CITY AND COUNTY OF SAN FRANCISCO
San Francisco Municipal Transportation Agency

Agreement

Procurement of 40-Ft and 60-Ft Low Floor Diesel Hybrid Coaches

Contract No. CPT 713

CCO NO. 14-1287

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Exhibits

Exhibit 1 Schedule of Prices
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Exhibit 3 FTA Requirements

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

Agreement between the City and County of San Francisco and

New Flyer of America Inc.

This Agreement is made this 30th day of DECEMBER, 2014, in the City and County of San Francisco, State of California, by and between: New Flyer of America Inc., 711 Kernaghan Avenue, Winnipeg, MB R2C 3T4, Canada ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

A. SFMTA wishes to obtain the services of a qualified firm to procure 61 60-ft low floor, diesel hybrid coaches with options of up to 163 60-ft. low floor, diesel hybrid coaches and up to 200 40-ft. low floor diesel hybrid coaches and associated spare parts, training, manuals, and special tools.

B. A Request for Proposals ("RFP") was issued on January 31, 2014 to the qualified proposers, and City selected Contractor as the highest-qualified scorer pursuant to the RFP.

Now, THEREFORE, the parties agree as follows:

Definitions

Acceptance: The formal written acceptance by the City that all Work, or a specific portion thereof, under the contract has been satisfactorily completed.

Award: Notification from the City to Contractor of acceptance of Contractor's proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

Certification: Certification by the Controller that funds necessary to make payments as required under the Contract are available in accordance with the City's Charter.

City: The City and County of San Francisco.

Conditional Acceptance: The circumstance in which a Vehicle has been delivered to SFMTA and placed in revenue service despite not having met all requirements for Acceptance.

Conformed Contract Documents: The Contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

Contract, Agreement: The written contract executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include

the Technical Specifications, all Conformed Contract Documents, the Contract bonds or other security, and all supplemental agreements.

Contract Modification: A written amendment to the Contract, agreed to by the City and Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Contractor: The proposer to whom the Award is made.

Controller: Controller of the City.

Correction: The elimination of a defect.

Days: Unless otherwise designated, "Days" as used in the Contract shall mean calendar days.

Defect: Any patent or latent malfunctions or failure in manufacture or design of any component or subsystem.

Diesel Hybrid Buses: The vehicles procured under this Contract, also referred to as "Vehicles" or "Coaches."

Director: The Director of Transportation of the SFMTA or his or her designee.

Engineer: The SFMTA Engineer assigned to the Contract or designated agent.

Final Acceptance: The formal written acceptance by the Director of Transportation or his or her designee that all contract deliverables for the Contract have been satisfactorily completed and accepted. This will authorize the Project Manager to release the final payment, including all retention, to the Contractor

Material and/or Equipment: The Diesel Hybrid Buses (including all parts and equipment installed in them) and other deliverables furnished by the Contractor under the provisions of the Contract.

Notice To Proceed (NTP): A written notice to the Contractor of the date on which it shall begin prosecution of the work to be done under the contract.

Project Manager: The Project Manager assigned to the Contract for the SFMTA, or his or her designated agent.

Proposal: The technical and management information and prices submitted by Contractor in response to the RFP.

Related Defect(s): The damages inflicted on any component or subsystem as a direct result of a Defect.

Resident Inspector: Any inspector or inspectors who may be assigned by the SFMTA Project Manager / Representative for the inspection of work to be done under this contract.

Request for Proposals; RFP: The Request for Proposals issued by the SFMTA on (Date), to procure up to 454 Diesel Hybrid Buses.

SFMTA: The San Francisco Municipal Transportation Agency, an agency of the City with responsibility for the Municipal Railway and the Division of Sustainable Streets (Parking and Traffic).

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

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

Work: The furnishing of all design, engineering, manufacturing, labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion and warranty of the Diesel Hybrid Buses.

Working Days: Those calendar days during which regular business is conducted excluding Saturdays, Sundays, and all Federal, State, and municipal holidays that are observed by the SFMTA during the duration of the Contract.

Acronyms

FDR	Final Design Review
FTA	Federal Transit Administration
PDR	Preliminary Design Review
RFP	Request for Proposals

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.

1.1. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

1.2. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

1.3. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall not exceed 6 years from the Effective Date.

3. Effective Date of Agreement.

This Agreement shall become effective on the date the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Work Contractor Agrees to Perform.

This Agreement is for the procurement of 61 60-ft, low floor, diesel hybrid coaches with options of up to 163 additional 60-ft, low floor diesel hybrid coaches and 200 40-ft. low floor diesel hybrid coaches as provided for in the Technical Specifications, and in the Contractor's Proposal (as incorporated into the Conformed Contract Documents), according to the Project Delivery Schedule set forth in Exhibit 2.1.

5. Compensation.

5.1. In no event shall the amount of this Agreement exceed Sixty Eight Million, Two Hundred Fifty Seven Thousand, Five Hundred Thirty Six Dollars ($68,257,536). This amount does not include California sales taxes, which shall be paid directly by the SFMTA. The breakdown of costs associated with this Agreement appears in Exhibit 1, Schedule 3.1, incorporated by reference as though fully set forth herein.

5.2. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until equipment, reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

5.3. In no event shall City be liable for interest or late charges for any late payments. City will not make price adjustments to this Contract to protect Contractor from economic inflation.

6. Guaranteed Maximum Costs.

6.1. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

6.2. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

6.3. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

6.4. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Contractor shall be subject to audit by City. Progress payments shall be made by the City to Contractor at the address specified below:

7.1. Amount. Subject to any subsequent deductions for Liquidated Damages for late delivery of Contract deliverables as specified in Section 19 of this Agreement,

the City agrees to pay an amount not to exceed the compensation amount stated in Section 5 of this Agreement and in accordance with the terms and conditions of this Agreement.

7.2. Invoices. Contractor's invoices shall be submitted to the following address:

San Francisco Municipal Transportation Agency
Fleet Engineering Section
Attn: Elson Hao
700 Pennsylvania Avenue, Bldg. B, Rm. 209
San Francisco, CA 94107

Each invoice shall include:

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

7.3. Progress Payments. SFMTA shall make payments as the work proceeds in accordance with the progress payment provisions specified below. Progress payments shall be conditioned on either (1) transfer of title, free of encumbrances, to the City for the portion of the components, equipment or material paid for by the progress payment, plus a certificate of insurance required by Section 15.1 of this Agreement; or (2) issuance of a letter of credit in conformance with the provision of Section 15.2.3 in the amount of the progress payment. Progress payments for which a letter of credit shall be required are as follows: Milestones set forth in Items 1(a) and 1(b) below. Letter(s) of credit for such progress payments will be released upon Acceptance or Conditional Acceptance of 80 percent of the total Vehicles.

In lieu of a letter of credit to secure progress payments, Contractor may elect to increase its performance bond required under Section 15 of this Agreement by the cumulative amount of progress payments for each of the above Milestones and any other items for which Contractor elects to submit security instead of transferring title. Such increase in the amount of the performance bond shall be included in the amount of the performance bond submitted at the time of Contract Award. This increase in the amount of the performance bond shall constitute security for all progress payments for which the bond is issued should Contractor default with respect to any provision of this Agreement. In lieu of an increase in the Performance Bond, an Advance Payment Bond, in a form acceptable to the City's Risk Manager, or other security acceptable to the City's Risk Manager, will also be accepted.

All Work covered and paid for during the construction of the Diesel Hybrid Buses shall become the sole property of SFMTA. This provision shall not be construed as relieving the Contractor from the sole responsibility for all Work upon which payments have been made or for the restoration of all damaged Work or as waiving the right of SFMTA to require the fulfillment of all of the terms of the Contract specifications. The Contractor shall remain liable for insuring and delivering the material in the final form as specified in the Contract, and shall replace material at no cost to SFMTA in the event it is not delivered and accepted by SFMTA.

Contractor shall prepare invoices supported by evidence satisfactory to SFMTA that the Work invoiced has been accomplished and that the materials, listed, if any, are stored and ready for use.

Each item listed below is from the Schedule of Prices set forth in Exhibit 1.

Item 1 – Diesel Hybrid Buses

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

Milestone	Maximum Percent of Bid Item 1 as applicable
(a) Authorization by SFMTA to ship each vehicle and authorization by Contractor to release each vehicle as described in Sections 12.2.3 of the Technical Specifications	50% of Unit Price
(b) Conditional acceptance of each vehicle by SFMTA	30% of Unit Price
(c) Full acceptance of each vehicle by SFMTA	10% of Unit Price
(d) All contract deliverables with the exception of training have been received and accepted as satisfactory	10%

Item 2 - Spare Parts

The City shall make payments for spare parts by Lot (see Spare Parts Delivery Procedure, Section 67.3 of this Agreement). Payment shall be made after the particular Lot (Lot 1 or Lot 2) has been delivered and accepted.

Item 3 – Training

City shall pay for training when all training sessions have been satisfactorily completed and accepted by SFMTA.

Item 4 - Interactive Multimedia Training

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

Milestone	Percentage of Bid Item 4
(a) SFMTA Approval of Design Detail Documentation	10%
(b) Delivery and Approval of one Prototype Module	20%
(c) Delivery and Approval of all Pre-production Modules	30%
(d) Delivery and Approval of all Production Modules	40%

Item 5 - Operating, Maintenance, and Parts Manuals

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

Item 6 – Special Tools Separate from Coach

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

7.4. Exchange Rate Risk. The City will not make price adjustments on this Contract to protect the Contractor from fluctuations in the value of the applicable foreign currency in relation to the United States dollar.

7.5. Inflation Risk. City will not make price adjustments to this Contract to protect Contractor from economic inflation except as otherwise provided in this Agreement.

7.6. Release. The Contractor shall, if required by the City, execute and deliver at the time of final payment and as a condition precedent to final payment, a release in form satisfactory to the City, discharging the City, its officers, agents and employees of and from liabilities, obligations, and claims arising under this contract.

8. Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

10. Taxes

10.1. Payment of Taxes. The City will reimburse the Contractor for any levied sales tax on articles purchased by the City under this Agreement. However, if the Contractor cannot be authorized to collect and pay the sales taxes to the State of California, then the City will pay the sales tax directly to the State. Contractor shall be solely responsible for any penalties, interest or fees assessed as a result of late or erroneous payment of such taxes. The City warrants that it is a public entity exempt from certain federal excise taxes and in connection therewith that it has obtained a federal excise tax exemption certificate. Contractor will pay all other taxes, including possessory interest taxes, licenses, imposts, duties, and all other governmental charges of any type whatsoever levied upon or as a result of this Agreement or Work performed pursuant hereto.

