit, and are not intended as a source of advice for the Contractor's employees, subcontractors, or suppliers. As specified in Technical Specification Section 18, the Contractor shall provide reasonable facilities that the inspectors may require for the performance of their duties including a private office. The inspectors will observe and may inspect the Work, and will report their observations to the City Project Manager. Except as expressly authorized by the City Project Manager in writing, the inspectors will have no authority to accept, reject, or approve the Work, to stop the Work, to authorize any changes in the Work, or to direct any Extra Work.

SP-49 Work Positions and Office Space

For the Contractor's preparation and testing of vehicles for delivery and acceptance to the City, the City will make available up to one vehicle work position (i.e., one track bay) within the City OMF, with an under vehicle inspection pit and vehicle roof access. The City will make available to the Contractor, to the extent possible as determined in the sole discretion of the City, electric power, storage for vehicle components, and use of employee facilities at the Operations Facility. The Contractor shall furnish all personnel, supplies, and tools for vehicle pre-delivery Work at the City's facilities, and shall furnish all equipment and other requirements for the vehicle pre-delivery and acceptance work position not made available to the Contractor from the City.



The City will make space available on the Operations and Maintenance Facility property for the Contractor to place Contractor's trailers for Contractor's office and parts storage as needed by Contractor.

SP-50 Care of Premises

The Contractor shall maintain its premises on City property in a reasonably neat and orderly condition. Upon completion of the entire project, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus materials, and rubbish of every kind from the site of the Contractor's Work on City property.

SP-51 Cooperation

The Contractor shall cooperate with the City in scheduling and coordinating the Contractor's Work on City property with the work and operations of the City.

SP-52 Alternate Dispute Resolution Provisions

Should any dispute arise between the parties concerning this Contract that is not satisfactorily resolved through the disputes review process (see General Provisions Sections 2.23), it is agreed that the dispute will be submitted to mediate negotiation prior to any party commencing litigation. In such an event, the parties to this Contract agree to participate in good faith in an impartial and non-binding mediation process as follows:

The parties will first attempt to utilize the mediation services of a neutral mediator selected by mutual agreement of the parties.

In the absence of such mutual agreement, the parties shall petition a court of competent jurisdiction to appoint a mediator.

If such a court is unable or unwilling to appoint a mediator, then each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator.

In any event, all costs of mediation services shall be borne equally by the parties. Each party shall bear its own costs and expenses.

Once undertaken, non-binding mediation is a voluntary procedure, facilitated by an independent third party, in which a dispute resolution process is undertaken which may result in settlement or an issue or issues in mediated negotiation, but only through mutual agreement.

The mediation process shall be considered confidential and privileged (as settlement negotiation and/or offers to compromise). No information revealed therein, including statements and admissions or any written material of any nature may be utilized in any subsequent legal proceeding unless that information is obtained outside of the mediation process. Further, neither party shall call the mediator as a witness in any subsequent legal proceeding regarding the above matter, and the mediator shall not be compelled to attend any such proceeding.

The disposition of any issue or issues resolved to the mutual satisfaction of the parties in the mediation process shall be reduced to writing, and the parties shall execute a settlement agreement reflecting that resolution.

Notwithstanding the above mediation process, the parties may by mutual agreement substitute any other alternative disputes resolution process (e.g., binding arbitration) that may be appropriate in resolving a particular dispute.



EXHIBIT SP-21

Deemed Contractual Delivery Contingency Plan

The term of the Deemed Contractual Delivery Contingency Plan (referred to herein as the "Plan") and the City's payment obligation are set forth in SP-21, which provides that the City shall be responsible for Plan costs commencing on the date of Deemed Contractual Delivery, continuing until the earlier of shipment or 30 days after Contractor receives a Release for Shipment authorizing Delivery to the City OMF. Costs of the Plan and services provided therein shall be determined consistently with the principles described below.

Contractor shall provide the City with detailed estimate of pricing and scope of maintenance services for the Plan no later than twelve (12) months after NTP.

Impact to Progress Payments. Upon Deemed Contractual Delivery, Contractor shall receive progress payments according to the provisions of SP-23.B.

Additional Bonding Cost. Contractor shall maintain applicable bonding requirements. The City shall be responsible for Contractor's additional costs of bonding during the term of the Plan consistent with SP-21. The additional cost shall be accrued on a monthly basis and the charges and appropriate documentation from Contractor's bond provider shall be submitted to the City.

Storage Costs. The City shall be responsible for Contractor's costs for safe and secure storage of Deemed Contractually Delivered vehicles during the term of the Plan consistently with SP-21. Notwithstanding the City's responsibility for such costs, Contractor agrees to use best efforts provide a safe and secure storage space at its facilities and thereby minimize or eliminate the cost to the City.

Insurance Costs. Contractor shall maintain insurance coverage for vehicles during the term of the Plan. The City shall be responsible for the additional costs of insurance required to insure the vehicles for the period beginning at Deemed Contractual Delivery and ending upon shipment to the City.

Maintenance Costs. Contractor shall identify and provide those services necessary to maintain the vehicles in accordance with Contractor maintenance procedures prescribed for the vehicles during the storage of the vehicles between the time that Deemed Contract Delivery occurs and shipment of the vehicles to the City and as necessary to keep all warranties in effect. Maintenance costs shall include the labor and materials required to maintain the vehicles between Deemed Contractual Delivery and shipment. The Parties anticipate that on a monthly basis this should require no more than 8 hours per month.

Project Management Support. Contractor shall provide those management services necessary to support the maintenance of the vehicles during the term of the Plan. The Parties anticipate that this should require no more than 8 hours per month for recordkeeping purposes.

Extended Warranties. Contractor shall take necessary steps to provide that warranty periods (General and Specific Warranties) for the vehicles commence at the contractually prescribed period of time after vehicle conditional acceptance or acceptance, as provided in the project schedule and SP-29. The City shall be responsible for the reasonable costs of extending the warranties.

