

**CITY OF WILSONVILLE
GOODS AND SERVICES CONTRACT**

This Goods and Services Contract (“Contract”) for the Battery Electric Shuttle Bus Purchase is made and entered into on this _____ day of _____ 2024 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Northwest Bus Sales, Inc.**, a Washington 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: Battery Electric Shuttle Bus Purchase Request for Proposals - Goods and Services, dated January 9, 2024, and Supplier’s Proposal in response thereto (together with the 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 THREE HUNDRED FIFTY-NINE THOUSAND FIFTY-TWO DOLLARS (\$359,052) and includes delivery to 28879 SW Boberg Road, Wilsonville, Oregon. Sale shall occur upon inspection of the Equipment by the City and acceptance of delivery at the City location shown above. 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 June 30, 2025.

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 Washington 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: Northwest Bus Sales, Inc.
Attn: Rob Goolsby
33207 Pacific Hwy South
Federal Way, WA 98003

Section 8. Required Federal Provisions

This Contract is funded, in whole or in part, with federal funds. Supplier must therefore comply with all of the following, in addition to the provisions listed above:

8.1. **Energy Conservation.** Supplier 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.

8.2. **Bus Testing.** Supplier agrees to comply with the Bus Testing requirements under 49 USC § 5318(e) and the FTA's implementing regulation at 49 CFR Part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Supplier shall obtain a copy of the bus testing report(s) from the operator of the testing facility and is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the City prior to final acceptance of the first vehicle by the City. The complete bus testing reporting requirements are provided in 49 CFR § 665.11.

8.3. **Recovered Materials.** Supplier agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended (42 USC § 6962), and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials" (40 CFR Part 247).

8.4. **Buy America.** Supplier agrees to comply with 49 USC § 5323(j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in Federal Transit Administration-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 USC § 5323(j)(2)(C) and 49 CFR § 661.11. All steel must originate in the USA and not leave the USA at any point. Supplier shall have submitted the appropriate Buy America certification to the City before commencement of any services. Supplier must have submitted to the City the appropriate Buy America certification with its Proposal, as proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. See **Exhibit C**.

8.5. **Clean Air and Clean Water.** Supplier agrees to comply with the inspection and other requirements of the Clean Air Act, as amended (42 USC § 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (33 USC § 1251 *et seq.*). Supplier agrees it will not use any violating facilities, it will report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (EPA) “List of Violating Facilities,” and it will report any violation of use of prohibited facilities to the City. Supplier understands and agrees that the City will, in turn, report each violation, as required, to assure notification to the Federal Transit Administration and the appropriate EPA Regional Office.

8.6. **Pre-Award and Post-Delivery Audit Requirements.** Supplier agrees to comply with 49 USC § 5323(m) and the FTA’s implementing regulation at 49 CFR Part 663. Supplier shall comply with the Buy America certification submitted with its Proposal. Supplier agrees to participate and cooperate in any pre-award or post-delivery audits performed pursuant to 49 CFR Part 663 and related FTA guidance.

8.7. **Access to Records.** The following federal access to records requirements apply to this Contract:

8.7.1. Supplier agrees to retain complete and readily accessible records related in whole or in part to this Contract, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

8.7.2. Supplier agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. Supplier will maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records will be until the City, SMART, the Federal Transit Administration (FTA) Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

8.7.3. Supplier agrees to provide the City, SMART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of Supplier which are related

to performance of this Contract for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. Supplier also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.

8.8. **Lobbying Restrictions.** Supplier certifies, to the best of its knowledge and belief, that:

8.8.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Supplier, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

8.8.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Supplier will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

8.9. **Contract Work Hours and Safety Standards.** For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Supplier will comply with the Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708), as supplemented by the Department of Labor regulations at 29 CFR Part 5. Under 40 USC § 3702 of the Act, Supplier will compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

8.9.1. Liquidated Damages. In the event of any violation of the requirements of this Section, Supplier will be liable for the unpaid wages. In addition, Supplier will 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 requirements of this Section in the sum of ten dollars (\$10) for each

calendar day on which such individual was required to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by this Section.