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

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

10.2.2. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

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

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

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the

requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

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

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

14.2. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services or Work performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other

purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance; Bonds

15.1. Insurance

15.1.1. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of his Agreement, Contractor shall maintain in force at its own expense, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, including Employers' Liability coverage, with limits not less than $1,000,000 each accident, or as required by law in the jurisdiction in which the work is performed.

(b) Comprehensive or Commercial General Liability Insurance with limits not less than $5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Independent Contractor, Broad-form Property Damage, Products and Completed Operations.

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

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

(e) During the course of this Agreement, as title to components or coaches is transferred to City (refer to Section 7.3), Contractor shall provide property insurance on such components against all risks of loss or damage for 100% of their replacement value, including City as a named insured and loss payee, as its interests may appear, and any deductible not to exceed $25,000 each loss.

15.1.2. Comprehensive or Commercial General Liability and Comprehensive or, Business Automobile Liability policies must provide the following:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, Employees and Members of Commissions;

(b) That such policies are primary insurance to any other insurance available to the Additional Insured's, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

15.1.3. Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

15.1.4. All policies shall provide 30 Days' advance written notice to City of cancellation or reduction in coverage for any reason, mailed to the following address:

San Francisco Municipal Transportation Agency
Elson Hao
Contract No. 713
Fleet Procurement Engineering Section
700 Pennsylvania Ave, Bldg. B, Rm 209
San Francisco, CA 94107

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

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

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

15.1.8. Before commencement of the term of this Contract, certificates of insurance, and copies of additional insurance endorsements, in form and with insurers acceptable to City, evidencing all required insurance, shall be furnished with complete copies of policies to City promptly upon request. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

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

15.1.10. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

15.2. Performance and Payment Security. The following provisions set forth financial guarantees that must be met by Contractor. Contractor may choose to meet the requirements of this Section 15.2 by obtaining either the required bonds or an irrevocable letter of credit ("Letter of Credit") in an equivalent amount.

15.2.1. Bonds

(a) Within 20 days following the receipt of a notice of tentative award of contract, and until completion of all Contract obligations and acceptance by City of the final vehicle, the Contractor shall furnish to City a

performance and a labor and materials bond each in an amount not less than 20 percent of the total Contract amount to guarantee Contractor's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last Vehicle is accepted, and to guarantee Contractor 's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection (c) below.

(b) Upon delivery and acceptance by the City of 50 percent of the original contracted number of vehicles, the amount of performance bond may be reduced to 65 percent of the original bond amount. Upon delivery and acceptance by the City of 75 percent of the original contracted number of vehicles, the amount of performance bond and labor and materials bond may be reduced to 30 percent of the original bond amount. If the Contractor requests any further reduction in the amount of the performance bond, the request shall be subject to approval by SFMTA and the City's Risk Manager. One year after the City fully accepts the last bus, the City will release the obligations of the surety under the performance and labor and materials bonds, provided that all contract deliverables have been performed and accepted and a warranty bond or letter of credit meeting the requirements of Subsection 15.2.1(c) is in place. The original bond document(s) shall be retained by the City.

(c) Contractor shall provide a two-year warranty or guaranty bond in the amount of 10 percent of the Contract price covering all of Contractor's warranty obligations under the Contract, which bond shall become effective upon release of the Performance Bond required under Subsection 15.2.1(a) and (b) above. At the end of the first year of warranty coverage, the Contractor may request a reduction of coverage, which may be approved at the discretion of SFMTA and the City's Risk Manager. Additionally, at City's election, and subject to approval of the surety issuing the bond, Contractor shall provide for up to two one-year extensions or renewals of the warranty or guaranty bond at an amount approved by SFMTA and the City's Risk Manager. If the original surety declines to extend or renew the initial bond, Contractor shall in good faith try to obtain the required additional coverage from another surety and shall document to the City its efforts in this regard.

(d) Within 20 days of receipt of a notice from SFMTA of intention to exercise the option to purchase more Coaches, the Contractor shall furnish to City a separate performance bond and a labor and materials bond in the amount of 20 percent of the cost of the additional coaches to be purchased, to guarantee performance of all contract obligations with respect to such optional vehicles. Provisions for reducing the amount of and release of such bond shall apply in the same manner as described above. Said bond shall also be retained by the City.

15.2.2. Requirements for Bonds.

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

(b) During the period covered by the Agreement, if any of the sureties upon the bond shall have an AM Best rating that falls below A-, VIII, or become insolvent and unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 days after notice given by SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30-day period to substitute another and sufficient surety, Contractor, if SFMTA so

elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond

15.2.3. Requirements for Letter of Credit.

(a) General Requirements. Any Letter of Credit submitted as required security under this Agreement shall be a confirmed, clean, irrevocable Letter of Credit in favor of the City and County of San Francisco, a municipal corporation. It must have an original term of one year, with automatic renewals of the full amount (subject to modification as otherwise provided in this Section 15.2 to reflect the adjustments set forth above in Section 15.2.1) throughout the term of the Agreement and throughout the performance of Contractor's obligations under the Agreement. If Contractor fails to deliver the Letter of Credit as required, City will be entitled to cancel this Agreement. The Letter of Credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation on behalf of the City.

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

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

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

(e) Return of Letter of Credit. The Letter of Credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 30, City will return or release the Letter of Credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent Letter of Credit, as determined by City.

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

16. Indemnification

16.1. General.. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or

agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

16.3. Intellectual Property. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or Work to be supplied in the performance of this Agreement.

16.4. Limitation of Liability. Except as provided herein, Contractor's aggregate liability to the City under this Agreement shall be limited to the Contract amount stated in Section 5.1, as that amount may be modified by a properly approved and executed Contract Modification. Said limitation on liability shall not apply to:

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

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

16.4.3. damages and other liability arising under claims by third parties, including indemnity or contribution for claims brought by a third party (see Paragraph 16.1);

16.4.4. damages and other liability for infringement of any intellectual property right as provided in Section 16.3.

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

17. Incidental and Consequential Damages.

Except with respect to liquidated damages, Contractor shall not be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS

AGREEMENT OR THE SERVICES OR WORK PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages

By entering into this Agreement, the Contractor agrees that in the event deliveries are not completed within the number of days indicated in Exhibit 2.1 and Technical Specifications, Vol. 2, Sections 13 or 10.2.2.2, or if Contractor fails to correct fleet defects in accordance with Technical Specifications, Vol. 2, Section 10.1.6.1, as may be revised by Contract Modifications, City will suffer damages that will be impracticable or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but are a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Except where the delay is the result of an Unavoidable Delay, City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by SFMTA.

Item No.	Milestone	Amount Per Day
1.	Submittal of Management Work Plan	$100.00
2.	Delivery of Lead Coach	$400.00
3.	Submittal of Training Lesson Plans	$200.00
4.	Submittal of Draft Operation, Maintenance, and Parts Manual	$200.00
5.	Delivery of 1st Production Coach	$400.00
6.	Delivery of last Production Coach	$400.00
7.	Spare Parts Delivery (Lot 1)	$400.00
8.	Spare Parts Delivery (Lot 2)	$400.00
9.	Completion of Training Program (including Multimedia)	$400.00
10.	Delivery of Special Tools	$300.00
11.	Submittal of Final Operation, Maintenance, and Parts Manuals	$400.00
12.	Warranty Fleet Defect Correction (see Technical Specifications, Section 10.1.6.1)	$250.00 per coach
13.	Contractor-Supplied Parts	2%*

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

Liquidated Damages imposed under this Agreement shall be in addition to any other damages which are recoverable by the City specified elsewhere in the Contract

documents. The total amount of liquidated damages shall not exceed 10 percent of the contract value.

20. Default; Remedies

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

20.1.1 Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 36, 52, 54 or 56.

20.1.2 Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of 15 Days after written notice thereof from City to Contractor.

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

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

20.2. Remedies. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

21.2. Contractor Actions. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

Not placing any further orders or subcontracts for materials, services, equipment or other items.

Terminating all existing orders and subcontracts.

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

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

Completing performance of any services or Work that City designates to be completed prior to the date of termination specified by City.

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

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

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

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

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

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

21.4. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection 21.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 21.3.

21.5. Deductions. In arriving at the amount due to Contractor under this Section, City may deduct: (a) all payments previously made by City for Work or services covered by Contractor's final invoice; (b) any claim which City may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (21.4); and (d) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or Work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or Work in compliance with the requirements of this Agreement.

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

22. Rights and Duties Upon Termination or Expiration

22.1. Survival of Sections. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 20, 24, 26 through 28, 49 through 52, 55, 56, 61, 62 and 67.

22.2. Contractor Duties. Subject to the immediately preceding subsection 22.1, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify the City.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the Work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information, which may be owned or controlled by City, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to

protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

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

To City: San Francisco Municipal Transportation Agency
Transit Division Fleet Engineering
700 Pennsylvania Avenue, San Francisco, CA 94107
Attention: Elson Hao, Project Manager
elson.hao@sfmta.com

To Contractor: New Flyer of America Inc.
711 Kernaghan Avenue
Winnipeg, MB R2C 3T4, Canada
Attention: Paula Lemay, Project Manager
paula_lemay@newflyer.com

Any notice of default must be sent by registered mail.

26. Intellectual Property

26.1. Works for Hire; Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services or Work to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities. If, in connection with services or Work performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. These shall include, but not be limited to, the data that comprises the destination sign system, as specified in Section 3.10.8 of the Technical Specifications-Volume 2; the data that comprises the voice annunciation system, as specified in Section 3.11.5 of the Technical Specifications; the source code for the SFMTA-specific portion of the multiplex electrical system controller, as described in Section 7.9 of the Technical Specifications; the vehicle record book, as provided in Section 9.2.7 of the Technical Specifications; and the computer database record, as provided in Section 9.1.8.1 of the Technical Specifications. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26.2. Licenses Granted

26.2.1. Computerized Software and Systems. To the extent that software, firmware, systems designs, computerized manuals, training modules, or other such deliverables are not designed specifically for City's purposes in connection with the Agreement, Contractor grants City a perpetual, exclusive, non-transferable, license at all locations owned or controlled by City to use all such deliverables, or portions

thereof. City shall also be authorized to modify or prepare derivative works of the deliverables and make copies of such deliverables for internal use only. Any such modifications shall become the property of the City unless such modifications are not used exclusively for internal purposes. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the deliverable(s) or any related materials or documentation. Contractor hereby warrants that it has title to and/or the authority to grant a license of such deliverables to the City. Upon request, Contractor shall provide to City a copy of the source code, which corresponds to the most current version of the deliverable, as well as any and all applicable proprietary materials that are otherwise not furnished under this Agreement, but may become necessary for the long-term maintenance and operation of the Vehicles. Alternatively, prior to Notice to Proceed, City and Contractor shall negotiate and enter into an escrow agreement whereby the applicable source codes for software that is proprietary to Contractor or its suppliers or subcontractors, including periodic updates of said source codes, and other proprietary materials, are placed in escrow. The source codes placed in escrow shall be on magnetic media and shall be accompanied by detailed software documentation, including a list of applicable software development tools. The Director of Transportation shall execute said escrow agreement on behalf of City.

