

**RESOLUTION NO. 2786**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING SOUTH METRO AREA REGIONAL TRANSIT (SMART) TO PURCHASE TWO 21-PASSENGER COMPRESSED NATURAL GAS BUSES FROM SCHETKY NW SALES, INC.**

WHEREAS, a goal of SMART (South Metro Area Regional Transit) is to transition its bus fleet to low emission alternatively fueled vehicles; and

WHEREAS, SMART has an immediate need to replace aging diesel buses; and

WHEREAS, SMART was awarded a competitive state grant specifically for the purchase of replacement buses; and

WHEREAS, staff completed the RFQ process required by the State of Oregon; and

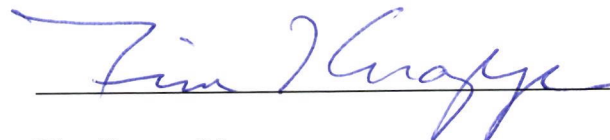
WHEREAS, Three quotes were received; only the quote submitted by Schetky NW Sales met the minimum requirements specified in the RFQ; and

WHEREAS, the City Council has duly appointed itself as the Local Contract Review Board, and acting as the Local Contract Review Board, is authorized to award the purchase contract in accordance with State requirements as recommended by staff.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

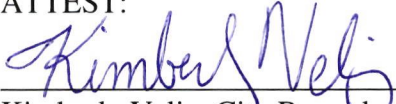
1. Based on the above recitals, which are incorporated herein, the City Council, acting as the Local Contract Review Board, does hereby approve and authorize SMART to award a purchase contract for two 21-passenger CNG buses to Schetky NW Sales, Inc.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 3<sup>rd</sup> day of February 2020, and filed with the Wilsonville City Recorder this date.



Tim Knapp, Mayor

ATTEST:



\_\_\_\_\_  
Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Linville	Yes
Councilor Lehan	Yes
Councilor West	Yes

## CITY OF WILSONVILLE GOODS AND SERVICES CONTRACT

This Goods and Services Contract (“Contract”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020 (“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 perform the services 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. Goods Purchased, Equipment Price, and Delivery Date**

Supplier will supply to the City two (2) transit vehicles, as more particularly described in the Quote/ Scope of Equipment attached hereto as **Exhibit A** and incorporated by reference herein (“Equipment”). The price of the Equipment is TWO HUNDRED THIRTY-SIX THOUSAND SIX HUNDRED DOLLARS (\$236,600) 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 October 1, 2020.

#### **Section 2. 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 3. Insurance**

**3.1. 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**.

**3.2. 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.

**3.3. 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.

**3.4. 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 4. Warranties.**

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

#### **Section 5. 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 6. 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: Mark Zollner  
8430 NE Killingsworth Street  
Portland, OR 97220

## Section 7. 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:

7.1. **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.

7.2. **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.

7.3. **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).

7.4. **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 Work. 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**.

7.5. **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.

7.6. **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.

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

7.7.1. 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.

7.7.2. 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.

7.7.3. 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.

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

7.8.1. 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.

7.8.2. 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.

7.9. **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.

7.9.1. 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 and subcontractor 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 workweek of forty (40) hours without payment of the overtime wages required by this Section.

7.9.2. 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.

7.10. **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:

7.10.1. 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.

7.10.2. 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.

7.10.3. 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.

7.10.4. 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.

7.11. **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.

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

7.12.1. 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.

7.12.2. 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(1) on Supplier, to the extent the Federal Government deems appropriate.

7.13. **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.***

#### **7.14. Trafficking in Persons.**

7.14.1. Supplier agrees that it and its employees that participate in the vanpool program covered under this Contract may not:

7.14.1.1. Withholding monthly progress payments;

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

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

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

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

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

7.14.2.2. 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.

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

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

7.14.3.2. 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.

**7.15. 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 Work performed under this Contract.

**7.16. 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.

**7.17. 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 8**, below.

**7.18. 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.

**7.19. 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 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, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

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 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").

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 bus. 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 documents, the provisions of this Contract shall control.

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.

10.5. 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 work described in this Contract shall be obtained and maintained throughout the term of this 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, and 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. 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.

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

**SUPPLIER:**

**CITY:**

SCHETKY NORTHWEST SALES, INC.