8.9.2. Withholding. The FTA 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 this Section.

8.10. **Civil Rights Requirements.** The following civil rights and equal employment opportunity requirements apply to this Contract, and Supplier shall at all times comply with these requirements:

8.10.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), Section 303 of the Age Discrimination Act of 1975, as amended (42 USC § 6102), Section 202 of the Americans with Disabilities Act of 1990, as amended (42 USC § 12132), and federal transit laws at 49 USC § 5332, Supplier agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age, disability, or national origin. In addition, Supplier agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

8.10.2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 USC § 2000e *et seq.*), and federal transit laws at 49 USC § 5332, Supplier agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" (41 CFR Chapter 60), and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965; 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. Supplier agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, 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, Supplier agrees to comply with any implementing requirements the FTA may issue.

8.10.3. Age. In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act" (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance" (45 CFR Part 90); and

federal transit law at 49 USC § 5332, Supplier agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

8.10.4. Disabilities. In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, Supplier agrees that it will not discriminate against individuals on the basis of disability. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

8.11. **Disadvantaged Business Enterprises**. If the City must adopt a Disadvantaged Business Enterprise (DBE) program, the parties will execute a written amendment so that this Contract becomes subject to the City's DBE program. Supplier shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Supplier shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Supplier 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 the City deems appropriate.

8.12. **Program Fraud and False or Fraudulent Statements and Related Acts.**

8.12.1. Supplier acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 USC § 3801 *et seq.*), and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies" (49 CFR Part 31), apply to its actions pertaining to this equipment purchase. Upon execution of this Contract, Supplier 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 this Contract or the FTA assisted equipment purchase. In addition to other penalties that may be applicable, Supplier 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 Supplier to the extent the Federal Government deems appropriate.

8.12.2. Supplier 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 the FTA under the authority of 49 USC Chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on Supplier, to the extent the Federal Government deems appropriate.

8.13. **Suspension and Debarment**. Supplier will comply with and facilitate compliance with U.S. Department of Transportation regulations, "Nonprocurement Suspension and Debarment" (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)" (2 CFR Part 180). Supplier is required to verify that its principals, affiliates, and any subcontracts are eligible to participate in this federally funded Contract and are not presently

declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

Supplier is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing and submitting its Proposal, Supplier has certified as follows:

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

8.14. Trafficking in Persons.

8.14.1. Supplier agrees that it and its employees covered under this Contract may not:

8.14.1.1. Withholding monthly progress payments;

8.14.1.2. Engage in forms of trafficking in persons during the period of time that this Contract is in effect;

8.14.1.3. Procure a commercial sex act during the period of time that this Contract is in effect; or

8.14.1.4. Use forced labor in the performance of the Contract or any subcontracts thereunder.

8.14.2. Supplier agrees to comply, and assures the compliance of each subrecipient, with federal requirements and guidance, including:

8.14.2.1. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g); and

8.14.2.2. The terms of this Section, which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.

8.14.3. Supplier agrees to, and assures that each subrecipient will:

8.14.3.1. Inform the FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and

8.14.3.2. Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, Suppliers, and subcontractors at every tier, including this requirement to flow down the clause.

8.15. Safe Operation of Motor Vehicles. Supplier is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. Supplier agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle Supplier owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the services performed under this Contract.

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

8.17. Violation and Breach of Contract; Termination. The clauses concerning violation and breach of this Contract and termination of this Contract can be found in **Section 9**, below.

8.18. No Obligation by the Federal Government. The City and Supplier acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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, Supplier, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.

8.19. Federal Transit Administration (FTA) Terms Controlling. 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 Contract. Supplier shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

Section 9. Early Termination; Default

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

9.1.1. By mutual written consent of the parties;

9.1.2. 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

9.1.3. 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.

9.2. 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 Contractor fails to cure prior to expiration of the cure period, the Contract is automatically terminated.

9.3. 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.

9.4. 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 10. Liquidated Damages

10.1. 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 bus 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 bus 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").

10.2. 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 bus. If Supplier fails to reimburse the City directly, the City will deduct the cost from Supplier's final pay request.