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

26.2.3. Proprietary Materials. To the extent that the Contractor considers any document or deliverable to be a trade secret or otherwise proprietary, Contractor shall so mark them. SFMTA shall require individuals using such proprietary documents to maintain the confidentiality of the documents, and if necessary, sign a confidentiality agreement regarding use of highly sensitive documents. Alternatively, at SFMTA's request, documents shall be placed in escrow, along with source codes, as described in subsection 26.2.1 above. Contractor shall hold the City harmless from and defend the City against all claims, suits or other proceedings instituted against the City for copyright infringement, misuse or misappropriation of a trade secret, or for access to the documents or deliverables under the City's Sunshine Ordinance or the California Public Records Act. Contractor will pay the costs and damages awarded in any such action or proceeding, or the cost of settling such action or proceeding, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the buses, spare parts, documents or deliverables constitutes infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

27. Reserved

28. Audits and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this

Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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

29. Subcontracting

Contractor may subcontract portions of the Work only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the performance of the Work. City's execution of this Agreement constitutes its approval of the major subcontractors/suppliers listed in its proposal, dated July 23, 2014, and submitted on July 25, 2014. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement made in violation of this provision shall be null and void.

30. Assignment

The Work to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

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

32. Consideration of Criminal History in Hiring and Employment Decisions.

32.1. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this

Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

32.2. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

32.3. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

32.4. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

32.5. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

32.6. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

32.7. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

32.8. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

33. Reserved

34. Nondiscrimination; Penalties

34.1. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

34.2. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from SFMTA) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

34.3. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.. As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

34.4. Incorporation of Administrative Code Provisions by Reference, The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. Tropical Hardwoods and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

36. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

37. Resource Conservation.

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

38. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the Work specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services or Work, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

39. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

40. Public Access to Meetings and Records.

If the Contractor receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

41. Notification of Limitations on Contributions.

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further

acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

42. Requiring Minimum Compensation for Covered Employees

Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco's Minimum Compensation Ordinance (MCO), and shall otherwise comply with the MCO as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P). The provisions of Chapter 12P , including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

43. Health Benefits for Covered Employees

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

44. First Source Hiring Program

Contractor shall comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, including but not limited to the remedies for noncompliance provided therein. The provisions of Chapter 83 are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

45. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years.

46. Preservative-Treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromate copper arsenate preservative, ammonia cal copper zinc arsenate preservative, or ammonia cal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

47. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law.

47.1. City-Ordered Changes

The City may order changes in the Work and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall respond within 30 days to such orders, except that:

If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost or the time required to execute the change in scope of Work, the City shall make a reasonable and proper adjustment in the Contract price, delivery schedule, or both, as agreed upon by the Contractor and the Agency as the reasonable and proper allowance for the increase or decrease required.

No order for any alteration, modification, or extra that will increase or decrease the cost of the Work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the City in the manner required under City law. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract, which include the requirements of the Technical Specifications.

47.2. Regulatory Changes

If a price adjustment is necessary to incorporate changes mandated by legislation or regulations that become effective after the Effective Date of the Contract and before manufacture of the Vehicles, the Agency and the Contractor shall negotiate the price adjustment. Such price adjustments may be audited, where required. The parties acknowledges that CARB 2015 compliance is included in the base order of 61 buses. However a price adjustment for CARB 2015 compliance may be necessary for the parallel hybrid system for the option buses.

47.3. Schedule Changes

If City-ordered changes have potential impact on the delivery schedule, the Contractor shall submit a schedule change request for City approval.

48. Authority of Project Manager; Claims; Disputes.

48.1. Authority of Project Manager . The Project Manager shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Project Manager shall at all times act fairly and reasonably. Any appeal of the Project Manager's decisions shall be in accordance with the provisions of Section 48.4 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 5 of this Contract when the dispute is finally resolved.

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

48.2. Claims for Additional Compensation.

48.2.1. Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA, including failure or refusal

to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Project Manager due written notice of potential claim.

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

48.2.3. It is the intention of this Section 48.2 that differences between the Parties arising under and by virtue of the Contract be brought to the attention of the SFMTA at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

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

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

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

48.6. Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

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

49. Agreement Made in California; Venue

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

50. Construction

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

51. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 47.

52. Compliance with Laws

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

53. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as Subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

54. Reserved

55. Severability

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

56. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor

57. Time of Essence

Time is of the essence in this Agreement.

58. Technical Specifications

58.1. Fabrication. The Vehicles shall be designed, fabricated, and tested in accordance with Volume 2, entitled "Technical Specifications for the Procurement of 40-ft and 60-ft Low Floor, Diesel Hybrid Coaches."

58.2. Omission. Notwithstanding the Technical Specifications or other data provided by the Project Manager, the Contractor shall have the responsibility of supplying all parts and details required to make these Vehicles complete and ready for service even though such details may not be specifically mentioned in the Specifications. Items that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this Contract or should have been installed by the Contractor.

58.3. Design Review. . Prior to start of coach construction, the Contractor and the SFMTA Project Manager / Representative shall agree to the specific details of coach construction. These details shall include, but not be limited to, items such as: engineering and design details, test plans and procedures, training and manuals, sub-suppliers equipment, colors, wording, and placement of numbers and signs. Each decision not covered in these Specifications, whether affecting cost or not, shall be documented in a master resolution list.

Periodically, this document shall be incorporated into the Contract by modification. In cases where consensus cannot be reached, the opinion of the SFMTA Project Manager / Representative as to design details shall be administratively final unless clearly arbitrary or capricious. Disputes regarding cost and other matters shall be subject to the provisions of Section 48 of this Agreement,

When plans, drawings, requests for information, procedures or other contract deliverables are submitted to SFMTA for approval and/or comments, the Contractor shall delineate any deviations from the Contract specifications in such deliverables. SFMTA shall approve, disapprove and/or comment on such deliverables within 30 days after receipt. However, no extension of time will be allowed for review of submittals that have been disapproved. Such disapproved submittals shall be resubmitted and will be reviewed and returned within 30 days after subsequent receipt. Neither review nor approval of any plans, drawings, procedures, other contract deliverables or the materials supplied under this contract shall in any way relieve the Contractor of its obligations to perform work under the provision of this Contract.

58.4. Preliminary Drawings. Preliminary drawings shall provide enough detail to conduct preliminary engineering evaluations of structural, electrical, mechanical, and other subsystems. Drawings shall show the general arrangement of equipment layout and subsystems and such detail as is necessary to give a comprehensive idea of the product contemplated.

58.5. Interchangeability All units and components procured under this Contract, whether provided by subcontractors or manufactured by the Contractor, shall be sufficiently similar in design, manufacture, and installation to assure interchangeability among coaches in this procurement. This interchangeability shall extend to the individual components as well as to their locations in the coaches.

58.6. Materials/Accessories Responsibility. The Contractor shall be responsible for all materials and workmanship in the construction of the coach and all accessories used, whether the same are manufactured by the Contractor or purchased from a subcontractor. This provision excludes equipment leased or supplied by SFMTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the coaches.

59. Project Planning, Scheduling and Control

59.1. Introduction. This Section specifies the requirements for project planning, scheduling and progress reporting to be performed by the Contractor in conjunction with the Contract Work. Contractor shall employ Critical Path Method scheduling (CPM) for planning, scheduling and reporting all work required by the Contract Documents.

59.2. Descriptions of Submittals. Submittals will be provided in accordance with Technical Specifications Section 12.2.3.

60. Reserved

61. FTA Requirements

The provisions contained in "FTA Requirements for Procurement Contracts," attached as Exhibit 3, are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

62. Cooperative Drafting

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

63. Warranty

Contractor shall provide warranties of Vehicles, training, parts and special tools as described in Technical Specifications Section 10 (Warranty).

64. Title

Adequate documents for securing the title of the Vehicle shall be provided to the Project Manager at the time the Vehicle is delivered. Upon Acceptance or ,in the case of a Vehicle being Conditionally Accepted, upon Conditional Acceptance of each Vehicle, the Contractor warrants that the title shall pass to the SFMTA free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims and demands of any character. Title to the spare parts to be delivered under this Contract shall vest in the SFMTA immediately upon Acceptance by the SFMTA.

65. Option Vehicles

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

65.1. Options for Additional Coaches. At the option of the City, the Contractor shall provide between 1 and 200 standard (40-ft) low floor diesel hybrid buses and between 1 and 163 low floor articulated diesel hybrid buses, in addition to the initial purchase(s). These options may be exercised at any time up to and including six years from the Effective Date, as defined in Section 3. The maximum quantities of buses that will be purchase for the subsequent years will be a shown in the Exhibit 1 (Schedule of Prices). City, at its exclusive option, may assign all or a portion of this option to another transit agency. Such assignment shall be effectuated by an assignment agreement between the City and the transit agency, with notice to Contractor. The assignment agreement may be executed by the Director on behalf of City. These option coaches shall be provided at the bid price(s) quoted in:

Schedule 2 – Schedule of Prices 40-Ft. Low Floor Series Diesel Hybrid Coaches - Items 1, 7, 8, 9 and 10.

Schedule 2.1 – Schedule of Prices 40-Ft. Low Floor Parallel Diesel Hybrid Coaches – Items 1, 7, 8, 9 and 10.

Schedule 3 – Schedule of Prices 60-Ft Low Floor Series Diesel Hybrid Coaches - Items 7, 8, 9 and 10.

Schedule 3.1 – Schedule of Prices 60-Ft. Low Floor Parallel Diesel Hybrid Coaches – Items 7, 8, 9 and 10.

65.2. .Option for Additional Spare Parts. At the option of the City, Contractor shall provide additional spare parts per Schedule 3A.1, spare parts List for 60-Ft. Low Floor (Parallel) Diesel Hybrid Coaches. Prices shall remain firm for 24 months after NTP.

