

**CITY OF WILSONVILLE
GOODS AND SERVICES CONTRACT**

This Goods and Services Contract (“Contract”) for the Battery Electric Trolley purchase is made and entered into on this _____ day of August 2023 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Schetky Northwest Sales, Inc.**, an Oregon corporation (hereinafter referred to as “Supplier”).

RECITALS

WHEREAS, the City wishes to purchase equipment that Supplier is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Supplier represents that Supplier is qualified to supply the equipment described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Supplier is prepared to provide such services as the City does hereinafter require;

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional documents: the Battery-Electric Replica Trolley Request for Proposals, dated May 18, 2023, and Supplier’s Proposal in response thereto (together with this Contract collectively referred to herein as “Contract Documents”). Supplier must be familiar with all of the foregoing and comply with them. All Contract Documents should be read in concert and Supplier is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Goods Purchased, Equipment Price, and Delivery Date

Supplier will supply the equipment described in the Contract Documents, and as more particularly described in the Scope of Equipment attached hereto as **Exhibit A** and incorporated by reference herein (“Equipment”). The price of the Equipment is FIVE HUNDRED NINETY-NINE THOUSAND SEVEN HUNDRED DOLLARS (\$599,700) and includes delivery to 28879 SW Boberg Road, Wilsonville, Oregon 97070 (“Delivery Location”). Sale shall occur upon inspection of the Equipment by the City and acceptance of delivery at the Delivery Location. The City will pay Supplier in full within 30 days of acceptance of delivery of the Equipment.

Supplier will schedule a date and time for delivery. Delivery must occur on or before September 30, 2024.

Section 3. Subcontractors and Assignments

Supplier shall neither subcontract with others for any of the services prescribed herein nor assign any of Supplier's rights acquired hereunder.

Section 4. Insurance

4.1. **Business Automobile Liability Insurance.** If Supplier will be using a motor vehicle in the performance of the services herein, Supplier shall provide the City a certificate indicating that Supplier has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

4.2. **Workers Compensation Insurance.** Supplier and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Suppliers who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

4.3. **Certificates of Insurance.** As evidence of the insurance coverage required by this Contract, Supplier shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Supplier agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Supplier will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

4.4. **Primary Coverage.** The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Supplier shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Supplier will be required to maintain such policies in full force and effect throughout any warranty period.

Section 5. Warranties.

Equipment warranties are attached hereto as **Exhibit B**. Supplier hereby represents that Supplier will promptly and thoroughly perform all warranty services at its location in Portland or at another location mutually agreed upon, in writing, by the parties.

Section 6. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Supplier.

Section 7. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville SMART
 Attn: Scott Simonton, Fleet Manager
 29799 SW Town Center Loop East
 Wilsonville, OR 97070-9454

To Supplier: Schetky Northwest Sales, Inc.
 Attn: Kevin Mansfield
 8430 NE Lombard Street
 Portland, OR 97220

Section 8. Early Termination; Default

8.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

8.1.1. By mutual written consent of the parties;

8.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Supplier by mail or in person; or

8.1.3. By Supplier, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Supplier, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

8.2. If the City terminates this Contract, in whole or in part, due to default or failure of Supplier to perform services in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Supplier shall be liable for all costs and damages incurred by the City as a result of the default by Supplier, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Supplier. In the event of a default, the City will provide Supplier with written notice of the default and a period of ten (10) days to cure the default. If Supplier notifies the City that it wishes to cure the default but cannot, in good faith,

do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, which agreed upon extension must be in writing and signed by the parties prior to the expiration of the cure period. Unless a written, signed extension has been fully executed by the parties, if Supplier fails to cure prior to expiration of the cure period, the Contract is automatically terminated.

8.3. If the City terminates this Contract for its own convenience not due to any default by Supplier, payment of Supplier shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Supplier against the City under this Contract.

8.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Supplier or the City that accrued prior to such termination.

Section 9. Liquidated Damages

9.1. The City and Supplier recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the trolley is not delivered on time in accordance with this Contract. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the trolley is not delivered on time. Accordingly, instead of requiring any such proof, the City and Supplier agree that as Liquidated Damages for delay (but not as a penalty), Supplier shall pay the City the amount of One Hundred Dollars (\$100) per day for each and every day that expires after the agreed upon delivery date (“Liquidated Damages”).

9.2. The parties further agree that this amount of Liquidated Damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the Liquidated Damages above, Supplier shall reimburse the City for all costs incurred by the City for inspection and project management services required beyond the time specified for final delivery of the trolley. If Supplier fails to reimburse the City directly, the City will deduct the cost from Supplier’s final pay request.

9.3. Supplier will not be responsible for Liquidated Damages or be deemed to be in default by reason of delays in performance due to reasons beyond Supplier’s reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Supplier’s direction and control that preclude Supplier from performing under the Contract (“Force Majeure”). In the case of the happening of any Force Majeure event, the time for completion of Supplier’s performance under the Contract will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 10. Miscellaneous Provisions

10.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other

documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

10.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

10.3. Equal Opportunity. No person shall be discriminated against by Supplier in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City.

10.4. No Assignment. Supplier may not delegate the performance of any obligation to a third party unless mutually agreed, in writing.

10.5. Adherence to Law. This Contract shall be subject to, and Supplier shall adhere to, all applicable federal, state, and local laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Supplier is required by law to obtain or maintain in order to perform the services described in this Contract shall be obtained and maintained throughout the term of the Contract.

10.6. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

10.7. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

10.8. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

10.9. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights

hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

10.10. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

10.11. Modification. This Contract may not be modified except by written instrument executed by Supplier and the City.

10.12. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

10.13. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

10.14. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

10.15. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

10.16. Interpretation. As a further condition of this Contract, the City and Supplier acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

10.17. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

10.18. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

10.19. Authority. Each party signing on behalf of Supplier and the City hereby warrants actual authority to bind their respective party.