10.3. 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 11. Miscellaneous Provisions

11.1. 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.

11.2. 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.

11.3. 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.

11.4. No Assignment. Supplier may not delegate the performance of any obligation to a third party.

11.5. Adherence to Law. Supplier shall adhere to all applicable federal and state 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.

11.6. 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.

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

11.8. 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.

11.9. 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.

11.10. 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.

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

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

11.13. 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.

11.14. 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.

11.15. 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.

11.16. 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.

11.17. 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.

11.18. 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.

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

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first above written.

SUPPLIER:

CITY:

NORTHWEST BUS 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 shuttle bus which:

Has passed a seven (7) year/200,000 mile Altoona/STURRA test, meaning the bus cannot have any Class 1 failures, or more than two (2) Class 2 failures, reported in the most recent executive summary, and;

Meets or exceeds the following required specifications:

Vehicle to be approximately 24 feet in length w/ 186" wheelbase 450 cutaway chassis (or approved equal).
Desired seating capacity 16 (or 10+2). See desired floorplan, page 2.
Total of three (3) double passenger foldaway seats, creating two wheelchair securement positions.
Floor mounted securement track to run full length of the foldaway seat area.
Power adjustable driver's seat. Seat to be upholstered in vinyl, color to be Transit gray.
Passenger seating to be Freedman Citi-seat (or approved equal) with level 1 vinyl upholstery, Oxen gray.
Passenger seats shall be equipped with Doheny (or approved equal) armrests on the aisle side (excluding foldaway seats).
Passenger seats to be equipped with grab handles on aisle side.
Delete passenger seatbelts.
Plexiglas driver modesty panel.
Minimum 36" electric passenger entrance door, 40" door preferred.
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 shall be LED.
Interior advertising rail package.
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 4500 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.
Gerflor anti-skid flooring, color Griffon gray, flooring material coved to seat rail.
Rubber step nosing, color to be safety yellow.
Standee line.
Vehicle to be equipped with QVM/OEM approved battery electric EV system.
EV system shall be capable of level 2 and DC fast charge.
Vendor to provide on-site technical support at time of vehicle delivery, to ensure compatibility of vehicle to existing chargers.
Vehicle range must exceed 100 miles (nominal).
ITS system: GMV Syncromatics, to include MDT w/ RAM mount, APC, and automated stop announcements. Bidders to work directly with GMV to ensure proper equipment.
Driver side running board.
Heated/remote exterior mirrors.
Electronic LED Yield sign wired to left turn signal.
Exterior LED lighting package.
Flush mounted or shielded LED side turn signals, midship mounted.
Docking lights for lift entrance.
Front standoff mount, capable of accepting owner supplied Sportworks Apex 3 bicycle rack.
Romeo Rim rear bumper, or approved equal.
Exterior paint color shall be fleet white.
5 lb. ABC fire extinguisher.
First aid kit.
Biohazard cleanup kit.
Total of three (3) ignition keys per bus.

Sample floorplan

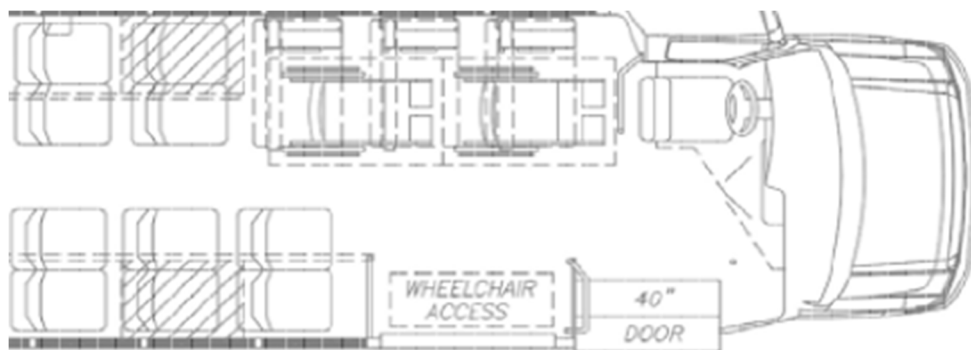


EXHIBIT B



ENDERA COMMERCIAL BUS LIMITED WARRANTY

This limited product warranty for Endera commercial buses (hereinafter referred to as “**Limited Warranty**”) is issued by Endera Motors, LCC, which is headquartered at 804 N. Pratt St, Ottawa, OH 45875, for itself and its legal successors or assigns (hereinafter collectively referred to as “**Endera**”), and applies exclusively to Endera commercial buses (as defined in Section 1) sold and used in the United States.