66. Precedence of Contract Documents

Any inconsistency in requirements of the contract documents shall be resolved by giving precedence in the following order:

(a) Executed Agreement
(b) Technical Specifications
(c) Warranty Provisions

67. Deliveries

67.1. Predelivery Tests and Inspections. Pre-delivery tests and inspections shall be performed prior to shipment to SFMTA. Such tests and inspections shall be performed in accordance with the procedures defined in Verification Section 21.3 of the Technical Specifications, and they may be witnessed by the SFMTA Resident Inspector. When a Coach passes these tests and inspections, the Resident Inspector shall authorize release of the Coach for shipment. Such authorization does not imply Acceptance of the Vehicle by SFMTA.

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

40-Ft Hybrid-Electric Diesel Coaches	60-Ft Hybrid-Electric Diesel Coaches
1095 Indiana Street San Francisco, California 94107	1940 Harrison Street San Francisco, California 94103

Contractor shall deliver Coaches during weekday working hours at a time mutually agreeable to SFMTA and Contractor, or as otherwise specified in writing by SFMTA, or as otherwise specified in writing by SFMTA. Contractor shall provide at least five Working Days notice to SFMTA prior to delivery. Delivery of the Coaches shall be F.O.B. point of delivery, freight pre-paid and allowed. Contractor shall ensure that all Coaches are fully operable when they are delivered. Contractor shall deliver a maximum of three (3) coaches per week.

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

67.3. Spare Parts Delivery Procedure. Contractor shall deliver Contract spare parts in two lots. Lot 1 shall be 50 percent of the quantity of spare parts listed in Schedules 1A, 2A or 3A of Exhibit 1. Lot 2 shall be the remaining quantity of spare parts listed in Schedules 1A, 2A or 3A of Exhibit 1. Composition of spare parts in each lot is subject to SFMTA approval. Contractor shall provide SFMTA with one-week advance notice before shipment of each lot of spare parts. Such notice shall include a packing list clearly identifying all parts and their quantity in the shipment.

Delivery shall be determined by signed receipt of the SFMTA representative at the point of delivery and may be preceded by a cursory inspection of the parts. Within 20 Days of delivery, SFMTA will issue a notification of acceptance, non-acceptance or Conditional Acceptance of the spare parts. The point of delivery shall be:

40-Ft Hybrid-Electric Diesel Coaches	60-Ft Hybrid-Electric Diesel Coaches
1095 Indiana Street San Francisco, California 94107	1940 Harrison Street San Francisco, California 94103

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

68. Acceptance Of Vehicles

68.1. Procedure.

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

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

If a Coach fails the Acceptance tests, the Coach shall not be Accepted until the repair procedures defined in Section 69, of this Agreement have been carried out and the Coach has been retested and passes all applicable tests. All deliveries of Coaches shall be halted whenever five or more Coaches have failed or have not been Accepted or Conditionally Accepted and are awaiting repairs or corrections.

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

68.2. Conditional Acceptance. If a Coach does not meet all requirements for Acceptance, SFMTA may, at its exclusive option, "conditionally accept" the Coach and place it into revenue service, pending receipt of Contractor-furnished materials and/or labor necessary to effectuate corrective action for Acceptance. For any Conditionally Accepted Vehicle, payments shall be made as provided in Section 7 above.

68.3. Assumption of Risk of Loss. Prior to delivery as described in Section 67 of this Agreement,, and regardless whether title has passed to the City, the Contractor shall bear risk of loss of the Coach, including any damage sustained during transportation to the delivery site. Risk of loss will pass to the SFMTA upon delivery of each Coach except that loss or damage to the Coach resulting from acts or omissions

of the Contractor shall be the responsibility of the Contractor until Acceptance of said vehicle.

68.4. Title . Adequate documents for securing the title for the Coach in the State of California shall be provided to the SFMTA Project Manager / Representative at the time the Coach is delivered. Unless full unencumbered title transfers earlier under Section 7.3, Item 1, upon acceptance of each Coach, title to each Coach shall pass to the City, which title Contractor warrants shall be free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims, and demands of any character.

69. Repairs Prior To Acceptance

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

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

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

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

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

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

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

70. Unavoidable Delays

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

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

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

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

71. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

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

CITY

San Francisco Municipal Transportation Agency

Edward D. Reiskin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
David A. Greenburg
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. 14-172
Dated: 12-2-14

Attest: R. Boomer
Secretary

Board of Supervisors
Resolution No. 471-14
Dated: 12-19-2014
Attest:

Clerk

CONTRACTOR

New Flyer of America Inc.

Paul Soubry
President Chief Executive Officer

David White
Executive Vice President, Supply Management

711 Kernaghan Avenue
Winnipeg, MB R2C 3T4
Canada

City vendor number: 49642

Exhibit 1
Schedule of Prices

SCHEDULE 2 - SCHEDULE OF PRICES
40-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES

No	Qty.	Description	Unit Price	Total Price
1.	48	Option for 1-48 40-ft Low Floor Series Diesel Hybrid Coaches in year 2015	$723,790 + PPI(1)	$34,741,920 + PPI(1)
2.	Per schedule 2A	Spare Parts for 40-ft Low floor Diesel Hybrid coaches (from Schedule 2A)	$1,087,361.65 + PPI(1)	$1,087,361.65 + PPI(1)
3.	Per Tech. Specs., Attachment 14	Training for 40-ft Low Floor Diesel Hybrid Coaches	$1,104,030.34	$1,104,030.34
4.	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 40-ft Low Floor Diesel Hybrid Coaches	$236,250.00	$236,250.00
5.	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 40-ft Low Floor Diesel Hybrid Coaches	$ 0	$ 0
6.	Per Schedule 2B	Special Tools for 40-ft Low Floor Diesel Hybrid Coaches (from Schedule 2B)	$1,106,541.48 + PPI(1)	$1,106,541.48 + PPI(1)
7.	41	Option for 1-41 40-ft Low Floor Series Diesel Hybrid Coach in year 2016	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
8.	30	Option for 1-30 40-ft Low Floor Series Diesel Hybrid Coaches in year 2017	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
9.	36	Option for 1-36 40-ft Low Floor Series Diesel Hybrid Coaches in year 2018	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
10.	45	Option for 1-45 40-ft Low Floor Series Diesel Hybrid Coaches in year 2019	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
			Grand Total	$38,276,103.47

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336 to be determined at the time the options are exercised, calculated from the effective date of the contract.

SCHEDULE 2.1 - SCHEDULE OF PRICES
40-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES

No	Qty.	Description	Unit Price	Total Price
1	48	Option for 1-48 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2015	$782,035 + PPI(1)	$37,537,680 + PPI(1)
2	Per schedule 2A.1	Spare Parts for 40-ft Low floor Diesel Hybrid coaches (from Schedule 2A)	$1,492,330.03 + PPI(1)	$1,492,330.03 + PPI(1)
3	Per Tech. Specs., Attachment 14	Training for 40-ft Low Floor Diesel Hybrid Coaches	$1,104,030.34	$1,104,030.34
4	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 40-ft Low Floor Diesel Hybrid Coaches	$236,250.00	$236,250.00
5	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 40-ft Low Floor Diesel Hybrid Coaches	$ 0	$ 0
6	Per Schedule 2B.1	Special Tools for 40-ft Low Floor Diesel Hybrid Coaches (from Schedule 2B)	$1,108,918.01 + PPI(1)	$1,108,918.01 + PPI(1)
7	41	Option for 1-41 40-ft Low Floor Parallel Diesel Hybrid Coach in year 2016	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
8	30	Option for 1-30 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2017	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
9	36	Option for 1-36 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2018	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
10	45	Option for 1-45 40-ft Low Floor Parallel Diesel Hybrid Coaches in year 2019	$Item 1 Unit Price + PPI(1)	$Item 1 Total Price + PPI(1)
Grand Total				$41,479,208.38

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336 to be determined at the time the options are exercised, calculated from the effective day of the contract.

SCHEDULE 2A
SPARE PARTS LIST FOR
40-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES

Parts described as "assembly" shall be shipped with all parts for complete assembly but not assembled. Parts described as "Complete" shall be shipped with all parts fully assembled.

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	4	Each	Engine, Complete (includes controls and wiring harness)	$26,347.51	$105,390.04
2.	4	Set	Propulsion System Generator and Drive Motor	$90,561.27	$362,245.08
3.	2	Each	Exhaust After-treatment Devices	$14,667.87	$29,335.74
4.	2	Each	Power Control System (PCS)	$31,285.01	$62,570.02
5.	2	Each	Propulsion System Wiring Harness	$4,137.12	$8,274.24
6.	2	Each	Engine Radiator, Complete with Tank(s)	$11,700.80	$23,401.60
7.	4	Each	Differential Carrier, Complete	$7,185.03	$28,740.12
8.	4	Each	Read Axle Housing Assembly	$7,660.25	$30,641.00
9.	10	Set	Front Brake Axle Set	$564.34	$5,643.40
10.	10	Set	Read Brake Axle Set	$564.34	$5,643.40
11.	2	Set	Heater/Defroster, Complete with Resistors, Motors and fans for the Entire Coach	$1,458.26	$2,916.52
12.	4	Each	Power Steering Pump, Complete	$10,145.53	$40,582.12
13.	4	Each	Alternator, Complete	$3,123.19	$12,492.76
14.	4	Each	Electric Starter System, Assembly	Not Applicable	Not Applicable
15.	4	Each	Turbocharger, Engine	$2,059.57	$8,238.28
16.	4	Each	Pump, Fuel Injection	$169.38	$677.52
17.	1	Each	Fuel Tank	$2,286.12	$2,286.12
18.	4	Each	Water Pump	$514.40	$2,057.60
19.	4	Each	Air compressor	$4,410.85	$17,643.40
20.	4	Set	Windshield (left and right)	$900.44	$3,601.76
21.	2	Set	Operator's Side Window (both sliding sections)	$549.26	$1,098.52
23.	1	Set	Door Panels (coach set)	$5,608.05	$5,608.05