CITY OF WILSONVILLE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

Employer I.D. No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda Guile-Hinman, Asst. City Attorney  
City of Wilsonville, Oregon

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## REQUEST FOR TRANSIT VEHICLE PRICE QUOTE (RFQ)

This is (check appropriate):

- Initial Request for Quote** (from Requesting Agency to Vendors)  
Due Date: 12/27/2019 \_\_\_\_\_
- Response to RFQ** (from Responding Vendor back to Requesting Agency)
- Grant Funded Purchase**

**VENDOR (Business Name):** SCHETKY NORTHWEST SALES, INC

**Vendor Contact Person:** CHASE SCHETKY

**Phone:** 503-607-3141

**Email Address:** [CHASES@SCHETKYNW.COM](mailto:CHASES@SCHETKYNW.COM)

**Alt Phone:** 503-730-8383

**Meets Buy America Standards (49 USC § 5323(j); 49 CFR part 661)**

### REQUESTING AGENCY INFORMATION

**Agency:** City of Wilsonville **Date:** 11/27/2019

**Contact Person:** Scott Simonton **Phone:** 503-570-1541

**Email Address:** \_simonton@ci.wilsonville.or.us **Fax:** \_\_\_\_\_

**Agency Address:** \_29799 SW Town Center Loop E, Wilsonville, OR 97070

The above Agency, through its Public Transit program or public transit affiliate, is requesting price quotes from Oregon State Price Agreement Contract Vendors for the purchase of the following vehicle(s):

**From:** Oregon State Price Agreement **No. of Vehicles Required:** \_2\_

**PTD Vehicle Category (Check):** (Please see *PTD Vehicle Descriptions and Useful Life Standards*)

Cat A  Cat B  Cat C  Cat D  Cat E \_\_\_\_\_ (select from 1 to 3)

**Length (can be range):** \_26\_ **Regular Seats:** 21 **ADA Stations/Tiedowns:** 2

**Fuel Type:**  Gasoline  Diesel  Bio-fuel  Hybrid  CNG  Propane



High Floor    Low Floor   Other Comment: \_\_\_\_\_

The general specification for vehicle is as follows:

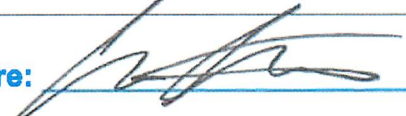
A. VENDOR'S VEHICLE BASE PRICE INFORMATION	VEHICLE BASE PRICE
<i>This Section to be completed by Vendor</i>	<i>Enter base price from State , Price Agreement below</i>
Vehicle Make/Model: 2019 ELDORADO FORD E-450 AEROTECH	
Length: APPROXIMATELY 26'	
Fuel Type: CNG	
Floor: <input checked="" type="checkbox"/> High Floor <input type="checkbox"/> Low Floor   Other:	
No. of Regular Passenger Seats:21	
No. of ADA Stations w/Tiedowns Desired:2	
Other Special Note: ENGINE WITH HARDENED VALVES	\$80,194

**B. VEHICLE REQUIRED SPECIFICATIONS**

<i>Requesting Agency completes Description column Vendor completes "Vendor Response" columns</i>	VENDOR RESPONSE
<i>Requesting Agency's Required Specifications Description</i>	<i>Vendor Suggestions (related to vehicle specs)</i>
Altoona Test Executive Summary	YES
Vehicle to be approximately 26 feet long w/ 176" wheelbase Ford F-450 chassis, or approved equal	YES
Braun NCL919 wheelchair lift, or approved equal. Lift to be mounted immediately aft of passenger entrance door, with a dedicated lift entry door.	YES
Vehicle to be equipped with OEM gaseous fuel prep package and Factory QVM approved CNG conversion.	YES
CNG cylinder storage capacity is to be a minimum of 40 GGE	YES
PA system w/ gooseneck mic, one aux port, and six speakers	YES
Power driver seat – driver's seat to be upholstered in vinyl, transit gray.	YES
Plexiglas driver barrier	YES
Heated/remote exterior mirrors	YES
Altro flooring, or approved equal, Altro yellow step nosing	EQUAL-GERFLOR SIRIUS