1. Endera Commercial Buses and Components

Endera commercial buses (“**Vehicles**”) are defined in this Limited Warranty as the following product types:

ENDERA 23’, 24’ 25’ 26’ and 28’ bodies built on Ford E-series cutaway chassis and Chevrolet cutaway chassis.

“**Components**” are defined in this Limited Warranty as any product, part, or component, including but not limited to the chassis and air conditioning system, that are part of the Vehicle and manufactured or supplied by a party other than Endera.

2. Limited Warranty Period and Beneficiary

2.1 Limited Warranty Period

The terms of this Limited Warranty take effect on the date that the Customer, as defined herein below, takes delivery of the Vehicle (hereinafter referred to as the “**Warranty Start Date**”) and shall remain in effect for the duration of the following periods, as applicable (each such period, a “**Limited Warranty Period**”).

1. For the earlier of five (5) years from the Warranty Start Date and 100,000 miles, Endera warrants that the body structure of the Vehicle (including structural metal components welded or mechanically fastened together forming the floor, side walls, roof, front or end caps) will be free from defects in structural integrity (“**Main Body Structure Warranty Period**”).
2. For the earlier of five (5) years from the Warranty Start Date and 100,000 miles, Endera warrants that the body structure will be free of rust-through resulting from corrosion (“**Corrosion Warranty Period**”).
3. For all Components, the original manufacturer’s warranty and warranty process applies.

2.2 Beneficiary

The sole and exclusive beneficiary of this Limited Warranty is the initial end customer who purchases the Vehicle directly or indirectly from Endera or from any one of its authorized manufacturers, dealers or distributors or from any other legitimate source, and is the initial owner of such Vehicle, and any of such Customer's permitted successors or assigns under Section 7 (hereinafter referred to as “**Customer**”).

3. Exclusions

This Limited Warranty shall not apply to the following:

1. The Vehicle has been subject to misuse (such as driving over curbs, overloading, racing or used as a permanent stationary power source, or driving through water deep enough to cause water to enter the cabin), abuse, neglect, accidents, collisions or objects striking the Vehicle;
2. Damage to body structure caused by chemicals, corrosive environments, or abrasion;
3. Damage caused by force majeure such as natural disasters, including but not limited to lightning, hail, frost, snow, storms, tidal waves, floods, fire or explosion, extreme temperatures, earthquakes, typhoons, tornadoes, volcanic eruptions, meteorites, ground motions, earth fissures, landslides, animal damage, hurricanes, or other unusually severe weather events;



4. Damage caused by installation of additional or replacement products, parts, components or attachments, or repairs, modifications or alterations;
5. Surface rust, deterioration and damage of paint, trim, upholstery, and other appearance items that result from use and/or exposure to the elements, such as dents and scratches, or due to exposure to harsh chemical washes or degreasers or chemicals, hard road salts or calcium chloride, damage or corrosion caused by environmental causes such as flooding, airborne fallout, acts of nature or other atmospheric conditions;
6. Parts and labor needed to maintain the Vehicle and the replacement of parts due to normal wear and tear, such as filters, belts, tires, brakes or other parts which are part of normal maintenance replacement; and normal maintenance of parts such as wiper blades, brake pads/liners, wheel alignment, filters and fluids;
7. Direct or indirect damage caused by theft, vandalism or acts beyond the control of Endera, including but not limited to accidents, riots, war, insurrection and civil disturbance;
8. Damage caused by the accident or negligence of Customer or any person other than Endera;
9. Damage caused by Customer's failure to provide normal preventative maintenance as customarily accepted in the industry, or damage caused by the Customer's failure to service the Vehicle or otherwise maintain and operate the Vehicle in accordance with the Endera product technical specifications or operating and maintenance manual;
10. Damage during shipment after delivery to Customer;
11. Vehicles that have had the odometer disconnected, altered, or inoperative with the result that actual mileage cannot be determined, vehicles that have ever been labeled or branded as dismantled, fire, flood, junk, rebuilt, reconstructed, or salvaged, or vehicles that have been determined to be a total loss by an insurance company;
12. Any aftermarket products, parts or components installed after delivery to Customer, or any damage caused due to the failure of such products, parts or components.