END OF SECTION



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SECTION 5

FORMS AND CERTIFICATES

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5. FORMS AND CERTIFICATES

5.1 (This Section Not Used)

5.2 Form A.1, Schedule of Prices

PRICE SUMMARY FORM (each line item is required to be completed)

I. BASE CONTRACT				
<u>No.</u>	<u>Qty.</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	4	Vehicles (See CP4, SP-11 for quantity adjustment options)	\$_____	\$_____
2.	1	System Support (from Schedule A)	Lump Sum	\$_____
3.	1	Sum of Spare Parts (from Schedule B), and Test Equipment and Special Tools (from Schedule C)	Lump Sum	\$_____
Total Base Contract Price				\$_____
II. OPTION FOR ADDITIONAL VEHICLES				
<u>No.</u>	<u>Qty.</u>	<u>Description of Item</u>	<u>Unit Price Before Escalation</u>	
1	1 to 5 Vehicles	Vehicles, if exercised 6 months or less after NTP	Price same as Base Contract price above	
2a.	1 to 5 Vehicles	Vehicles, if exercised more than 6 months and no more than 24 months after NTP	\$_____	
2b.	6 to 20 Vehicles	Vehicles, if exercised more than 6 months and no more than 24 months after NTP	\$_____	
3a.	1 to 5 Vehicles	Vehicles, if exercised more than 24 months and no more than 42 months after NTP	\$_____	
3b.	6 to 20 Vehicles	Vehicles, if exercised more than 24 months and no more than 42 months after NTP	\$_____	
4a.	1 to 5 Vehicles	Vehicles, if exercised more than 42 months and no more than 60 months after NTP	\$_____	
4b.	6 to 20 Vehicles	Vehicles, if exercised more than 42 months and no more than 60 months after NTP	\$_____	
5a.	1 to 5 Vehicles	Vehicles, if exercised more than 60 months and no more than 84 months after NTP	\$_____	
5b.	6 to 20 Vehicles	Vehicles, if exercised more than 60 months and no more than 84 months after NTP	\$_____	



5.3 Schedule A, System Support

No.	Description of Item	Total Price
1.	Engineering	\$
2.	Field Support	\$
3.	Warranty	\$
4.	Performance Bond or Letter of Credit	\$
5.	Insurance	\$
TOTAL, SYSTEM SUPPORT		\$
(Schedule A)		
(Note: Each line item is required to be completed)		



5.4 Schedule B, Spare Parts

Note: Each line item is required to be completed.

Item No.	Quantity	Description of Item	Unit Price	Total Price
A. VEHICLE-BODY STRUCTURE				
1.	1 each	Articulation diaphragm or bellows	\$	\$
2.	1 vehicle set	Articulation removable exterior sheathing, mounting devices and hardware	\$	\$
3.	1 vehicle set	Articulation interior shrouding over bellows	\$	\$
4.	1 each	Articulation mechanical joint assembly, complete	\$	\$
B. COUPLER				
1.	1 each	Coupler & draft gear assembly, complete	\$	\$
C. OPERATOR'S CAB				
1.	1 each	Master controller, complete	\$	\$
2.	1 each	Operator's console panel(s), complete, excluding master controller, transfer switch and reverse switch, communications control head, but including wiring harness, all audible and visual indicators, pushbuttons and miscellaneous switches	\$	\$
3.	1 vehicle sets	All cab switches (except transfer and reverser switches), pushbuttons, displays, meters, gauges, indicating lamps, LED's, lenses, and audible alarms	\$	\$
4.	1 each	Transfer switch assembly	\$	\$
5.	1 each	Reverser switch assembly	\$	\$
6.	2 each	Wiper motor	\$	\$
7.	10 each	Wiper motor arm	\$	\$
8.	5 vehicle sets	Wiper blades	\$	\$
9.	1 each	Horn assembly	\$	\$
10.	1 each	Bell assembly	\$	\$



Item No.	Quantity	Description of Item	Unit Price	Total Price
11.	1 each	Windshield washer pump	\$	\$
12.	10 each	Windshield washer spray nozzle	\$	\$
13.	1 each	Speedometer	\$	\$
D. PASSENGER DOORS				
1.	1 each size	Door panel (RH) , complete including window, seats, sensitive edges, and push button switches	\$	\$
2.	1 each size	Door panel (LH) , complete, including window, seats, sensitive edges, and push button switches	\$	\$
3.	1 vehicle set	Door operator linkages and mechanism, complete	\$	\$
4.	1 vehicle set	Door controller assemblies or modules	\$	\$
5.	1 vehicle set	Door panel weather seals, except sensitive edges	\$	\$
6.	2 each	Crew switch	\$	\$
7.	2 each	Internal door manual release mechanism	\$	\$
8.	1 each	External door manual release mechanism	\$	\$
9.	1 vehicle set	Pushbutton switches (interior and exterior)	\$	\$
10.	1 each	Audible door closing warning indicator	\$	\$
11.	1 each	Door-out-of-service indicator	\$	\$
12.	1 each	Visual door closing warning indicator	\$	\$
13.	1 each	Transom door open indicator light	\$	\$
E. HEATING, VENTILATING, AND AIR CONDITIONING				
1.	1 vehicle set	All heating elements (overhead and floor)	\$	\$
2.	1 vehicle set	Air flow switches (all)	\$	\$
3.	1 vehicle set	Thermostats and temperature sensors (all)	\$	\$
4.	1 vehicle set	Temperature control relays (all)	\$	\$



Item No.	Quantity	Description of Item	Unit Price	Total Price
5.	1 vehicle set	Heating/ventilation contactors, all	\$	\$
6.	2 each	Air conditioning unit, complete	\$	\$
7.	1 vehicle set	Fusible links and plugs (all)	\$	\$
8.	5 each	Crankcase heaters	\$	\$
9.	10 each	Service valve caps	\$	\$
10.	1 vehicle set	Resilient vibration isolation mounts (all)	\$	\$
11.	10 vehicle sets	Fresh air and return air filters	\$	\$
12.	1 vehicle set	Operator's heater and window defroster systems, including controls, excluding cab windshield	\$	\$
F. LIGHTING				
1.	1 vehicle set	Fixtures for all interior and exterior lights and indicators (except cab console mounted items and door indicators)	\$	\$
2.	2 vehicle sets	All lamps excluding head lamps	\$	\$
3.	10 each	Head lamp (exclusive of fixture)	\$	\$
G. ELECTRICAL EQUIPMENT				
1.	1 each	Pantograph assembly, complete	\$	\$
2.	1 each	Pantograph head, complete, with suspension devices	\$	\$
3.	10 vehicle sets	Pantograph shoe carbon insert set	\$	\$
4.	1 vehicle set	Pantograph mounting insulators	\$	\$
5.	1 vehicle set	Pantograph raise/lower actuator assembly, complete, including limit switches	\$	\$
6.	1 each	Lightning arrester	\$	\$
7.	1 vehicle set	High speed circuit breaker (s), complete	\$	\$
8.	1 vehicle set	Ground fault detectors, all types	\$	\$
9.	1 vehicle set	High-voltage fuses	\$	\$
10.	1 vehicle set	Battery box assembly including sliding tray, if applicable	\$	\$



