

RESOLUTION NO. 2714

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING SOUTH METRO AREA REGIONAL TRANSIT (SMART) TO PURCHASE TWO 35' BATTERY ELECTRIC BUSES AND CHARGING EQUIPMENT FROM PROTERRA, 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 \$1.45M grant specifically for the purchase of battery electric buses; and

WHEREAS, the aforementioned grant application specifically named Proterra, Inc. as the selected vehicle manufacturer; and

WHEREAS, the Federal Register specifically allows grantees to direct select a vendor for this funding opportunity; and


WHEREAS, staff performed extensive research and peer analysis prior to selecting Proterra, Inc. for this project; 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 Federal 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 35' battery electric buses, and charging equipment, to Proterra, Inc.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 19th day of November 2018, 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 Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

Attachments:

- A. Proterra Inc. – Goods and Services Contract

**CITY OF WILSONVILLE
GOODS AND SERVICES CONTRACT**

This Goods and Services Contract (“Contract”) for the Wilsonville Transit Electric Bus Purchase Project (“Project”) is made and entered into on this ____ day of _____, 2018 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Proterra Inc**, a Delaware 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. Contract Documents

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional documents: the City’s Low-No grant application and subsequent award under FTA § 5339(c) (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 Proterra Catalyst Battery Electric Buses and Depot Charging Stations described in the Contract Documents (“Equipment”) and as more particularly described in the Scope of Equipment attached hereto as **Exhibit A** and incorporated by reference herein. The price of the Equipment is ONE MILLION FIVE HUNDRED THIRTY-FIVE THOUSAND ONE HUNDRED FIVE DOLLARS (\$1,535,105) 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 April 30, 2019.

Section 3. Subcontractors and Assignments

Supplier shall not assign any of Supplier's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Supplier, provided Supplier advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Supplier acknowledges such services will be provided to the City pursuant to a subcontract(s) between Supplier and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Supplier. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Supplier shall not be subject to additional reimbursement by the City.

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**.

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: Proterra Inc.
 Attn: Rich Feldman
 1815 Rollins Road
 Burlingame, CA 94010

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 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**.

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 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.

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.** 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(1) 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. 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.

8.15. 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.

8.16. 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.

8.17. 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.

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

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. Liability

In no event will Supplier be liable to the City for any indirect, incidental, consequential, or punitive damages, or for loss of profits or revenue, whether in an action in contract, tort, strict liability, or otherwise.

Section 12. Intellectual Property

Supplier shall retain ownership of: (1) any patents; (2) inventions, discoveries (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, and technical data; (3) copyrights, copyright registrations, mask works, mask work registrations, and applications therefor in the United States and anywhere in the world, and all other rights corresponding thereto throughout the world; and (4) any other proprietary rights or intellectual property (collectively, the “Intellectual Property”) in or to the technology associated with the Equipment supplied to the City under this Contract. The City and Supplier agree that Supplier shall own any Intellectual Property developed in connection with the Equipment purchased through this Contract, including, without limitation, any alterations or modifications to the Equipment purchased under this Contract made or developed by Supplier.

Supplier hereby grants to the City a royalty-free, paid-up, non-exclusive, non-transferable, irrevocable license to use the Intellectual Property for purposes of operations and maintenance of the Equipment supplied under this Contract. The City agrees that it will not use the Intellectual Property for any commercial or manufacturing purpose, or any purpose not expressly authorized pursuant to this Contract.

Section 13. Miscellaneous Provisions

13.1. 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.

13.2. 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.

13.3. 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.

13.4. No Assignment. Supplier may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

13.5. 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.

13.6. 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.

13.7. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

13.8. 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.

13.9. 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.

13.10. 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.

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

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

13.13. 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.

13.14. 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.

13.15. 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.

13.16. 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.

13.17. 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.

13.18. 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.

13.19. 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:

PROTERRA INC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. 27-1878459

APPROVED AS TO FORM:

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



Customer SMART-Wilsonville
 Number of buses 2
 Bus length / model 35' E2
 Contract/P.O. #