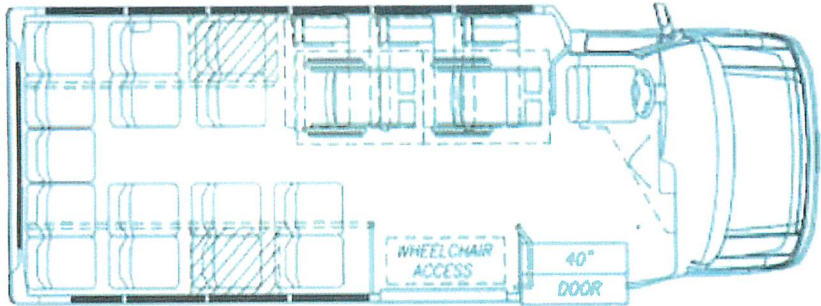
Minimum 36" electric passenger entrance door	YES- 40" DOOR
58,000 BTU A/C system. Skirt mounted condenser unit must be located fore of rear axle. Units mounted aft of rear axle will not be accepted. Roof mounted units may be considered, bidder to note additional height dimensions if proposing roof mounted units.	YES-60,000 BTU
Driver side running board	YES
<b>Requesting Agency's Required Specifications Description (Continued)</b>	<b>VENDOR RESPONSE</b>
	<i>Vendor Suggestions (related to vehicle specs)</i>
Emergency escape roof hatch	YES
Hanover Displays amber LED front & side destination signs w/software package, or approved equal	YES
Passenger seating to be Freedman Citi-seat, or approved equal, with vinyl upholstery, Level 1, Oxen gray. Armrests and grab rails on aisle side of passenger seating. No passenger seat seatbelts (apply credit if included in base price)	YES- CITI-SEAT
Skirt mounted battery box with sliding battery tray.	YES
Passenger signal system w/stop request sign and pull cords (no press tape). One time only chime. Stop requested light on dashboard.	YES
Exterior LED light package Skirt mounted docking lights	YES
Interior advertising rail package	YES
Upgrade to full length W/C track system for 2 stations	YES
Flush mounted or shielded LED side turn signals	
Electronic LED Yield sign	YES
REI HD800 w/6 camera 750 GB DVR system, or approved equal. System to be Wi-Fi/GPS enabled	YES
Sportworks front standoff mount, capable of accepting Apex 3 rack, or approved equal	YES
Romeo Rim rear bumper, or approved equal	YES
Motorola APX4500, or approved equal, two-way radio w/ antenna, installed	YES
<b>Subtotal Cost of Required Options:</b>	<b>\$38,104</b>
<b>Total Vehicle Cost With All Required Options:</b>	<b>\$118,300</b>
<b>C. VEHICLE PREFERRED OPTIONS</b>	

<b>Requesting Agency's Preferred Options Description</b>	<b>Included in Base Price?  YES / NO</b>	<b>\$Additional Cost for Option\$  (or Note Not Available)</b>	<b>Vendor Suggestions  (related to vehicle specs)</b>
<b>Subtotal Cost of Preferred Options:</b>		<b>\$</b>	

**Vendor's Signature:** 
**Date Sent:** 12/27/19

**Vendor's Response Back to RFQ – Please sign and date your response here.**

**Sample Floor plan (Attach or cut-and-paste new plan here, or attach on back)**



**VENDOR INFORMATION**

Vendors are strongly encouraged to submit price quotes using the format provided. Vendors should specifically note if and how they meet the above specifications, and note any differences in what has been called out above, in their price quotes. This may be done on the form, or on an attached sheet. The vehicle(s) will be purchased with funding from the Oregon Department of Transportation, Public Transit Division and the Requesting Agency, and will follow applicable Federal and State procurement guidelines.

**Price Quote shall be submitted to the Requesting Agency contact person named on the first page on this form.**

**Price Quotes may be sent by U.S. Mail, emailed, or faxed to the addresses for Requesting Agency noted on page 1 of this form.**

**VEHICLE SELECTION INFORMATION**

Selection of the vehicle and successful price quote will be based on:

- Lowest Cost With Required Specifications (*Lifecycle costs may be considered in price determination and may affect lowest bid determination*)**
- Best Value Determination (ODOT PTD pre-approval required.)**

**The Best Value Determination criteria are as follows:**