Item No.	Quantity	Description of Item	Unit Price	Total Price
11.	1 vehicle set	Standby Battery, set complete	\$	\$
12.	1 each	Emergency battery cut-out switch	\$	\$
13.	1 each	Auxiliary inverters, complete	\$	\$
14.	1 each	LVPS, complete (if separate)	\$	\$
15.	1 each	Knife switch assembly, complete	\$	\$
16.	1 vehicle set	Line filters with charging apparatus, all types	\$	\$
17.	1 vehicle set	Ground brush assembly, complete	\$	\$
18.	10 each set	Ground brushes, set per assembly	\$	\$
19.	10 each set	Ground brush springs, set per assembly	\$	\$
20.	1 each	Vehicle mounted shop power plug assembly, complete	\$	\$

H. PROPULSION SYSTEM AND CONTROL

1.	2 each	Traction motor, complete with couplings	\$	\$
2.	2 each	Propulsion/dynamic brake resistors assembly, complete	\$	\$
3.	2 each	Propulsion AC inverter, complete, in enclosures	\$	\$
4.	1 vehicle set	Control relays and sensors, all (including speed sensors)	\$	\$
5.	2 each	Electronic control each, complete (1 each, if included in item 4)	\$	\$
6.	1 vehicle set	Printed circuit cards, all	\$	\$
7.	1 vehicle set	Inverter ventilation motors (if applicable)	\$	\$
8.	2 each	Propulsion gearbox with axle coupling, complete	\$	\$
9.	1 vehicle set	Power semiconductor assemblies	\$	\$
10.	10 vehicle sets	Ventilation replaceable air filters (if applicable)	\$	\$

I. TRUCK ASSEMBLIES

1.	2 each	End truck, complete (ready to install under vehicle)	\$	\$
----	--------	--	----	----



Item No.	Quantity	Description of Item	Unit Price	Total Price
2.	1 each	Center truck, complete (ready to install under vehicle), if applicable	\$	\$
3.	1 vehicle set	Primary springs	\$	\$
4.	1 vehicle set	Secondary suspension, complete	\$	\$
5.	2 each	Motor truck wheel and axle set with gear box, brake disc, motor couplings, and journal bearings	\$	\$
6.	2 each	Motor truck axle (machined)	\$	\$
7.	2 each	Center truck axle stub axle and wheel assembly, if applicable	\$	\$
8.	8 each	Wheel tire, each type	\$	\$
9.	2 vehicle sets	Rubber wheel blocks or rings, each type	\$	\$
10.	1 vehicle set	Track brake supports	\$	\$
11.	5 sets	Height adjustment shims, if applicable	\$	\$
12.	2 vehicle sets	Grounding cable	\$	\$
J. FRICTION BRAKE SYSTEM				
1.	1 vehicle set	All friction brake equipment (except connecting hoses, fittings, inter-unit wiring, electronic control unit, and hydraulic pressure control unit)	\$	\$
2.	5 vehicle sets	Brake pads with backing plates (in addition to Item 1)	\$	\$
3.	1 each	Hydraulic pump, complete	\$	\$
4.	1 each	Hydraulic pressure control unit (HPCU), complete	\$	\$
5.	1 each	Hydraulic accumulator	\$	\$
6.	1 each	Sanding assembly, complete (with dedicated air compressor if applicable)	\$	\$
7.	1 each	Friction brake, electronic control logic, complete	\$	\$
8.	1 vehicle set	Printed circuit cards	\$	\$
9.	1 vehicle set	All control relays and contactors for brake equipment	\$	\$



Item No.	Quantity	Description of Item	Unit Price	Total Price
10.	1 vehicle set	All manually controlled valves and cocks for brake equipment	\$	\$
11.	1 vehicle set	Brake system magnet valves and pressure switches, all (in addition to Item 1)	\$	\$
12.	2 each	Track brake assembly, complete (including cables)	\$	\$
13.	1 vehicle set	Track brake suspension springs , elastomeric elements, and hardware, complete	\$	\$
14.	1 vehicle set	Sand box heater	\$	\$
15.	1 each	Air compressor assembly, complete with all hardware and controls, if applicable	\$	\$
16.	1 vehicle set	Air dryer units with controls, if applicable	\$	\$
17.	1 vehicle set	Air reservoirs, if applicable	\$	\$
18.	1 vehicle set	Miscellaneous air valves, if applicable	\$	\$

K. VEHICLE COMMUNICATION SYSTEMS

1.	1 vehicle set	Communications pre-amplifiers, mixer amplifiers, and power amplifiers	\$	\$
2.	2 each	Audio system control head complete	\$	\$
3.	2 each	Handset (in addition to Item 2)	\$	\$
4.	2 each	Gooseneck microphone	\$	\$
5.	1 vehicle set	Interior and exterior P.A. speakers, complete with transformers	\$	\$
6.	1 vehicle set	Passenger intercom stations	\$	\$
7.	1 vehicle set	Speaker grilles	\$	\$
8.	2 each	Passenger information system control panel, if applicable	\$	\$
9.	1 vehicle set	Passenger information system interior and exterior signs	\$	\$
10.	1 vehicle set	Passenger information system controllers	\$	\$