Proterra Tech Spec	Category	Customer Selection	Option	Price Impact
	Base Bus		Low/No 2017 Partner - E2	\$693,000
TS 9	Propulsion System (Electric)	X	E2	NA
	Overhead Fast Charger	X	Base - None	\$0
TS 9			35' Bus Body Only	
		X	Single-Sided Rear Standard J1772-CCS Charge Ports: (2) 120KW CS-Rear Location (240KW Simultaneous)	\$2,366
TS 32.1	Wheels - front	X	Base - Alcoa 22.5 x 8.25 Brushed Aluminum Wheels PN 886510	\$0
TS 32.1	Wheels - rear	X	Base - Alcoa 22.5 x 8.25 Brushed Aluminum Wheels PN 886510	\$0
	Wheel & Tire Accessories	X	Base - Torque Indicators, Green (Wheel Check WLCH-B)	\$0
		X	Hubodometer - Veeder-Root	\$325
		X	Spare Wheel	\$540
TS 32.2	Tires	X	Base - Michelin X InCity Z 305/70R22.5	\$0
		X	Spare Tire	\$735
TS 46.3	Visors / Sun Shades	X	Front and Side Mesh, Solid, Solid/Mesh 30" Front: 1/2 Mesh Upper & 1/2 Solid Lower Side: 1/2 Mesh & 1/2 Solid Vertical Split"	\$96
TS 46.6	Driver Foot Controls	X	Adjustable	\$4,507
TS 74	Vandal Shields	X	Base - None	\$0
TS 71.1	Appearance (Exterior Graphics)	X	Base - Base bus gel coat in white (no wrap / paint)	\$0
TS 75.8	Floor Covering	X	Base - Altro Meta series Altro Meta TFM2702 Genome 2.7mm	\$0
TS 78	Passenger Seating		35' Bus Body Only	
		X	Base - 29 Passenger / USSC Gemini Package - Silver screen AC-507	\$0
TS 79	Passenger Assists (Stanchions)	X	Base - Stainless steel except exit stanchions (yellow), 2 modesty panels without polycarbonate screens, 6 lower level vertical stanchions from ceiling to seats with no bends, 2 upper level horizontal stanchions, 4 vertical upper level stanchions with no bends, 6 grab straps	\$0
		X	Base config, with electric doors (additional stanchions at exit door)	\$203
TS 79.5	Overhead	X	Base - 6 Grey Nylon Prima Grab Straps	\$0
TS 80	Passenger Doors	X	Ventura Electric, Rear door is Plug	\$5,478
TS 80	Optical Door Sensor	X	Contactless Passenger Protection System (Ventura Only)	\$281
		X	Wave to Open capable	
TS 81.1	Loading Systems for Low-Floor Bus (ADA Ramp)		35' Bus Body Only	
		X	Lift U LU11 6:1	\$3,281
TS 81.5	Wheelchair Accomodations -		35' Bus Body Only	
		X	Base - 2 ADA Positions w/ 4pt Q'straint ADA System	\$0
TS 85.1	ADA Stop Request Signal Type	X	Base - Touch Pad on Seat	\$0



Customer SMART-Wilsonville
 Number of buses 2
 Bus length / model 35' E2
 Contract/P.O. #

Proterra Tech Spec	Category	Customer Selection	Option	Price Impact
TS 70.2	Bike Rack	X	Sportsworks 3 position (Not Available in CA) Apex in Stainless	\$1,704
TS 70.2	Bike Rack Sensor	X	Base - No Sensor Installed	\$0
TS 83	Destination Signs: Front	X	Base - Hanover, Amber 160x17	\$0
TS 83	Destination Signs: Dash	X	Base - None	\$0
TS 83	Destination Signs: Curbside	X	Base - Hanover Amber 112x15	\$0
TS 83	Destination Signs: Rear		Base - Hanover, Amber 48x15	
			Hanover White 48x15	
			Hanover Spectrum 40x24	
			Luminator Horizon SMT Amber 48x16	
			Luminator Horizon SMT White 48x16	
		X	Yield Sign	\$345
		X	None	-\$150
TS 83	Destination Signs: Streetside	X	Base - None	\$0
TS 85	Passenger Stop Request / Exit Signal	X	Base - Touch Tape	\$0
TS 85	Stop Request Misc	X	Base - Switch on Stanchion Forward of Rear Door	\$0
TS 86.3	Automatic Passenger Counter (APC)	X	Base - None	\$0
		X	Provision for APC TBD - Space save in EEC only	\$0
	WiFi	X	Base - None	\$0
TS 85.1	Next Stop Sign	X	Base - Backlit "Stop Requested" sign, Transign #SRD300	\$0
	Winter Weather Package	X	Heated front entrance	\$51
TS 62	Hatches- Only (1) front hatch is available for 35'		35' Bus Body Only	
		X	Base - 1 x Opaque Manually Operated	\$0
	Single Camera Advanced Driver Assistance System (Passive)	X	Base - None	\$0
	USB Ports	X	Base - None	\$0
TS 75.1	Operators Barrier	X	Base - None	\$0
TS 55	HVAC	X	Base - Eberspaecher	\$0
TS 72.1	Passenger Information System	X	Base - None	\$0
TS 53.4	Windows	X	Base - Single Piece Flush Mounted 50% Grey 5 mm tempered glass (per base selected on template)	\$0



Customer SMART-Wilsonville
 Number of buses 2
 Bus length / model 35' E2
 Contract/P.O. #