No.	Qty.	Unit	Description	Unit Price	Total Price
24.	1	Set	Door Operator (coach set)	$4,314.96	$4,314.96
25.	1	Set	Door cylinder, Complete (coach set)	$4,085.60	$4,085.60
26.	1	Set	Passenger Side Window (coach set)	11,045.04$	$11,045.04
27.	30	Each	Wheels	$492.16	$14,764.80
28.	2	Set	Destination Signs, Complete (units for front, side, rear and run number signs and controls) (coach set)	$20,363.78	$40,727.56
29.	2	Set	Wheelchair ramp, Complete (less weldments to mount ramp to bus)	$4,799.90	$9,599.80
30.	20	Set	Headlight (coach set)	$1,264.43	$25,288.60
31.	20	Set	Reflectors (coach set)	$8.78	$175.60
32.	20	Set	Stop, Tail and Backup Light (coach set)	$384.66	$7,693.20
33.	25	Set	Exterior Mirror (coach set)	$917.77	$22,944.25
34.	1	Set	Operator Console Gauges and Switches (coach set)	$3,822.17	$3,822.17
35.	1	Set	Passenger Seat, Complete (coach set)	$30,653.54	$30,653.54
36.	1	Set	Passenger Seat Inserts (coach set)	$1,863.04	$1,863.04
37.	3	Each	Operator Seat	$2,384.04	$7,152.12
38.	6	Each	Back Cushion, Operator Seat	$90.80	$544.80
39.	6	Each	Seat Cushion, Operator Seat	$58.74	$352.44
40.	5	Set	Windshield Wiper, Complete with motor, shaft, linkage, mounting bracket and arms	$746.50	$3,732.50
41.	1	Set	Interior Panels with Trim Strips (coach set)	$628.48	$628.48
42.	10	Set	Exterior Skirt Panels (coach set)	$2,749.83	$27,498.30
43.	1	Set	Handrails and Stanchions (coach set)	$2,594.23	$2,594.23
44.	1	Set	Fender, rubber (coach set)	$366.82	$366.82
45.	1	Set	Bumper, Complete (coach set)	$2,013.36	$2,013.36
46.	4	Each	Steering Gearbox	$1,028.66	$4,114.64
47.	6	Set	Hub, Axle (coach set)	$5,723.51	$34,341.06

No.	Qty.	Unit	Description	Unit Price	Total Price
48.	5	Each	Booster Pump	$491.95	$2,459.75
49.	10	Set	Radius Rod (coach set)	$825.65	$8256.50
50.	10	Set	Electric, Pneumatic and Hydraulic Valves	$793.30	$7,933.00
51.	6	Each	Amplifier, Public Address Systems	N/A	N/A
52.	6	Each	Microphone, Public Address System	$1,212.50	$7,275.00
53.	6	Each	Operator Display Keyboard (ODK)	$1,333.89	$8,003.34
54.	4	Each	Cooling Fan	$462.96	$1,851.84
55.	2	Set	Polycarbonate Panels (Anti-Vandalism) (coach set)	$77.06	$154.12
56.	2	Set	Voice Annunciate System, Complete (coach set)	$16,011.95	$32,023.90
Grand Total					$1,087,361.65

NOTES:

1. Grand Total entered as Item #2 on the Schedule of Prices (Schedule 2) for 40-Ft Low Floor Diesel Hybrid Coaches.
2. Manufacturer will certify exchange on a one-for-one basis of unused items listed as 1 through 56 in the event they are superseded with advanced components rendering those provided as part of this contract obsolete or under-rated.
3. Manufacturer will recommend the quantity for Items, dependent on the technology utilized, if SFMTA's selected quantities are incorrect.

SCHEDULE 2A.1
SPARE PARTS LIST FOR
40-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES

Parts described as "assembly" shall be shipped with all parts for complete assembly but not assembled. Parts described as "Complete" shall be shipped with all parts fully assembled.

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	4	Each	Engine, Complete (includes controls and wiring harness)	$41,477.40	$165,909.60
2.	4	Set	Propulsion System Generator and Drive Motor	$153,797.18	$615,188.72
3.	2	Each	Exhaust After-treatment Devices	$14,667.87	$29,335.74
4.	2	Each	Power Control System (PCS)	$91,205.36	$182,410.72
5.	2	Each	Propulsion System Wiring Harness	$3,857.60	$7,715.20
6.	2	Each	Engine Radiator, Complete with Tank(s)	$11,700.80	$23,401.60
7.	4	Each	Differential Carrier, Complete	$7,185.03	$28,740.12
8.	4	Each	Read Axle Housing Assembly	$7,660.25	$30,641.00
9.	10	Set	Front Brake Axle Set	$564.34	$5,643.40
10.	10	Set	Read Brake Axle Set	$564.34	$5,643.40
11.	2	Set	Heater/Defroster, Complete with Resistors, Motors and fans for the Entire Coach	$1,458.26	$2,916.52
12.	4	Each	Power Steering Pump, Complete	$3,147.39	$12,589.56
13.	4	Each	Alternator, Complete	$3,177.21	$12,708.84
14.	4	Each	Electric Starter System, Assembly	Not Applicable	Not Applicable
15.	4	Each	Turbocharger, Engine	$2,059.57	$8,238.28
16.	4	Each	Pump, Fuel Injection	$169.38	$677.52
17.	1	Each	Fuel Tank	$2,286.12	$2,286.12
18.	4	Each	Water Pump	$514.40	$2,057.60
19.	4	Each	Air compressor	$4,410.85	$17,643.40
20.	4	Set	Windshield (left and right)	$900.44	$3,601.76
21.	2	Set	Operator's Side Window (both sliding sections)	$549.26	$1,098.52
23.	1	Set	Door Panels (coach set)	$5,608.05	$5,608.05

No.	Qty.	Unit	Description	Unit Price	Total Price
24.	1	Set	Door Operator (coach set)	$4,314.96	$4,314.96
25.	1	Set	Door cylinder, Complete (coach set)	$4,085.60	$4,085.60
26.	1	Set	Passenger Side Window (coach set)	11,045.04$	$11,045.04
27.	30	Each	Wheels	$492.16	$14,764.80
28.	2	Set	Destination Signs, Complete (units for front, side, rear and run number signs and controls) (coach set)	$20,363.78	$40,727.56
29.	2	Set	Wheelchair ramp, Complete (less weldments to mount ramp to bus)	$4,799.90	$9,599.80
30.	20	Set	Headlight (coach set)	$1,264.43	$25,288.60
31.	20	Set	Reflectors (coach set)	$8.78	$175.60
32.	20	Set	Stop, Tail and Backup Light (coach set)	$384.66	$7,693.20
33.	25	Set	Exterior Mirror (coach set)	$917.77	$22,944.25
34.	1	Set	Operator Console Gauges and Switches (coach set)	$3,822.17	$3,822.17
35.	1	Set	Passenger Seat, Complete (coach set)	$30,653.54	$30,653.54
36.	1	Set	Passenger Seat Inserts (coach set)	$1,863.04	$1,863.04
37.	3	Each	Operator Seat	$2,384.04	$7,152.12
38.	6	Each	Back Cushion, Operator Seat	$90.80	$544.80
39.	6	Each	Seat Cushion, Operator Seat	$58.74	$352.44
40.	5	Set	Windshield Wiper, Complete with motor, shaft, linkage, mounting bracket and arms	$746.50	$3,732.50
41.	1	Set	Interior Panels with Trim Strips (coach set)	$628.48	$628.48
42.	10	Set	Exterior Skirt Panels (coach set)	$2,749.83	$27,498.30
43.	1	Set	Handrails and Stanchions (coach set)	$2,594.23	$2,594.23
44.	1	Set	Fender, rubber (coach set)	$366.82	$366.82
45.	1	Set	Bumper, Complete (coach set)	$2,013.36	$2,013.36
46.	4	Each	Steering Gearbox	$1,028.66	$4,114.64
47.	6	Set	Hub, Axle (coach set)	$5,723.51	$34,341.06

No.	Qty.	Unit	Description	Unit Price	Total Price
48.	5	Each	Booster Pump	$491.95	$2,459.75
49.	10	Set	Radius Rod (coach set)	$825.65	$8256.50
50.	10	Set	Electric, Pneumatic and Hydraulic Valves	$793.30	$7,933.00
51.	6	Each	Amplifier, Public Address Systems	N/A	N/A
52.	6	Each	Microphone, Public Address System	$1,212.50	$7,275.00
53.	6	Each	Operator Display Keyboard (ODK)	$1,333.89	$8,003.34
54.	4	Each	Cooling Fan	$462.96	$1,851.84
55.	2	Set	Polycarbonate Panels (Anti-Vandalism) (coach set)	$77.06	$154.12
56.	2	Set	Voice Annunciate System, Complete (coach set)	$16,011.95	$32,023.90
Grand Total					$1,492,330.03

NOTES:

1. Grand Total entered as Item #2 on the Schedule of Prices (Schedule 2.1) for 40-Ft Low Floor Diesel Hybrid Coaches.
2. Manufacturer will certify exchange on a one-for-one basis of unused items listed as 1 through 56 in the event they are superseded with advanced components rendering those provided as part of this contract obsolete or under-rated.
3. Manufacturer will recommend the quantity for Items, dependent on the technology utilized, if SFMTA's selected quantities are incorrect.

SCHEDULE 2B
SPECIAL TOOLS FOR
40-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	6	Lots	Field Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
2.	3	Lots	Shop Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
3.	3	Lots	Towing Adapter (Section 2.1.5 of the Technical Specifications – Volume 2)	$228.53	$685.60
4.	22	Lots	Hoisting Adapter (Section 2.1.6 of the Technical Specifications – Volume 2)	$426.00	$9,372.00
5.	3	Lots	Wheelchair Ramp Maintenance Controller (Section 3.6.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
6.	4	Lots	Destination Signs Programming Package (Section 3.10.9 of the Technical Specifications – Volume 2)	$1,228.67	$4,914.68
7.	2	Lots	Voice Annunciator Programming Workstation, Recording Station and Data Collection Tool Package (Section 3.11.2 of the Technical Specifications – Volume 2)	$245,619.20	$491,238.41
8.	1	Lots	Surveillance Camera system Viewing Station, (Section 3.13.8 of the Technical Specifications – Volume 2)	$6,613.65	$6,613.65
9.	1	Lots	Surveillance Camera System Special Tools (Section 3.13.2 of the Technical Specifications)	$22,045.50	$22,045.50
10.	2	Sets	Engine diagnostic Reader and Rebuild Special Tools (Section 6.4 & 9.3 of the Technical Specifications – Volume 2) (coach set)	$26,788.81	$53,577.62
11	4	Sets	ABS Brakes Diagnostic Software (Section 5.3.7 of the Technical Specifications – Volume 2) (coach set)	$439.45	$1,757.97
12	4	Sets	Fire Suppression System Testing Kit (Section 5.11 of the Technical Specification – Volume 2) (coach set)	$802.36	$3,209.43
13	6	Lots	PLC System, Laptop Programmer and Maintenance Reader (Section 7.9 of the Technical Specifications – Volume 2)	$534.97	$3,209.82
14	2	Lots	Powerplant dolly including ESS, ramp and equipment box dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	$2,198.09	$4,396.18

No.	Qty.	Unit	Description	Unit Price	Total Price
15	4	Each	Automatic Passenger Counter diagnostic tools and software required for service (Section 3.18 of the Technical Specifications	$1,616.67	$6,466.68
16	4	Sets	Wireless, Onboard Diagnostic Communication Sending Unit (to be used for real-time off sight engineering support) (coach set)	Not Applicable	Not Applicable
17	4	Each	ToughBook diagnostic Computers (to communicate with vehicle using wireless and/or plug-in diagnostic communication links	$2,466.16	$9,864.63
18	6	Each	Latest data link handheld diagnostic devise capable of reading propulsion system and chassis maintenance data	Not Applicable	Not Applicable
19	4	Sets	Low Floor Axle Tool Kit (Section 5.1.1 of the Technical Specifications – Volume 2)	$71,581.22	$286,324.88
20	8	Each	Bus-mounted data recorder test, troubleshoot and repair equipment (Section 5.10 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
21	4	Sets	Propulsion system diagnostic and specialty tool kit (Section 6.2 of the Technical Specifications – Volume 2)	$33,534.15	$134,136.61
22	2	Each	Disc brake lathe and attachment fixture for SFMTA STAR machine to service the rotors on the vehicle	$34,364.00	$68,728.00
23	1	Sets	Propulsion System Generator Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
24	1	Sets	Propulsion System Motor Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
Grand Total					$1,106,541.48

Grand Total entered as Item #6 on the Schedule of Prices (Schedule 2) for 40-Ft Low Floor Diesel Hybrid Coaches.