Item No.	Quantity	Description of Item	Unit Price	Total Price
11.	1 vehicle set	CCTV cameras/monitors	\$	\$
12.	1 vehicle set	CCTV recorder	\$	\$
13.	1 each	Event recorder assembly, complete	\$	\$
14.	3 each	Event recorder data cartridge	\$	\$
15.	5 each	Event recorder data cartridge key	\$	\$
L. INTERIOR AND EXTERIOR APPOINTMENTS				
1.	2 each	Windshield	\$	\$
2.	2 each	Cab side window, LH and RH	\$	\$
3.	1 vehicle set	Side windows	\$	\$
4.	1 vehicle set	Door windows	\$	\$
5.	2 each	Glazing strip, windshield	\$	\$
6.	4 each	Glazing strip, cab window	\$	\$
7.	1 vehicle set	Glazing strip, side windows, if applicable	\$	\$
8.	1 vehicle set	Glazing strip, door windows	\$	\$
9.	1 vehicle set	Windscreens	\$	\$
10.	1 vehicle sets	Covers for exterior and interior equipment enclosures (all)	\$	\$
11.	1 vehicle sets	Seat bottom insert	\$	\$
12.	1 vehicle sets	Seat back insert	\$	\$
13.	1 each	Single seat, complete, if applicable	\$	\$
14.	2 each	Double seat, complete, if applicable	\$	\$
15.	1 each	Flip-up seat, complete, if applicable	\$	\$
16.	1 each	Multiple seat, complete, if applicable	\$	\$
17.	1 vehicle set	Interior ceiling panels	\$	\$
18.	1 vehicle set	Interior liners	\$	\$
19.	1 vehicle set	Interior molding	\$	\$
20.	1 vehicle set	Exterior and interior graphics, all	\$	\$
21.	1 vehicle set	Interior air intake and exhaust grills	\$	\$



Item No.	Quantity	Description of Item	Unit Price	Total Price
22.	1 vehicle set	Exterior air intake and exhaust grilles	\$	\$
23.	1 vehicle set	Floor covering (equivalent amount in rolls)	\$	\$
24.	1 vehicle set	Skirts	\$	\$
25.	1 vehicle set	Stanchions and rails (all horizontal and vertical sections, plus all fittings)	\$	\$
26.	4 each	Exterior camera housing	\$	\$
27.	1 vehicle set	Cab partition and linings, complete	\$	\$
28.	1 each	Cab door, complete	\$	\$
29.	10 each	Cab visor	\$	\$
30.	2 each	Cab coat hook	\$	\$
31.	1 each	Cab waste receptacle	\$	\$
32.	1 each	Cab seat, complete	\$	\$
33.	50 each	Master controller key	\$	\$
34.	50 each	Crew key	\$	\$
35.	50 each	Maintenance key	\$	\$
36.	1 vehicle set	Interior and exterior locks assemblies not part of other spare parts	\$	\$
37.	1 vehicle set	Flooring cove molding, if applicable	\$	\$
M. MISCELLANEOUS				
1.	1 vehicle set	All seals and gaskets not included in specific subsystems spares	\$	\$
2.	1 vehicle set	All air, hydraulic, and pneumatic filters not included within specific subsystem spares	\$	\$
3.	1 vehicle set	All fuses not included in specific subsystems spars	\$	\$
4.	1 vehicle set	All fuse holders not included in specific subsystems spares	\$	\$
5.	1 vehicle set	All pneumatic and refrigerant hoses and lines (including fittings) not included within specific subsystem spares	\$	\$
6.	1 vehicle set	Wire and cable of all types used on the vehicle, in lengths equal to total	\$	\$



Item No.	Quantity	Description of Item	Unit Price	Total Price
		amount on vehicle		
7.	1 vehicle set	All vehicle control high voltage contactors, control modules, and low voltage relays not included in specific subsystems spares	\$	\$
8.	4 vehicle sets	All special fasteners not commercially available	\$	\$
9.	1 vehicle set	All special and commercially available terminals and connectors for wire and cable	\$	\$
10.	1 unit	All lubricants (oil and greases) necessary to maintain the vehicles per the O&M Manual (1 year supply)	\$	\$
11.	2 vehicle sets	Monitoring and diagnostics logic units and assemblies	\$	\$
12.	1 unit	Spare parts necessary to maintain all diagnostic test equipment for a period of 2 years	\$	\$
TOTAL, SPARE PARTS (Schedule B)				\$

The City of Milwaukee reserves the right to make minor adjustments to the quantities of individual spare parts provided that the Total Price is not changed. Any such adjustments will be mutually agreed with the Contractor.



5.5 Schedule C, Equipment and Special Tools

(each line item is required to be completed)

Item No.	Quantity	Description of Item	Unit Price	Total Price
1.	3 each	Portable Test Units (Hardened laptops with all diagnostic software installed)	\$	\$
2.	2 sets	All gauges, test equipment, and special tools other than Portable Test Units in line 1 above	\$	\$
3.	2 sets	Cable connector tools	\$	\$
4.	1 set	Rerailing equipment	\$	\$
5.	2 sets	Jack Socket Adapters	\$	\$
TOTAL, SPECIAL TOOLS (Schedule C)				\$



5.6 Form A.2, Proposal Security Form

This Proposal is accompanied by a Proposal Security in the form of Proposal Bond, or Certified Check/Cashier's Check/Treasurer's Check in the amount of 5% of the Base Price that computes to _____ Dollars (\$_____). This security is made payable to the City of Milwaukee, drawn on an United States Bank whose total capital funds are greater than \$10,000,000. If the Offer or BAFO, if applicable, as submitted is accepted and the undersigned shall fail to execute and deliver the Contract to the City of Milwaukee, it is hereby agreed that the amount of the Proposal Security shall be forfeited by the undersigned to the City of Milwaukee; otherwise said Proposal Security shall be returned to the undersigned specified in the Contract Documents.



5.7 Form A.3, Pre-Award Audit Form for Contractors

The Proposer hereby agrees to make available in its office at all reasonable times, or to provide, all records and documents pertaining to this Solicitation, in sufficient detail to permit the City of Milwaukee's Inspectors or independent contractor to perform pre-award audits to establish compliance with City of Milwaukee's specifications.

Signature: _____

Typed Name: _____

Title: _____

Company: _____

Date: _____



5.8 Form A.4 Pre-Award Audit Form for Sub-Contractors

The Proposer hereby agrees to make available in its office at all reasonable times, or to provide, all records and documents pertaining to this Solicitation, in sufficient detail to permit the City of Milwaukee's Inspectors or independent contractor to perform pre-award audits to establish compliance with City of Milwaukee's specifications.

Signature: _____

Typed Name: _____

Title: _____

Company: _____

Date: _____



5.9 Form A.5, Sample Performance Surety Form

Form DPW-127A (p. 1)

DPW-127A
(2/2014))

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership, or Individual)

and _____
(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called Owner, in the penal sum of _____

_____ Dollars, \$ (_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall completely, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise effect its obligation on this bond, and it does hereby waive



Form DPW-127A (p. 2)

notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20 _____.

Principal (SEAL)

Witnesses

By _____

Title

Address

Surety Witnesses

Surety

Surety - Contract MAILING Address

By _____
Attorney-in-Fact or Agent

(SEAL OF SURETY)

Name of Surety Contact Person _____ and Phone Number _____
(Please Print)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must be authorized to transact business in the State where the project is located.