Supplier and the City hereby agree to all provisions of this Contract.

SUPPLIER:

CITY:

SCHETKY NORTHWEST SALES, INC.

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

EIN/Tax I.D. No. _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of Wilsonville, Oregon

EXHIBIT A

Scope of Equipment

Supplier to provide one (1) battery-electric replica trolley which meets or exceeds the following required specifications:

Vehicle to be approximately 30-35 feet in length
Vehicle chassis to be OEM battery electric platform, BEV conversions will not be considered.
Two mobility device securement stations with floor mounted securement track, and adequate number of Q'straint straps (or approved equal)
Desired seating capacity 26-32.
Power adjustable driver's seat. Seat to be upholstered in vinyl, color to be Transit gray.
Passenger seating to be genuine hardwood slat style, finished to match exterior wood package.
Leather loop style standee grab straps to be installed on both sides of the aisle, minimum qty. 8 total.
All interior stanchions and standee rails to be finished in brass.
Delete passenger seatbelts.
Full length Plexiglas driver modesty panel.
Braun NCL919 wheelchair lift (or approved equal). Lift to be mounted directly aft of passenger entrance door. Lift shall feature a dedicated entry door.
Emergency escape roof hatch.
Public address system with a minimum of one auxiliary port.
Public address system to include six (6) speakers, evenly spaced in the ceiling of the bus.
Interior lighting preferred to be incandescent (not LED)
Passenger signal system w/ stop requested sign, operated by pull cords (no touch tape) with one time only chime (dual chime for ADA positions). Stop requested light on dashboard.
Wheelchair door ajar warning light on dashboard.
Motorola APX 6500 2 way radio, radio must meet current Clackamas County C800 digital specifications.
Hanover Displays amber LED front and side destination signs w/ software package (or approved equal)
REI HD5-600 six camera surveillance system with 750 GB storage drive (or approved equal), system to be Wi-Fi/GPS enabled.
Minimum 58,000 BTU A/C system. Skirt mounted condenser unit must be mounted fore of rear axle. Units mounted aft of rear axle will not be deemed acceptable. Roof mounted units may be considered, vendor to provide height dimension on any roof mounted A/C equipment.
Minimum 40,000 BTU passenger cabin heater, under seat or floor mount acceptable.
ITS system: GMV Syncromatics, to include MDT w/ RAM mount, APC, and automated stop announcements. Bidder to work directly with GMV to ensure proper equipment.
Gerflor anti-skid flooring (or approved equal), color TBD, vendors to include color choices in bid package.
Rubber step nosing, color TBD.
Standee line.

Vehicle must include 12V or 24V power distribution system.
Vehicle must provide a nominal range of at least 125 miles per charge
Vendor to provide detailed list of applicable vehicle chargers, and anticipated charging times with bid package
Vendor to provide on-site technical support at time of vehicle delivery, for the purpose of ensuring vehicle/charger compatibility.
Heated/remote exterior mirrors.
Electronic LED Yield sign wired to left turn signal.
Flush mounted or shielded side turn signals, midship mounted.
Docking lights for lift entrance.
Front standoff mount, capable of accepting owner supplied Sportworks Apex 3 bicycle rack.
Exterior paint color TBD, vendor to supply color choices with bid package.
Pinstripe package to be included.
5 lb. ABC fire extinguisher.
First aid kit.
Biohazard cleanup kit.
Minimum 34" electric passenger entrance door, 40" door preferred.

Sample floorplan

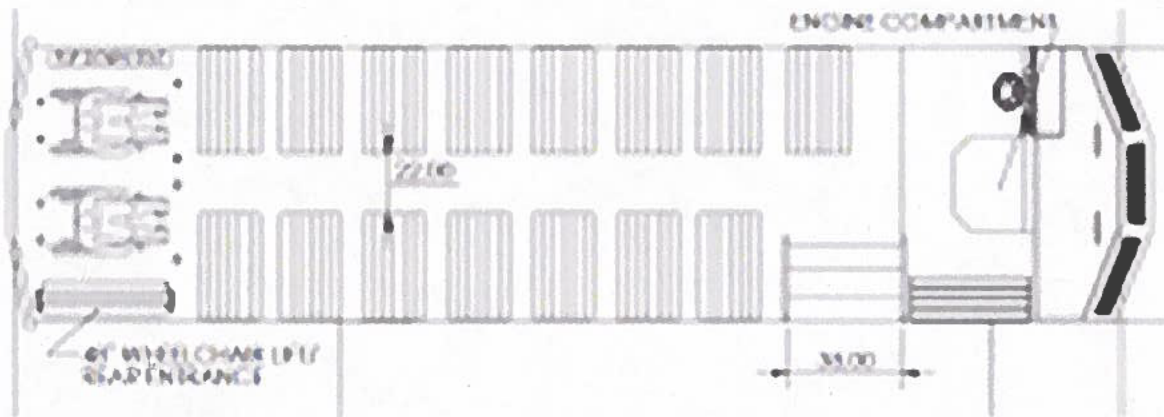




EXHIBIT B

Hometown Manufacturing, Inc.

750 Industrial Parkway | PO Box 185
Crandon, WI 54520
Phone: 715-301-0149 | Fax: 715-478-5095
www.hometown-mfg.com

WARRANTY

**Hometown Manufacturing, Inc. / Freightliner / Proterra
Villager Electric Trolley**

Complete Trolley Materials and Workmanship – 1 Year
Body and Chassis Structural Integrity – 3 Years / 50,000 Miles
Proterra Battery - 8 Years / 150,000 Miles