SCHEDULE 2B.1

SPECIAL TOOLS FOR 40-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	6	Lots	Field Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
2.	3	Lots	Shop Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
3.	3	Lots	Towing Adapter (Section 2.1.5 of the Technical Specifications – Volume 2)	$228.53	$685.60
4.	22	Lots	Hoisting Adapter (Section 2.1.6 of the Technical Specifications – Volume 2)	$426.00	$9,372.00
5.	3	Lots	Wheelchair Ramp Maintenance Controller (Section 3.6.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
6.	4	Lots	Destination Signs Programming Package (Section 3.10.9 of the Technical Specifications – Volume 2)	$1,228.67	$4,914.68
7.	2	Lots	Voice Annunciator Programming Workstation, Recording Station and Data Collection Tool Package (Section 3.11.2 of the Technical Specifications – Volume 2)	$245,619.20	$491,238.41
8.	1	Lots	Surveillance Camera system Viewing Station, (Section 3.13.8 of the Technical Specifications – Volume 2)	$6,613.65	$6,613.65
9.	1	Lots	Surveillance Camera System Special Tools (Section 3.13.2 of the Technical Specifications)	$22,045.50	$22,045.50
10.	2	Sets	Engine diagnostic Reader and Rebuild Special Tools (Section 6.4 & 9.3 of the Technical Specifications – Volume 2) (coach set)	$26,788.81	$53,577.62
11	4	Sets	ABS Brakes Diagnostic Software (Section 5.3.7 of the Technical Specifications – Volume 2) (coach set)	$439.45	$1,757.97
12	4	Sets	Fire Suppression System Testing Kit (Section 5.11 of the Technical Specification – Volume 2) (coach set)	$802.36	$3,209.43
13	6	Lots	PLC System, Laptop Programmer and Maintenance Reader (Section 7.9 of the Technical Specifications – Volume 2)	$534.97	$3,209.82
14	2	Lots	Powerplant dolly including ESS, ramp and equipment box dolly (Section 11.6.1 of the Technical Specifications	$2,198.09	$4,396.18

No.	Qty.	Unit	Description	Unit Price	Total Price
			– Volume 2)		
15	4	Each	Automatic Passenger Counter diagnostic tools and software required for service (Section 3.18 of the Technical Specifications	$1,616.67	$6,466.68
16	4	Sets	Wireless, Onboard Diagnostic Communication Sending Unit (to be used for real-time off sight engineering support) (coach set)	Not Applicable	Not Applicable
17	4	Each	ToughBook diagnostic Computers (to communicate with vehicle using wireless and/or plug-in diagnostic communication links	$2,466.16	$9,864.63
18	6	Each	Latest data link handheld diagnostic devise capable of reading propulsion system and chassis maintenance data	Not Applicable	Not Applicable
19	4	Sets	Low Floor Axle Tool Kit (Section 5.1.1 of the Technical Specifications – Volume 2)	$71,581.22	$286,324.88
20	8	Each	Bus-mounted data recorder test, troubleshoot and repair equipment (Section 5.10 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
21	4	Sets	Propulsion system diagnostic and specialty tool kit (Section 6.2 of the Technical Specifications – Volume 2)	$34,128.24	$136,512.96
22	2	Each	Disc brake lathe and attachment fixture for SFMTA STAR machine to service the rotors on the vehicle	$34,364.00	$68,728.00
23	1	Sets	Propulsion System Generator Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
24	1	Sets	Propulsion System Motor Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
Grand Total					$1,108,918.01

Grand Total entered as Item #6 on the Schedule of Prices (Schedule 2.1) for 40-Ft Low Floor Diesel Hybrid Coaches.

SCHEDULE 3 - SCHEDULE OF PRICES
60-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES

No.	Qty.	Description	Unit Price	Total Price
1.	61	60-ft Low Floor Series Diesel Hybrid Coaches – Base Contract	$1,024,837.75	$62,515,212.75
2.	Per Schedule 3A	Spare Parts for 60-ft Low floor Diesel Hybrid coaches (from Schedule 3A)	$1,438,127.96	$1,438,127.96
3.	Per Tech. Specs., Attachment 14	Training for 60-ft Low Floor Diesel Hybrid Coaches	$1,104,030.34	$1,104,030.34
4.	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 60-ft Low Floor Diesel Hybrid Coaches	$236,250.00	$236,250.00
5.	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 60-ft Low Floor Diesel Hybrid Coaches	$ 0	$ 0
6.	Per Schedule 3B	Special Tools for 60-ft Low Floor Diesel Hybrid Coaches (from Schedule 3B)	$1,105,811.96	$1,105,811.96
7.	50	Option for 1-50 60-ft Low Floor Series Diesel Hybrid Coaches in year 2015	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
8.	48	Option for 1-48 60-ft Low Floor Series Diesel Hybrid Coaches in year 2016	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
9.	35	Option for 1-35 60-ft Low Floor Series Diesel Hybrid Coaches in year 2018	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
10.	30	Option for 1-30 60-ft Low Floor Series Diesel Hybrid Coaches in year 2019	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
Grand Total				$66,399,323.01

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336, to be determined at the time the options are exercised, calculated from the effective date of the contract.

SCHEDULE 3.1 - SCHEDULE OF PRICES
60-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES

No.	Qty.	Description	Unit Price	Total Price
1.	61	60-ft Low Floor Parallel Diesel Hybrid Coaches – Base Contract	$1,041,442.75	$63,528,007.75
2.	Per Schedule 3A.1	Spare Parts for 60-ft Low floor Diesel Hybrid coaches (from Schedule 3A)	$1,891,719.26	$1,891,719.26
3.	Per Tech. Specs., Attachment 14	Training for 60-ft Low Floor Diesel Hybrid Coaches	$1,104,030.34	$1,104,030.34
4.	Per Section 9 of Tech. Specs.	Interactive Multimedia Training for 60-ft Low Floor Diesel Hybrid Coaches	$236,250.00	$236,250.00
5.	Per Section 9 of Tech. Specs.	Operating, Maintenance and Parts Manuals for 60-ft Low Floor Diesel Hybrid Coaches	$ 0	$ 0
6.	Per Schedule 3B.1	Special Tools for 60-ft Low Floor Diesel Hybrid Coaches (from Schedule 3B)	$1,497,528.76	$1,497,528.76
7.	50	Option for 1-50 60-ft Low Floor Parallel Diesel Hybrid Coach in year 2015	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
8.	48	Option for 1-48 60-ft Low Floor Parallel Diesel Hybrid Coaches in year 2016	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
9.	35	Option for 1-35 60-ft Low Floor Parallel Diesel Hybrid Coaches in year 2018	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
10	30	Option for 1-30 60-ft Low Floor Parallel Diesel Hybrid Coaches in year 2019	$Base Unit Price + PPI(1)	$Base Unit Price + PPI(1)
Grand Total				$68,257,536.11

(1) PPI: Producer's Price Index for Transportation Equipment Manufacturing: NAICS 336, to be determined at the time the options are exercised, calculated from the effective date of the contract.

SCHEDULE 3A
SPARE PARTS LIST FOR
60-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES

Parts described as "assembly" shall be shipped with all parts for complete assembly but not assembled. Parts described as "Complete" shall be shipped with all parts fully assembled.

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	4	Each	Engine, Complete (includes controls and wiring harness)	$47,671.75	$190,687.00
2.	4	Set	Propulsion System Generator and Drive Motor	$100,553.75	$402,215.00
3.	2	Each	Exhaust After-treatment Devices	$15,748.49	$31,496.98
4.	2	Each	Power Control System (PCS)	$43,878.00	$87,756.00
5.	2	Each	Propulsion System Wiring Harness	$4,110.96	$8,221.92
6.	2	Each	Engine Radiator, Complete with Tank(s)	$11,700.80	$23,401.60
7.	4	Each	Differential Carrier, Complete	$7,185.03	$28,740.12
8.	4	Each	Read Axle Housing Assembly	$7,660.25	$30,641.00
9.	10	Set	Front Brake Axle Set	$564.34	$5,643.40
10.	10	Set	Read Brake Axle Set	$564.34	$5,643.40
11.	2	Set	Heater/Defroster, Complete with Resistors, Motors and fans for the Entire Coach	$1,458.26	$2,916.52
12.	4	Each	Power Steering Pump, Complete	$10,145.53	$40,582.12
13.	4	Each	Alternator, Complete	$3,221.80	$12,887.20
14.	4	Each	Electric Starter System, Assembly	Not Applicable	Not Applicable
15.	4	Each	Turbocharger, Engine	$2,059.57	$8,238.28
16.	4	Each	Pump, Fuel Injection	$169.38	$677.52
17.	1	Each	Fuel Tank	$2,286.01	$2,286.01
18.	4	Each	Water Pump	$514.40	$2,057.60
19.	4	Each	Air compressor	$4,675.62	$18,702.48
20.	4	Set	Windshield (left and right)	$900.44	$3,601.76
21.	2	Set	Operator's Side Window (both sliding sections)	$549.32	$1,098.64