Form DPW-127B (p. 1)

DPW-127B
(2/2014)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____ (Name of Contractor)

_____ (Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership, or Individual)

and _____ (Name of Surety)

_____ (Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____ (Name of Owner)

_____ (Address of Owner)

hereinafter called Owner, in the penal sum of _____

_____ Dollars, \$ (_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____ 20____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline,, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.



Form DPW-127B (p. 2)

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise effect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20_____.

Principal (SEAL)

Witnesses

By _____

Title

Address

Surety

Surety Witnesses

Surety - Contract MAILING Address

By _____

Attorney-in-Fact or Agent

(SEAL OF SURETY)

Name of Surety Contact Person _____ and Phone Number _____
(Please Print)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute bond.

IMPORTANT: Surety companies executing bonds must be authorized to transact business in the State where the project is located.



5.10 Form B.1, Proposal Forms

Proposal for the Streetcars in accordance with the Contract Documents.

Proposal No.: _____

Name of Proposer: _____

Name of Representative at

Pre-proposal meeting: _____

Address: _____

Telephone No.: _____

Facsimile No.: _____

E-mail: _____

The Proposer offers to furnish equipment, materials, and services in accordance with the Request for Proposals pursuant to the terms and conditions of the Contract Documents.

The Proposer declares that it has carefully examined the Contract Documents, including the General Provisions/Special Provisions, Technical Specifications and Drawings, and that it has familiarized itself with all of the conditions affecting the Contract, and understands that in making this offer it waives all right to plead any misunderstanding regarding the same.



PROPOSAL FORM – CONTINUED

This Proposal is made this _____ day of _____, 2____, and executed by the undersigned:

(IF AN INDIVIDUAL)

Signature of Offeror: _____

Business Address: _____

Federal Identification/Social Security No.: _____

(IF A CO-PARTNERSHIP)

Firm Name: _____

By*: _____

Business Address: _____

Federal Identification/Social Security No.: _____

Name(s) and Address(es) of all Partners of the Firm: _____

(IF A CORPORATION)

Corporation Name: _____

By*: _____

Title: _____

Business Address: _____

Federal Identification/Social Security No.: _____

Name(s) and Address(es) of all Partners of the Firm: _____

Attest: _____

Secretary _____

***IMPORTANT:** Attach proof of authority of Officer of Agent to sign Proposal.



5.11 Form B.2, Acknowledgment of Addenda

Acknowledgment of Addenda is hereby established below:

Addenda No.	Dated	Received
--------------------	--------------	-----------------

Failure to acknowledge receipt of all Addenda may cause the Proposal to be considered non-responsive to the solicitation.

Acknowledgment of receipt of each Addenda must be duly established and included with this Proposal (see the above table).



5.12 Form B.3 Technical Summary Form

Section 2: Design and Performance Criteria		
No.	Parameter	Value
1	Length over anticlimbers, in inches	
2	Truck center spacing, in inches	
3	Body width at side sills, maximum, in inches	
4	Width over door thresholds, maximum, inches	
5	Body width, maximum, in inches	
6	Height top of rail to top of finished floor, high floor, new wheels, in inches	
7	Height, top of rail to top of finished floor, low floor, new wheels, in inches	
8	Height, top of rail to centerline of coupler, new wheels, in inches	
9	Height, top of rail to bottom of underfloor equipment, AW3, in inches	
10	Height, top of rail to bottom of truck equipment, AW3, in inches	
11	Side door clear opening minimum height, in inches	
12	Side door clear opening minimum width, in inches	
13	End door clear opening minimum height, in inches	
14	Clear opening minimum width for cab doors, in inches	
15	Interior height, floor to high ceiling, minimum, in inches	
16	Interior height, floor to low ceiling (if used), minimum, in inches	
17	Vehicle body wall thickness, maximum in inches	
18	Truck axle spacing, in inches	
19	Wheel diameter, new, in inches	
20	Wheel diameter, fully worn, in inches	
21	Mounted wheel-set back-to-back distance, in inches	
22	AW0 weight, in pounds	
23	Amount of seated passengers	
24	Floor area for standees, square meters	
25	Side-to-side unbalance at AW0, in pounds	
26	End-to-end truck pivot weight difference at AW0, in pounds	



Form B.3 (continued)		[Note: Location refers the place of production assembly.]			
No.	Item	Requirement	Choice 1	Choice 2	Choice 3
Section 3: Vehicle-Body Structure					
1	Underframe	Supplier			
		Location			
2	Front End	Supplier			
		Location			
3	Side Walls	Supplier			
		Location			
4	Roof	Supplier			
		Location			
5	Vehicle Shell Assembly	Supplier			
		Location			
		Location (2 nd)			
Section 4: Coupler					
1	Coupler Assembly	Supplier			
Section 5: Operator's Cab					
1	Cab Assembly	Supplier			
		Installation			
2	Operator's Seat	Supplier			
		Location			
Section 6: Passenger Doors					
1	Door Operators	Supplier			
		Type			
		Installation			
2	Door Panels	Supplier			
		Installation			
Section 7: Heating, Ventilating, and Air Conditioning					
1	HVAC	Supplier			
2	HVAC Compressor	Supplier			
		Type			
3	HVAC Floor Heaters	Supplier			
Section 8: Lighting					
1	Lighting	Supplier			



Form B.3 (continued) [Note: Location refers the place of production assembly.]					
Section 9: Electrical Equipment					
No.	Item	Requirement	Choice 1	Choice 2	Choice 3
1	Pantograph	Supplier			
2	Auxiliary Power Supply	Supplier			
3	Low Voltage Power Supply	Supplier			
4	Battery	Supplier			
5	Energy Storage Devices	Supplier			
6	Energy Storage Management Controller	Supplier			
Section 10: Propulsion System and Control					
1	Inverters and control electronics	Supplier			
		Location			
2	Traction Motors	Supplier			
		Type			
		Location			
3	Braking Resistors	Supplier			
4	Gear Box	Supplier			
5	Coupling	Supplier			
Section 11: Truck Assemblies					
1	Truck frame	Supplier			
		Location			
		Material			
2	Primary Suspension	Supplier			
		Type			
3	Secondary Suspension	Supplier			
		Type			
4	Journal Bearing	Supplier			
5	Axle	Supplier			
6	Wheels	Supplier			
		Type			
7	Truck Assembly	Supplier			
		Location			