Proterra Tech Spec	Category	Customer Selection	Option	Price Impact
TS 49	Driver's Seat	X	USSC P/N G22-030301010101010001 S/N 274295 • OEM Bus Chassis Style - Gillig - Low Floor • Bus Base - Low Profile Adapter & Cross Bracing, 10" Slides • Black Lap Belt – 9" RH Receptor – Dual Sensing – 74" • Suspension - Standard Air • Slide Release Style - Center Air Release (Low Profile) • Slide Button Configuration - Air Slide • Switchbox Location - Right Hand Controls • Back Adjuster - Continuous Adjustment (Knob) • Back Recline Angle - 15 Degrees (Standard) • Back Style - Medium • Back Foam - Poly • Cushion Foam - Poly • No Seat Alarm • Headrest - Standard Black Vinyl • No Armrests • Cover - Fabric & Vinyl, Std Black	\$791
35' Bus Body Only				
TS 53.2	Emergency Exit (Egress) Configuration	X	Base - 2 Egress Windows (2 SS)	\$0
		X	1 Additional Egress Window (CS3)	\$2,813
TS 69.2	Access Door Latch/Locks	X	Base - square key for exterior access panels - access to the Master Battery Disconnect is not locked	\$0
TS 72	Decals, Numbering and Signaling	X	Proterra Decal Package Biligual (English & Spanish)	\$0
TS 75.9	Interior Lighting (Hadley) Interior Lights Automatically Select Bright When Either Door Open (Y/N)	X	Base - Automatic Bright at Open	\$0
TS 76	Fare Collection	X	Base - Electrical Provision Only for Diamond XV	\$0
TS 86.1	Camera Surveillance System	X	REI HD 800	\$5,939
TS 86.2	Public Address System	X	Base - REI PA only w/ Gooseneck mic. 8 Interior Speakers	\$0
TS 86.4	Voice/CB Radio System	X	Provision for Motorola XTL2500	\$0
TS 86.4.4	Emergency Alarm	X	None	\$0
TS 39.5	Air Dryer	X	Base - Bendix AD-IS	\$0
	Maintenance Ports	X	Base - Single Male Industrial fitting @ bumper and Rear SS access panel	\$0
TS 5.10	Fire Suppression	X	Only Fire Detection in Prodrive	\$2,325
35' Bus Body Only				
TS 25	Towing	X	Base - Capable of front and rear tow	\$0
			Special Request	
	Other	X	Front License Plate Holder	\$50



Customer SMART-Wilsonville
 Number of buses 2
 Bus length / model 35' E2
 Contract/P.O. #

Proterra Tech Spec	Category	Customer Selection	Option	Price Impact
			Total Configs	\$31,677
			Base Bus	\$693,000
			Total Per Bus	\$724,677
			Total 2 Buses	\$1,449,355
Manuals				
	Parts Manual	X	1 printed and bound hard copy	\$200
	Operator Manual	X	1 printed and bound hard copy	\$100
	Maintenance and Repair Manual	X	1 printed and bound hard copy	\$300
	Quick Reference Guides	X	1 printed and bound hard copy (full set)	\$75
	Electrical Schematic	X	1 printed and bound hard copy	\$75
			Total Manuals	\$750
Tools				
	Proterra Diagnostic Software License	X	Each	\$5,000
			Total Tools	\$5,000
Chargers				
	Proterra 60 kW PCS	X	2 @ \$40,000 Each	\$80,000
			GRAND TOTAL	\$1,535,105



PROTERRA

Standard Limited Warranty Battery System (XR, E2)

Proterra Inc. (“Proterra”) warrants to the original purchaser/lessee that its Battery System (“Battery”) for the Catalyst XR/E2 series battery electric bus will be free from material defects in material and workmanship under normal use and when properly serviced. Proterra agrees to repair or replace defective parts at no additional cost to the purchaser/lessee subject to the terms and conditions set forth herein. This is a limited warranty subject to the terms and conditions stated below, and subject to compliance in all respects with the approved use conditions set forth at the bottom of this Standard Limited Warranty.

Proterra’s Standard Limited Battery System Warranty (“Warranty”) applies to the internal Battery components listed below. The warranty covers 100% of the parts, labor reimbursement (if applicable in accordance with the terms of this warranty and the purchase/lease agreement) and any associated freight costs during the warranty time period identified below. Battery components contained within the main battery enclosure (“Pack”) may not be serviced by the purchaser/lessee or any third party maintenance provider, and any such servicing of the Pack by purchaser/lessee or any third party maintenance provider voids the Warranty. Proterra technicians will perform all necessary repairs required internal to the Pack.

Coverage Periods:

Materials and Workmanship: 12 years / unlimited miles

80% of Initial Usable Capacity: 6 years / or 200,000 kWh of gross discharge throughput per pack

The warranted usable capacity at 6 years or the gross discharge throughput limit (whichever comes first) will be at least 80% of initial usable capacity.