No.	Qty.	Unit	Description	Unit Price	Total Price
23.	1	Set	Door Panels (coach set)	$14,947.49	$14,947.49
24.	1	Set	Door Operator (coach set)	$4,314.96	$4,314.96
25.	1	Set	Door cylinder, Complete (coach set)	$4,085.60	$4,085.60
26.	1	Set	Passenger Side Window (coach set)	$16,444.20	$16,444.20
27.	30	Each	Wheels	$492.16	$14,764.80
28.	2	Set	Destination Signs, Complete (units for front, side, rear and run number signs and controls) (coach set)	$20,363.78	$40,727.56
29.	2	Set	Wheelchair ramp, Complete (less weldments to mount ramp to bus)	$4,799.90	$9,599.80
30.	20	Set	Headlight (coach set)	$1,264.43	$25,288.60
31.	20	Set	Reflectors (coach set)	$8.78	$175.60
32.	20	Set	Stop, Tail and Backup Light (coach set)	$384.66	$7,693.20
33.	25	Set	Exterior Mirror (coach set)	$973.83	$24,345.75
34.	1	Set	Operator Console Gauges and Switches (coach set)	$3,822.17	$3,822.17
35.	1	Set	Passenger Seat, Complete (coach set)	$38,023.34	$38,023.34
36.	1	Set	Passenger Seat Inserts (coach set)	$3,085.66	$3,085.66
37.	3	Each	Operator Seat	$2,384.04	$7,152.12
38.	6	Each	Back Cushion, Operator Seat	$90.79	$544.74
39.	6	Each	Seat Cushion, Operator Seat	$58.73	$352.38
40.	5	Set	Windshield Wiper, Complete with motor, shaft, linkage, mounting bracket and arms	$746.50	$3,732.50
41.	1	Set	Interior Panels with Trim Strips (coach set)	$2,472.22	$2,472.22
42.	10	Set	Exterior Skirt Panels (coach set)	$3,621.37	$36,213.70
43.	1	Set	Handrails and Stanchions (coach set)	$3,822.04	$3,822.04
44.	1	Set	Fender, rubber (coach set)	$548.87	$548.87
45.	1	Set	Bumper, Complete (coach set)	$2,579.08	$2,579.08
46.	4	Each	Steering Gearbox	$1,028.66	$4,114.64
47.	6	Set	Hub, Axle (coach set)	$5,723.51	$34,341.06

No.	Qty.	Unit	Description	Unit Price	Total Price
48.	5	Each	Booster Pump	$491.95	$2,459.75
49.	10	Set	Radius Rod (coach set)	$1,118.32	$11,183.20
50.	10	Set	Electric, Pneumatic and Hydraulic Valves	$1,111.65	$11,116.50
51.	6	Each	Amplifier, Public Address Systems	N/A	N/A
52.	6	Each	Microphone, Public Address System	$1,212.50	$7,275.00
53.	6	Each	Operator Display Keyboard (ODK)	$1,333.89	$8,003.34
54.	4	Each	Cooling Fan	$462.96	$1,851.84
55.	2	Set	Polycarbonate Panels (Anti-Vandalism) (coach set)	$74.81	$149.62
56.	2	Set	Voice Annunciate System, Complete (coach set)	$16,011.92	$32,023.84
57.	6	Set	Turntable Filling Valve and Accumulator, Complete	$5,481.85	$32,891.10
58.	6	Set	Turntable Proportional Valve, Complete	Not Applicable	Not Applicable
59.	12	Each	Turntable Hydraulic Cylinder	$2,068.78	$24,825.36
60.	6	Each	Turntable ECU	Not Applicable	Not Applicable
61.	6	Each	Turntable Main Bearing	$4,458.67	$26,752.02
62.	6	Each	Articulated Section Front Bellows	$5,742.48	$34,454.88
62.	6	Each	Articulated Section Rear Bellows	$5,742.48	$34,454.88
Grand Total					$1,438,127.96

NOTES:

1. Grand Total entered as Item #2 on the Schedule of Prices (Schedule 3) for 60-Ft Low Floor Diesel Hybrid Coaches.
2. Manufacturer will certify exchange on a one-for-one basis of unused items listed as 1 through 62 in the event they are superseded with advanced components rendering those provided as part of this contract obsolete or under-rated.
3. Manufacturer will recommend the quantity for Items, dependent on the technology utilized, if SFMTA's selected quantities are incorrect.

SCHEDULE 3A.1
SPARE PARTS LIST FOR
60-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES

Parts described as "assembly" shall be shipped with all parts for complete assembly but not assembled. Parts described as "Complete" shall be shipped with all parts fully assembled.

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	4	Each	Engine, Complete (includes controls and wiring harness)	$47,671.75	$190,687.00
2.	4	Set	Propulsion System Generator and Drive Motor	$185,766.95	$743,067.80
3.	2	Each	Exhaust After-treatment Devices	$15,748.49	$31,496.98
4.	2	Each	Power Control System (PCS)	$119,863.07	$239,726.14
5.	2	Each	Propulsion System Wiring Harness	$4,209.16	$8,418.32
6.	2	Each	Engine Radiator, Complete with Tank(s)	$11,700.80	$23,401.60
7.	4	Each	Differential Carrier, Complete	$7,185.03	$28,740.12
8.	4	Each	Read Axle Housing Assembly	$7,660.25	$30,641.00
9.	10	Set	Front Brake Axle Set	$564.34	$5,643.40
10.	10	Set	Read Brake Axle Set	$564.34	$5,643.40
11.	2	Set	Heater/Defroster, Complete with Resistors, Motors and fans for the Entire Coach	$1,458.26	$2,916.52
12.	4	Each	Power Steering Pump, Complete	$214.42	$857.68
13.	4	Each	Alternator, Complete	$3,295.90	$13,183.60
14.	4	Each	Electric Starter System, Assembly	Not Applicable	Not Applicable
15.	4	Each	Turbocharger, Engine	$2,059.57	$8,238.28
16.	4	Each	Pump, Fuel Injection	$169.38	$677.52
17.	1	Each	Fuel Tank	$2,286.01	$2,286.01
18.	4	Each	Water Pump	$514.40	$2,057.60
19.	4	Each	Air compressor	$4,675.62	$18,702.48
20.	4	Set	Windshield (left and right)	$900.44	$3,601.76
21.	2	Set	Operator's Side Window (both sliding sections)	$549.32	$1,098.64

No.	Qty.	Unit	Description	Unit Price	Total Price
23.	1	Set	Door Panels (coach set)	$14,947.49	$14,947.49
24.	1	Set	Door Operator (coach set)	$4,314.96	$4,314.96
25.	1	Set	Door cylinder, Complete (coach set)	$4,085.60	$4,085.60
26.	1	Set	Passenger Side Window (coach set)	$16,444.20	$16,444.20
27.	30	Each	Wheels	$492.16	$14,764.80
28.	2	Set	Destination Signs, Complete (units for front, side, rear and run number signs and controls) (coach set)	$20,363.78	$40,727.56
29.	2	Set	Wheelchair ramp, Complete (less weldments to mount ramp to bus)	$4,799.90	$9,599.80
30.	20	Set	Headlight (coach set)	$1,264.43	$25,288.60
31.	20	Set	Reflectors (coach set)	$8.78	$175.60
32.	20	Set	Stop, Tail and Backup Light (coach set)	$384.66	$7,693.20
33.	25	Set	Exterior Mirror (coach set)	$973.83	$24,345.75
34.	1	Set	Operator Console Gauges and Switches (coach set)	$3,822.17	$3,822.17
35.	1	Set	Passenger Seat, Complete (coach set)	$38,023.34	$38,023.34
36.	1	Set	Passenger Seat Inserts (coach set)	$3,085.66	$3,085.66
37.	3	Each	Operator Seat	$2,384.04	$7,152.12
38.	6	Each	Back Cushion, Operator Seat	$90.79	$544.74
39.	6	Each	Seat Cushion, Operator Seat	$58.73	$352.38
40.	5	Set	Windshield Wiper, Complete with motor, shaft, linkage, mounting bracket and arms	$746.50	$3,732.50
41.	1	Set	Interior Panels with Trim Strips (coach set)	$2,472.22	$2,472.22
42.	10	Set	Exterior Skirt Panels (coach set)	$3,621.37	$36,213.70
43.	1	Set	Handrails and Stanchions (coach set)	$3,822.04	$3,822.04
44.	1	Set	Fender, rubber (coach set)	$548.87	$548.87
45.	1	Set	Bumper, Complete (coach set)	$2,579.08	$2,579.08
46.	4	Each	Steering Gearbox	$1,028.66	$4,114.64
47.	6	Set	Hub, Axle (coach set)	$5,723.51	$34,341.06

No.	Qty.	Unit	Description	Unit Price	Total Price
48.	5	Each	Booster Pump	$491.95	$2,459.75
49.	10	Set	Radius Rod (coach set)	$1,118.32	$11,183.20
50.	10	Set	Electric, Pneumatic and Hydraulic Valves	$1,111.65	$11,116.50
51.	6	Each	Amplifier, Public Address Systems	N/A	N/A
52.	6	Each	Microphone, Public Address System	$1,212.50	$7,275.00
53.	6	Each	Operator Display Keyboard (ODK)	$1,333.89	$8,003.34
54.	4	Each	Cooling Fan	$462.96	$1,851.84
55.	2	Set	Polycarbonate Panels (Anti-Vandalism) (coach set)	$74.81	$149.62
56.	2	Set	Voice Annunciate System, Complete (coach set)	$16,011.92	$32,023.84
57.	6	Set	Turntable Filling Valve and Accumulator, Complete	$5,481.85	$32,891.10
58.	6	Set	Turntable Proportional Valve, Complete	Not Applicable	Not Applicable
59.	12	Each	Turntable Hydraulic Cylinder	$2,068.78	$24,825.36
60.	6	Each	Turntable ECU	Not Applicable	Not Applicable
61.	6	Each	Turntable Main Bearing	$4,458.67	$26,752.02
62.	6	Each	Articulated Section Front Bellows	$5,742.48	$34,454.88
62.	6	Each	Articulated Section Rear Bellows	$5,742.48	$34,454.88
Grand Total					$1,891,719.26

NOTES:

1. Grand Total entered as Item #2 on the Schedule of Prices (Schedule 3.1) for 60-Ft Low Floor Diesel Hybrid Coaches.
2. Manufacturer will certify exchange on a one-for-one basis of unused items listed as 1 through 62 in the event they are superseded with advanced components rendering those provided as part of this contract obsolete or under-rated.
3. Manufacturer will recommend the quantity for Items, dependent on the technology utilized, if SFMTA's selected quantities are incorrect.