4. Warranty Claims

4.1 Time Limit for Warranty Claims

All claims under the Limited Warranty must be submitted in writing to Endera within the earlier thirty (30) calendar days after it became aware of non-conformity with the Limited Warranty, and (ii) the respective expiry date of the Limited Warranty Period. Endera shall have the right to reject warranty claims submitted outside of such period.

4.2 Burden of Proof for Warranty Claims

A warranty claim will only be accepted if Customer provides reasonably sufficient documentary evidence to demonstrate that the root cause of the fault or non-conformity in the Vehicle is a breach of the Limited Warranty.

4.3 Warranty Claim Procedures

Customer shall, as soon as it becomes aware of an instance of non-conformity with the Limited Warranty, immediately (but in any event no later than the earlier of thirty (30) calendar days after it became aware of non-conformity with the Limited Warranty. Customer must provide the following information ("Required Information") when making a claim under this Limited Warranty:

- Make, model and year of vehicle
- VIN number or Endera unit number of vehicle
- Current mileage
- Date of failure
- Acceptance date of vehicle

Upon receiving the Required Information, Endera will review the claim and issue an authorization number if it believes the claim is potentially covered under this Limited Warranty. No repairs or repair reimbursements will be funded without a valid Endera



authorization number. Warranty claims should be commenced through the Vehicle dealer, or by email to warranty@enderacorp.com for direct purchases.

5. Remedy for Warranty Claim

5.1 Remedy under the Limited Warranty

Should Endera confirm that the Vehicle is not in conformity with the Limited Warranty, it shall, at its sole discretion, within a reasonable time period, notify the Customer that Endera will either: a) repair the Vehicle at no charge, or; b) reimburse Customer the reasonably and properly incurred costs of having a third party conduct the repairs. Endera may take possession of the Vehicle or Vehicle Component, conduct such repair at the location where it is held by Customer or request Customer to deliver the Vehicle or Vehicle Component to Endera or to a third party workshop approved by Endera. If Customer delivers the Vehicle or Vehicle Component to Endera or a workshop approved by Endera, the cost of such delivery and return delivery shall be at Customer's expense. All warranty work performed by a third party is subject to Endera's prior approval, and examination upon completion.

5.2 Exclusive Remedy

The remedy under the Limited Warranty as set forth above is the sole and exclusive responsibility and obligation of Endera to Customer under this Limited Warranty, and is also the sole and exclusive remedy of Customer for the Vehicle under this Limited Warranty.

Performance of Endera's warranty obligation under this Limited Warranty shall not extend the Limited Warranty Period. The remainder of the original warranty period shall still apply to the repaired or replaced Vehicle. If the production of a component necessary to repair the Vehicle has been discontinued, withdrawn from the market, or is otherwise unavailable, Endera shall have the right to replace with a similar or superior type, the performance of which should not be lower than the original type.

6. Limitation of Liability

6.1 Notwithstanding anything to the contrary herein, the warranties set forth in this Limited Warranty are in lieu of all other warranties, whether express, implied, or statutory, including but not limited to any implied warranties of merchantability, fitness for a particular purpose or non-infringement. However, if Customer is identified as a "consumer" and the Vehicle as a "consumer product" in accordance with the laws governing the protection of consumer rights in the country where the vehicle was originally delivered by Endera to the original Customer, to the extent required by applicable law, any implied warranties of merchantability, fitness for a particular purpose or non-infringement are limited to the Limited Warranty Period set forth above, or such shorter period set forth in applicable law. This Limited Warranty gives Customer specific legal rights, and Customer may also have other rights that vary by state, province or jurisdiction, and such other rights shall remain unaffected.