Form B.3 (continued) [Note: Location refers the place of production assembly.]					
Section 12: Friction Brake System					
No.	Item	Requirement	Choice 1	Choice 2	Choice 3
1	Friction Brake Equipment	Supplier			
		Type			
		Location			
Section 13: Vehicle Communication Systems					
1	Communications	Supplier			
2	Information Signs	Supplier			
3	Video Monitoring	Supplier			
4	GPS/Vehicle Location	Supplier			
5	Train-to-Wayside	Supplier			
4	Event Recorder	Supplier			
5	Automatic Passenger Counting	Supplier			
Section 14: Interior and Exterior Appointments					
1	Windows	Supplier			
		Location			
		Material			
2	Passenger Seats	Supplier			
		Location			
		Material			
3	Interior Linings	Supplier			
		Location			
		Material			
Systems Engineering and Final Assembly					
1	Systems Engineering	Firm			
2	Vehicle Final Assembly	Supplier			
		Location			



5.13 Form B.4, City of Milwaukee Certification of Restrictions on Lobbying

I, _____, hereby certify on behalf of
(Printed name and title of authorized official)

, that:

(Bidder Name)

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federally-funded contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally-funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify, and disclose accordingly.

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

Executed this _____ day of _____, 20 _____

By: _____

(Signature of Authorized Official)

Attest: _____

(Title of Authorized Official)



5.14 Form B.5 Federal Lobbying Disclosure Form

Lobbying Disclosure Form – Standard Form LLL

APPENDIX B TO 49 CFR PART 20 -DISCLOSURE FORM TO REPORT LOBBYING

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 USC 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
11. Information requested through this form is authorized by title 31 USC section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 USC 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	



INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 USC Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subawardee recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503



5.15 Form B.6, Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion to be Submitted by Proposer

1. By signing and submitting this bid, the prospective Proposer is providing the signed certification set out below.
2. The certification referred to in this paragraph is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective Proposer knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City may pursue available remedies, including suspension and/or debarment.
3. The prospective Proposer shall provide immediate written notice to the City if at any time the prospective Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this paragraph, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 49 CFR Part 29. You may contact the City for assistance in obtaining a copy of those regulations.
5. The Proposer agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the City.
6. The prospective Proposer further agrees by submitting this bid that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this paragraph. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under subparagraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the City may pursue available remedies, including suspension and/or debarment.



CERTIFICATION

- 1) The prospective Proposer certifies, by submission of this Proposal, that neither it nor its “principals” [as defined at 49 CFR section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- 2) When the prospective Proposer is unable to certify to the statements in this certification, such prospective Proposer shall attach an explanation to this certification.

Signature of Authorized Official

Title of Authorized Official

Date Signed: _____



5.16 Form B.7, Buy America Rule Certification

Buy America Provision

This certification requirement for procurement of buses, other rolling stock and associated equipment is subject to the Federal Transit Administration "Buy America Rule" provisions and requirements.

This "Buy America Rule" Certificate must be completed and submitted to the City.

A waiver from the "Buy America Rule" provision may be sought if grounds for the waiver exist. General waivers are listed at 49 CFR Section 661.7.

Certificate of Compliance with 49 USC section 5323(j)(2)(C) and 49 CFR part 661

The Bidder hereby certifies that it will comply with the requirements of 49 USC Section 5323(j)(2)(C) and the regulations in 49 CFR part 661.

Date: _____

Signature: _____

Company Name: _____

Title : _____

Certificate of Non-Compliance with 49 USC Section 5323(j)(2)(C) and, 49 CFR Part 661

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. Section 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR section 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____



5.17 Form B.8, Non-Collusion Affidavit

STATE OF _____)

) ss.

COUNTY OF _____)

The undersigned being duly sworn, deposes and says that he/she is the _____

(insert "sole owner", "a partner", "president" or other proper title)

of _____

(Firm/Joint Venture Name)

the Proposer submitting this proposal; that such Proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such Proposal is genuine and not collusive or a sham; the Proposer has not been a party to any agreement to propose a fixed amount or to refrain from proposing and has not, directly or indirectly, by agreement, communication or conference with anyone, attempted to induce action prejudicial to the interest of the City of Milwaukee, or of any Proposer or anyone else interested in the proposed Contract.

Signed: _____

Subscribed and sworn to before me this _____ day of __, 20__.

Place Seal Here:

NOTARY PUBLIC in and for the State of

Print Name: _____

My commission expires: _____



5.18 Form B.9, Cargo Preference Certification: Use of United States-Flag Vessels 46

U.S.C. Section 1241 46 CFR part 381

The undersigned Bidder 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 contract 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 in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a lower tier participating subcontractor's bill-of-lading) and
- c) to include these requirements in all lower tier participating subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Signature: _____

Typed Name: _____

Title: _____

Company: _____

Date: _____



5.19 Form B.10 Certification of Disadvantaged Business Enterprises (DBE) Compliance

The Contractor, a Transit Vehicle Manufacturer, hereby certifies that it has complied with the requirements of 49 CFR Part 26.49 by submitting an annual DBE goal to the Federal Transit Administration (FTA). The goal has either been approved or not disapproved by the FTA.

Signature: _____

Typed Name: _____

Title: _____

Company: _____

Date: _____



5.20 Form B.11 Non-Discrimination Certification Form

Non-Discrimination Certification

Contract Title: 03-CD-017 Proposal for Streetcars

Proposer: _____

The undersigned PROPOSER hereby certifies and agrees that the following information is correct:

In preparing its proposal, the PROPOSER has considered all proposals submitted from qualified, potential subcontractors and suppliers and has not engaged in or condoned prohibited discrimination.

For purposes of this certification, prohibited discrimination means discrimination in the solicitation, selection, and/or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability or other unlawful form of discrimination. Without limiting the foregoing, prohibited discrimination also includes retaliating against any person, business or other entity for reporting any incident of prohibited discrimination.

Without limiting any other provision of the solicitation for proposals on this Project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the proposal by the PROPOSER on this Project and terminate any contract awarded based on such proposal.

As a condition of contracting with the City, the PROPOSER (and, if awarded the contract, the CONTRACTOR) agrees to promptly provide the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the PROPOSAL submitted by the PROPOSER and terminate any contract awarded on such PROPOSAL.