SCHEDULE 3B
SPECIAL TOOLS FOR
60-FT LOW FLOOR (SERIES) DIESEL HYBRID COACHES

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	6	Lots	Field Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
2.	3	Lots	Shop Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
3.	3	Lots	Towing Adapter (Section 2.1.5 of the Technical Specifications – Volume 2)	$228.53	$685.60
4.	22	Lots	Hoisting Adapter (Section 2.1.6 of the Technical Specifications – Volume 2)	$426.00	$9,372.00
5.	3	Lots	Wheelchair Ramp Maintenance Controller (Section 3.6.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
6.	4	Lots	Destination Signs Programming Package (Section 3.10.9 of the Technical Specifications – Volume 2)	$1,228.67	$4,914.68
7.	2	Lots	Voice Annunciator Programming Workstation, Recording Station and Data Collection Tool Package (Section 3.11.2 of the Technical Specifications – Volume 2)	$245,619.20	$491,238.41
8.	1	Lots	Surveillance Camera system Viewing Station, (Section 3.13.8 of the Technical Specifications – Volume 2)	$6,613.65	$6,613.25
9.	1	Lots	Surveillance Camera System Special Tools (Section 3.13.2 of the Technical Specifications)	$22,045.50	$22,045.50
10.	2	Sets	Engine diagnostic Reader and Rebuild Special Tools (Section 6.4 & 9.3 of the Technical Specifications – Volume 2) (coach set)	$26,424.06	$52,848.11
11	4	Sets	ABS Brakes Diagnostic Software (Section 5.3.7 of the Technical Specifications – Volume 2) (coach set)	$439.45	$1,757.79
12	4	Sets	Fire Suppression System Testing Kit (Section 5.11 of the Technical Specification – Volume 2) (coach set)	$802.36	$3,209.43
13	6	Lots	PLC System, Laptop Programmer and Maintenance Reader (Section 7.9 of the Technical Specifications – Volume 2)	$534.97	$3,209.82
14	2	Lots	Powerplant dolly including ESS, ramp and equipment box dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	$2,198.09	$4,396.18
15	4	Each	Automatic Passenger Counter	$1,616.67	$6,466.68

No.	Qty.	Unit	Description	Unit Price	Total Price
			diagnostic tools and software required for service (Section 3.18 of the Technical Specifications		
16	4	Sets	Wireless, Onboard Diagnostic Communication Sending Unit (to be used for real-time off sight engineering support) (coach set)	Not Applicable	Not Applicable
17	4	Each	ToughBook diagnostic Computers (to communicate with vehicle using wireless and/or plug-in diagnostic communication links	$2,466.16	$9,864.63
18	6	Each	Latest data link handheld diagnostic devise capable of reading propulsion system and chassis maintenance data	Not Applicable	Not Applicable
19	4	Sets	Low Floor Axle Tool Kit (Section 5.1.1 of the Technical Specifications – Volume 2)	$71,581.22	$286,324.88
20	8	Each	Bus-mounted data recorder test, troubleshoot and repair equipment (Section 5.10 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
21	4	Sets	Propulsion system diagnostic and specialty tool kit (Section 6.2 of the Technical Specifications – Volume 2)	$33,534.15	$134,136.61
22	2	Each	Disc brake lathe and attachment fixture for SFMTA STAR machine to service the rotors on the vehicle	$34,364.00	$68,728.00
23	1	Sets	Propulsion System Generator Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
24	1	Sets	Propulsion System Motor Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
Grand Total					$1,105,811.96

Grand Total entered as Item #6 on the Schedule of Prices (Schedule 3) for 60-Ft Low Floor Diesel Hybrid Coaches.

SCHEDULE 3B.1
SPECIAL TOOLS FOR
60-FT LOW FLOOR (PARALLEL) DIESEL HYBRID COACHES

No.	Qty.	Unit	Description	Unit Price	Total Price
1.	6	Lots	Field Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
2.	3	Lots	Shop Tester, Electrical Assemblies (Section 1.16.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
3.	3	Lots	Towing Adapter (Section 2.1.5 of the Technical Specifications – Volume 2)	$228.53	$685.60
4.	22	Lots	Hoisting Adapter (Section 2.1.6 of the Technical Specifications – Volume 2)	$426.00	$9,372.00
5.	3	Lots	Wheelchair Ramp Maintenance Controller (Section 3.6.2 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
6.	4	Lots	Destination Signs Programming Package (Section 3.10.9 of the Technical Specifications – Volume 2)	$1,228.67	$4,914.68
7.	2	Lots	Voice Annunciator Programming Workstation, Recording Station and Data Collection Tool Package (Section 3.11.2 of the Technical Specifications – Volume 2)	$245,619.20	$491,238.41
8.	1	Lots	Surveillance Camera system Viewing Station, (Section 3.13.8 of the Technical Specifications – Volume 2)	$6,613.65	$6,613.25
9.	1	Lots	Surveillance Camera System Special Tools (Section 3.13.2 of the Technical Specifications)	$22,045.50	$22,045.50
10.	2	Sets	Engine diagnostic Reader and Rebuild Special Tools (Section 6.4 & 9.3 of the Technical Specifications – Volume 2) (coach set)	$26,424.06	$52,848.11
11	4	Sets	ABS Brakes Diagnostic Software (Section 5.3.7 of the Technical Specifications – Volume 2) (coach set)	$439.45	$1,757.79
12	4	Sets	Fire Suppression System Testing Kit (Section 5.11 of the Technical	$802.36	$3,209.43

No.	Qty.	Unit	Description	Unit Price	Total Price
			Specification – Volume 2) (coach set)		
13	6	Lots	PLC System, Laptop Programmer and Maintenance Reader (Section 7.9 of the Technical Specifications – Volume 2)	$534.97	$3,209.82
14	2	Lots	Powerplant dolly including ESS, ramp and equipment box dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	$2,198.09	$4,396.18
15	4	Each	Automatic Passenger Counter diagnostic tools and software required for service (Section 3.18 of the Technical Specifications	$1,616.67	$6,466.68
16	4	Sets	Wireless, Onboard Diagnostic Communication Sending Unit (to be used for real-time off sight engineering support) (coach set)	Not Applicable	Not Applicable
17	4	Each	ToughBook diagnostic Computers (to communicate with vehicle using wireless and/or plug-in diagnostic communication links	$2,466.16	$9,864.63
18	6	Each	Latest data link handheld diagnostic devise capable of reading propulsion system and chassis maintenance data	Not Applicable	Not Applicable
19	4	Sets	Low Floor Axle Tool Kit (Section 5.1.1 of the Technical Specifications – Volume 2)	$71,581.22	$286,324.88
20	8	Each	Bus-mounted data recorder test, troubleshoot and repair equipment (Section 5.10 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
21	4	Sets	Propulsion system diagnostic and specialty tool kit (Section 6.2 of the Technical Specifications – Volume 2)	$34,128.35	$136,513.40
22	2	Each	Disc brake lathe and attachment fixture for SFMTA STAR machine to service the rotors on the vehicle	$34,364.00	$68,728.00
23	1	Sets	Propulsion System Generator Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable
24	1	Sets	Propulsion System Motor Dolly (Section 11.6.1 of the Technical Specifications – Volume 2)	Not Applicable	Not Applicable

No.	Qty.	Unit	Description	Unit Price	Total Price
25	1	Kit	Camera Way Side Kit	$305,000.00	$305,000.00
26	1	Kit	Clever Devices – Cisco: Hardware, Licenses, Cabling & Installation Services Site Survey, Onsite Installation, Configuration and ATP Training	$84,340	$84,340
Grand Total					$1,497,528.76

Grand Total entered as Item #6 on the Schedule of Prices (Schedule 3.1) for 60-Ft Low Floor Diesel Hybrid Coaches.

Exhibit 2: PROJECT DELIVERY SCHEDULE

40-FT LOW FLOOR DIESEL HYBRID COACHES

Item	Calendar Days after Notice-to-Proceed
Submittal of Baseline Schedule and Management Work Plan	35
Submittal of vehicle drawings, control, Reliability Program Plan and test plans	175
Submittal of training program (including lesson plans)	60
Delivery of prototype coach[1]	203
Submittal of draft operations, maintenance, parts manuals, recommended spare parts	203

Item	Calendar Days after Approval of Prototype Coach
Beginning of coach delivery[2]	105
Delivery of first half of spare parts (Lot 1)	100
Delivery of second half of spare parts (Lot 2)	200
Completion of training program	730
Submittal of final operations, maintenance, and parts manual	100
Delivery of special tools	100
Completion of coach delivery	260

1 Approval to deliver lead coach will not be granted until after receipt and approval of all vehicle drawings, control and test plans.

2 Approval to deliver production vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance, and parts manuals; and after successful completion of all appropriate tests as described in Section 11.2 of the Technical Specification.

Exhibit 2.1: PROJECT DELIVERY SCHEDULE
60-FT LOW FLOOR DIESEL HYBRID COACHES

Item	Calendar Days after Notice-to-Proceed
Submittal of Baseline Schedule and Management Work Plan	35
Submittal of vehicle drawings, control, Reliability Program Plan and test plans	175
Submittal of training program (including lesson plans)	60
Delivery of prototype coach[1]	203
Submittal of draft operations, maintenance, parts manuals, recommended spare parts	203

Item	Calendar Days after Approval of Prototype Coach
Beginning of coach delivery[2]	105
Delivery of first half of spare parts (Lot 1)	100
Delivery of second half of spare parts (Lot 2)	200
Completion of training program	730
Submittal of final operations, maintenance, and parts manual	100
Delivery of special tools	100
Completion of coach delivery	300

1 Approval to deliver lead coach will not be granted until after receipt and approval of all vehicle drawings, control and test plans.

2 Approval to deliver production vehicles will not be granted until after submittal of a satisfactory training plan; draft operations, maintenance, and parts manuals; and after successful completion of all appropriate tests as described in Section 11.2 of the Technical Specification.

EXHIBIT 3

FTA REQUIREMENTS FOR PROCUREMENT CONTRACTS

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

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

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

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

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

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

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency ("SFMTA"). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

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

VI. CIVIL RIGHTS

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

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

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

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

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

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

VII. DBE/SBE ASSURANCES

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

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

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

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

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

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same

prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

IX. ENERGY CONSERVATION REQUIREMENTS

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

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

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

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

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

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

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

XII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express

consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIII. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVI. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases ($100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVII. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

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

when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XVIII. RECYCLED PRODUCTS

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

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

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

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

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

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

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

XX. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

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

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

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

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

XXI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

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

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

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

XXII. FLY AMERICA

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

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

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

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING

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

XXVI. SEAT BELT USE

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