6.2 Unless otherwise provided by applicable mandatory law, Endera shall not be liable for any of the following losses: a) personal injury or property damage; b) any other loss or injury whatsoever arising out of or in connection with the Vehicle (including but not limited to any defects in the Vehicle or arising from the use or installation thereof); and c) any incidental, consequential or special damages resulting from any cause. Endera's liability for fraudulent or willful intent, gross negligence or personal injury, in each case, under applicable mandatory liability law shall remain unaffected. Notwithstanding any other provision of this Limited Warranty and including if Endera is liable to compensate Customer hereunder, the total compensation paid or payable by Endera, and the total liability of Endera hereunder, shall not exceed the amount actually received by Endera as indicated in the original sales agreement for the Claim Vehicle. The limitations of liability under this Limited Warranty will not apply to the extent restricted or prohibited by applicable mandatory law.

6.3 Customer acknowledges that the foregoing limitations on liability are an essential element of the relevant sale contract



between the parties and that in the absence of such limitations the purchase price of the relevant Vehicle would be substantially higher.

6.4 Endera has used bolding and underlining to draw Customer's attention to clauses which exclude or limit its liability under this Limited Warranty, and has explained the relevant clauses as required by Customer. There is no disagreement between the parties over the understanding of any clause of this Limited Warranty.

7. Assignment of Warranty

Upon written notice to Endera, Customer may assign this Limited Warranty to an affiliate of Customer or a new owner of the Vehicle, provided that: (i) there is no outstanding payment due under the sale contract and (ii) the assignee agrees to be bound by these Limited Warranty terms. If requested by Endera, Customer shall provide reasonable evidence of such succession or transfer of ownership. This Limited Warranty may not otherwise be assigned or transferred, and any attempt to assign or transfer in violation of this Section 7 shall be null and void.

8. Miscellaneous

8.1 Severability

If any portion or provision of this Limited Warranty is held to be invalid, illegal or unenforceable under applicable law, or the application of such portion or provision to certain persons or in certain circumstances is held to be invalid, illegal or unenforceable, then the portion or provision shall be deemed to be changed and interpreted to accomplish the objectives of such portion or provision to the greatest extent possible under applicable law and the remaining portions or provisions of this Limited Warranty or the applicability of this Limited Warranty will remain unaffected, independent, and valid.

8.2 Force Majeure

Endera shall not be responsible or liable in any way to Customer for any non-performance or delay in Endera's performance of its obligations under this Limited Warranty due to occurrences of any force majeure event, which is an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of Endera. Such events or circumstances may include, but are not limited to: actions or inactions of any governmental authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, natural disasters, including but not limited to lightning, hail, frost, snow, storms, tidal waves, floods, fire or explosion, extreme temperatures, earthquakes, typhoons, tornadoes, volcanic eruptions, meteorites, ground motions, earth fissures, landslides, animal damage, hurricanes, or other unusually severe weather events, strikes, lockouts or other labor disputes, unavailability of suitable or sufficient labor, material, or capacity or technical or yield failures and any other unforeseen event beyond its control, including, without limitation, any technological or physical event or condition which is not reasonably known or understood by Endera at the time of the sale of the Vehicle or the notification by Customer of the relevant warranty claim. Notwithstanding that the COVID-19 pandemic initiated prior to delivery of the Vehicle, its effect on global supply chains, manufacturing and the economy are ongoing. In light of this, the COVID-19 pandemic and its effects may cause delays and constitute a force majeure event.

8.3 Governing Law and Dispute Resolution

Any dispute related to or arising out of this Limited Warranty, including without limitation any question regarding its existence, validity, breach, or termination, shall be referred to and finally resolved pursuant to the governing law clauses and dispute resolution procedures under the terms of sale between the original purchaser and Endera.

BUY AMERICA CERTIFICATION

Certification Requirement for the Procurement of Steel, Iron, or Manufactured Products

SMART Bus Purchase

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS:

The bidder or offeror hereby certifies that it will comply with the requirements of 49 USC 5323(j), and the applicable regulations in 49 CFR Part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS:

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j), but it may qualify for an exception to the requirement pursuant to 49 USC 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____