Name of Agency

BY: _____

(Seal) Signature of Authorized Official

Title

Date: _____

ATTEST / WITNESS:

(AFFIX CORPORATE SEAL) Secretary / Name of Witness



5.21 Form B.12, Questions for Technical Proposals

Section 2: Design and Performance Criteria

1. What techniques / formulae / data have Proposer used to determine that a minimum service life of 30 years for the Streetcar is achievable if the annual average operating distance per vehicle is 50,000 miles? (Technical Specification, Section 2).
2. What are the concerns with adhesion limits on grades for the proposed vehicle? Include the required coefficients of friction for starting the vehicle and maintaining braking rates on an 8.25% grade as seen on Vine St. in the Uptown segment.
3. Do the specified EMC and EMI requirements create any concern for achievability?
4. What were the best interior and wayside noise values that Proposer measured on other projects? Provide values and conditions during the measurements.
5. What technical issues, if any, are unclear to Proposer? Provide answers per TS Section.
6. Does Proposer have a database to monitor the vehicle reliability as outlined in TS, Section 2.10? If YES, provide example, if NO, provide explanation on how Proposer will create a database.
7. Does Proposer have a sample from other projects of a reliability summary report for all specified systems that demonstrates that the specified MDBTD requirements were achieved? Provide sample from one project in the United States.
8. Does Proposer have a department dedicated to safety? Provide a description of the department and its proposed role in this Project.
9. How did the Proposer perform systems integration on its most recent LRV project?

Section 3: Vehicle-Body Structure

1. What computer program and version will be used for the Finite Element Analysis? List experience using such software. How did the results of actual testing agree with the stress analysis results? Provide examples.
2. What are the methods for carrying cabling, ducting, and piping through the articulation? Are cable and pipe connectors used on one or both sides of the articulation?
3. What dimensioning technique will Proposer use to control tolerances?
4. Is the proposed carbody designed to accommodate cantilevered seats?

Section 4: Coupler

1. Provide a drawing and description of operation for the coupler mechanical head.
2. What is the coupler gathering range?
3. Describe the proposed end skirt material and arrangement and describe the procedure for removal of end skirts for deployment of the coupler.

Section 5: Operator's Cab

1. What is the Operator's forward visibility in the proposed cab design?
2. What windshield sun screening methods are proposed?



Section 6: Passenger Doors

1. What is the basic door configuration and method of operation? Include sketches showing the movement of the door leaves through the opening and closing cycles, with swept panel areas, and the arrangement provided to clear the wayside platform.
2. Of what materials will the door panels be made?
3. How do the door controls communicate with each other within the vehicle?
4. How will door control and software achieve system safety requirements?
5. How will the door panels be locked closed and sensed as locked?
6. How will the mechanical door release mechanisms work?
7. Does the door equipment specified in this Section pose any unique challenges?

Section 7: Heating, Ventilating and Air Conditioning

1. How is the HVAC unit mounted on the vehicle? What type of electric connections will be used?
2. What are the power requirements of the unit? How does the Proposer intend to assure proper start-up of the units without overloading the power supply?
3. What is the proposed cooling and heating capacity of the HVAC unit?
4. What is the proposed floor heat capacity?
5. In how many stages are the heating and cooling systems arranged?
6. What is carbody heat transmission for the proposed vehicle?
7. Do the HVAC requirements pose any unique challenges?

Section 8: Lighting

1. Does the requirement for LED lighting on the vehicle interior pose any unique challenges for the Proposer?
2. Will relamping of exterior lights be from the exterior or the interior? (Answer per light.)
3. How will Proposer achieve specification-required light distribution within a vehicle in emergency conditions?
4. What is reliability of the LED lighting in low temperatures? What is the recommended low temperature for reliable operation?
5. Does any light have a dropping resistor?

Section 9: Electrical Equipment

1. What are the battery charging features of the Low-Voltage Power Supply, if supplied as an integrated unit?
2. Describe "limp home" capabilities with failed ac inverter(s).
3. What are the equipment ventilation requirements and arrangement of ventilation equipment for the vehicle?
4. Does the monitoring and diagnostic system specified in this Section pose any unique challenges?



5. Describe the Proposer's experience in working with the data bus concept and its application on the rail transit vehicles.
6. Describe the proposed vehicle and train data network architecture and hardware, if proposed.
7. Will the data system perform any safety functions? If YES, list them and describe how system safety requirements will be met.
8. Does the auxiliary electrical equipment specified in this Section pose any unique challenges?
9. Describe the proposed vehicle safety grounding and power return grounding arrangements.

Section 10: Propulsion System and Control

1. What is the one-hour rating of the proposed traction motors? Is this rating exceeded during in the simulations of normal service on the alignment? What is the duration of the overload, if any?
2. Where will the electronic control equipment be located in the vehicle? And why?
3. Describe the proposed wheel spin/slide control system and its interface to the friction brake system.
4. How will the propulsion system self-protect against overloads and transients?
5. What issues does the Proposer envision in integrating propulsion and energy storage control systems, if proposed?
6. How will propulsion system control meet safety requirements?
7. How will No-Motion be implemented and how will it meet system safety requirements?
8. Does the propulsion equipment specified in this Section pose any unique challenges?

Section 11: Truck Assemblies

1. What type of secondary suspension will be used? How will the door threshold height be regulated and what is the tolerance of the leveling system as the passenger load varies from AW0 to AW3? Has the Proposer previously supplied a load leveling system on a vehicle? If yes, describe its performance.
2. How will the trucks be attached to the carbody? Will the trucks rotate under the carbody or will they be fixed?
3. What type journal bearings will be used?
4. What stress analysis program and version will be used? Provide examples of their use on previous truck designs. What type of elements were used? How many elements were in the model? Provide examples of how the test results agreed with the stress analysis values.
5. What is the estimated weight of a motor truck and a trailer truck?
6. How will wheel wear adjustment be provided?
7. Will removal of the trucks from the vehicle require a pit for undercar access or can the trucks be removed on a flat track in the Maintenance Facility? What is the amount of hours and persons needed for detrucking?
8. What are the maximum loads that the proposed truck can withstand? What are the maximum loads permitted for the axle? What are the maximum loads permitted for the wheel?
9. How will Proposer minimize the carbody roll? What is maximum carbody roll?



10. Provide a description of the vehicle leveling procedure.

Section 12: Friction Brake System

1. What disc temperature will be reached under the worst-case condition on the Milwaukee route profile under normal operation and with dynamic brakes failed? What other nearby equipment is heated by the disc under these conditions? To what temperature?
2. What is the anticipated disc brake pad life for the end trucks and center trucks?
3. What is the procedure for manually releasing the spring-applied parking brake in the event of a failure?
4. How are the proposed friction brake, dynamic brake, and fault checking arrangement integrated?
5. What are the interface signals between the disc brake system and the propulsion system?
6. Where will the HPCU be located and why?
7. What type of hydraulic fluid is being proposed?
8. Does the brake equipment specified in this Section pose any unique challenges?

Section 13: Vehicle Communications and Passenger Information System

1. What supplier will be responsible for the integration of the communication system components?
2. Describe the Proposer's experience in working with video monitoring equipment and its application on the rail transit vehicles. What is the anticipated coverage area of each camera with the system proposed? How many front-facing cameras will be supplied to provide the required coverage?
3. Describe the Proposer's experience in working with automatic passenger counting systems on the rail transit vehicles. Provide examples of how the data is organized in the system's report on boarding's.
4. Does the system specified in this Section pose any unique challenges?
5. Provide sample output data from the proposed event recorder and a history of its use in rail transit applications.

Section 14: Interior and Exterior Appointments

1. Will the interior cornice areas be used as equipment lockers? What access panels are proposed?
2. What is the proposed interior lining and window mask material and configuration?
3. Describe the passenger seat construction and the flip-up seat mechanism. Are cantilevered seats proposed?
4. What equipment will be mounted under seats?
5. Describe the transition from the low floor to the high floor sections, including the number of steps/risers. What will be the tread width and rise of the stairs? How wide is the stairway? Where will grab rails be provided? Will the floor be sloped in any locations?
6. Describe the proposed side skirt and roof shroud material and arrangement and describe the procedure for removal of side skirts and roof shrouds.
7. Describe proposed acoustical and thermal insulation systems.



8. What paint system will be used on the vehicle exterior? Has the Proposer used more than two colors on the exterior sides and ends of a vehicle?
9. Does the Proposer have experience applying decals to the exterior of a rail transit vehicle? Does the Proposer have any limits on the number or size of decals for the vehicle included in this Proposal?

Section 15: Testing

1. Provide a sample Master Tag Program from one project completed in the United States.
2. What testing does the Proposer seek to satisfy Contract requirements by submitting previously performed test results?

Section 16: Materials and Workmanship

1. Is there any prohibited or questionable material proposed to be used on the vehicle?
2. Does Proposer know of places in the vehicle where dissimilar metals come into contact with each other? Provide a list.
3. List the locations and applications on the proposed vehicle where critical fasteners are used.
4. Does Proposer have a sample of smoke and flammability matrix from other projects? What concerns with smoke and flammability in regards to the energy storage system does the Proposer have? Provide a sample smoke and flammability matrix from one project.
5. How many different types of air filters will vehicle have? Provide list.

Section 17: System Support

1. Will Proposer's staff provide training?
2. Does Proposer have list(s) of spare parts, gauges and special tools and test and inspection equipment for similar vehicles delivered to other projects? Proposer shall not submit the list(s), but the list(s) should be available during meeting with finalists. (A list from one project in the United States will be required at that meeting.)

Section 18: Program Control and Quality Assurance

1. Does Proposer plan to utilize a document control system? Please describe system and reports it can generate.

END OF SECTION



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SECTION 6

CITY OF MILWAUKEE GENERAL TERMS AND CONDITIONS

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6. CITY OF MILWAUKEE TERMS AND CONDITIONS

The Proposer's response to this Request for Proposals (RFP) will be made a part of the Contract with the City. These Conditions, substantially in the form contained herein, shall be included in the resulting contract documents between the City and the successful Proposer (such documents, collectively, the "Agreement").

Unless otherwise stated by the Proposer in the response to this RFP, the Proposer agrees to the following terms and conditions, which will become part of the Agreement.

6.1 Prompt Pay

It is the City's policy to pay all invoices within 30 days. If the City does not make payment within 45 days after receipt of a properly completed and undisputed invoice, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month, (unless the amount due is subject to a good-faith dispute and, before the 45th calendar day of receipt, notice of the dispute is sent to the Contractor in accordance with the notice provisions in the Contract). If there are subcontractors, consistent with Wis. Stat. s. 66.0135(3), the Contractor must pay the subcontractors for satisfactory work within seven days of the Contractor's receipt of payment from the City, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the Contractor fails to make timely payment to a subcontractor, the Contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day.

6.2 Proprietary Materials

The City acknowledges that in the course of performing services, the Proposer may use products, materials, or propriety methodologies. The City agrees that it shall have or obtain no rights in such propriety products, materials, and methodologies except pursuant to a separate written agreement executed by the parties.

The Proposer acknowledges that in the course of performing services for the City, the materials and information produced for the City are the exclusive properties of the City and may not be disseminated in any manner without prior written approval of the City.

6.3 Warranty

The Proposer warrants that the services to be provided by it hereunder will be performed in a good, timely, and professional manner by qualified staff and in accordance with generally accepted practices.

6.4 Ownership of Property

The Proposer agrees that at the expiration or in the event of any termination of the Contract that any memoranda, maps, drawings, working papers, reports, records, files either electronic or paper and other similar items produced in connection with the Contract shall become the property of the City and the Proposer shall promptly deliver such items to the City.

6.5 Independent Contractor

The Proposer shall perform all Work and services described in the Contracts as an independent contractor and not as an officer, agent, servant or employee of the City. Proposer shall have exclusive control of and the exclusive right to control the details of the services and Work performed under the Contract and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating



a partnership or joint venture between the City and Proposer. No person performing any of the Work or services described hereunder shall be considered an officer, agent, servant or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

6.6 Waiver

The Contract shall be construed in a manner that a waiver of any breach of any provision of the Contract shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

6.7 Amendment

This Contract may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

6.8 Entirety

This Contract and the Exhibits attached hereto contain the entire agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Contract shall be of no force and effect.

6.9 Severability

This Contract shall be severable. If any part or parts of this Contract shall for any reason be held or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

6.10 Public Records

Both parties understand that the City is bound by the Wisconsin Public Records Law, as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. s. 19.21 *et seq.* Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the City harmless from liability under that law due to its fault. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of the final payment under this Contract.

END OF SECTION