“Gross Discharge Throughput” is defined as the total energy discharged through the battery pack during its life and is tracked by the BMS at the pack level and reported through telemetry. This includes energy discharged while powering auxiliary systems as well as energy discharged which was recuperated from regenerative braking.

The procedure for determining percentage of usable capacity (also referenced as ‘state of health’ or ‘SOH’) can be found in the maintenance and repair manual.

The Battery is defined as the main high voltage energy storage system and consists of the following:

- Battery modules and components internal to the Pack
- Battery management system (BMS) electronics
- Cooling system components internal to the Pack
- Pack enclosure

- All electrical connections and components internal to the Pack
- Manual Service Disconnect (MSD)

A warrantable defect may be addressed by software updates, replacing internal parts, or replacing assemblies. These replacement parts may be identical or equivalent substitutes. Repairs may include factory reconditioned components that have an energy capacity at least equal to that of the original Battery before the failure occurred. Where applicable, Proterra reserves the right to upgrade parts or assemblies with latest design.

Proterra retains ownership of any components that are removed and/or replaced including any system components that have reached the end of their service life due to SOH.

Due to the pace of battery technology development, Proterra reserves the right to replace components with different items of equal or better performance.

The Warranty does NOT cover malfunction, failure, or loss of capacity of the Battery System due to the following events induced or caused by the purchaser/lessee or other third party:

- Alteration or modification of any Battery part or assembly or combination of the Battery with third party items
- Misuse or negligent use of the Battery, including but not limited to, purchaser's, lessee's or a third party's failure to follow Proterra operating guidelines contained in the manual made available by Proterra
- Exposing the vehicle to ambient temperatures above 140°F (60°C) or below -22°F (-30°C) for more than 24 hours at a time
- Physically damaging the Battery, or intentionally attempting, either by physical means, programming, or other methods, to extend or reduce the life of the Battery
- Exposing the Battery to direct flame
- Flooding of the Battery
- Intentional or accidental collision
- Acts of Nature
- Neglect or failure to perform the Preventative Maintenance outlined in the maintenance service training for the Battery System
- Unauthorized use or operation outside of the terms and conditions of the applicable purchase/lease contract
- Unauthorized or improper maintenance and repair by non-Proterra personnel
- Intentional acts of destruction, tampering or vandalism

The start of the Standard Limited Warranty term is the date of acceptance of each bus in accordance with the terms of the applicable purchase/lease contract.

Proterra administers the warranty process and all warranty claims are at the sole and absolute discretion of Proterra.

In connection with any claim brought under this limited warranty, the purchaser/lessee must provide the failed component along with the proper documentation and warranty claim form. Proterra will perform an inspection of the failed component and supporting documentation to make a claim determination. Proterra will not provide any compensation, labor, repairs, or replacement part to the purchaser/lessee without the above documentation.

EXCEPT EXPRESSLY AS SET FORTH IN THIS WARRANTY, PROTERRA EXPRESSLY DISCLAIMS

ANY OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AS TO THE QUALITY OR PERFORMANCE OF THE BATTERIES AND/OR THE PACKS.

THIS STANDARD LIMITED WARRANTY IS SUBJECT TO COMPLIANCE IN ALL RESPECTS DURING THE ENTIRE APPLICABLE WARRANTY PERIOD WITH THE BELOW APPROVED USE CONDITIONS. IF THE ORIGINAL PURCHASER/LESSEE DOES NOT COMPLY IN ALL RESPECTS WITH THE BELOW APPROVED USE CONDITIONS DURING THE ENTIRE APPLICABLE WARRANTY PERIOD, THEN THIS STANDARD LIMITED WARRANTY SHALL NOT APPLY.

APPROVED USE CONDITIONS

The Batteries shall be used in accordance with the Battery Services Agreement between Customer and Proterra, as well as in accordance with the following use conditions:

Storage SOC Range	When not installed in a vehicle, batteries shall be stored between 5% and 20% SOC.
Excursions "Below Empty"	Excursions below 0% SOC, as indicated by the dash, shall be limited to no more than 30 occurrences in the initial 6 year SOH warranty period.
Storage Temperature Range Excursions	The battery may be stored at temperatures which occur in the range from -40degC to +60degC. Storing at temperatures above +30degC should be limited to no more than 10% of the storage period. Storing at temperatures above +40degC should be limited to no more than 5% of the storage period.
Recommended Nominal Storage Temperature Range	To maximize life, the battery pack should be stored in the range from -20degC to +30degC.



PROTERRA

Standard Limited Warranty **Proterra Charging System**

Proterra Inc. (“Proterra”) warrants to the original purchaser/lessee that its Proterra Charging System will be free from defects in material and workmanship under normal use and when properly serviced. Proterra agrees to repair or replace defective parts at no additional cost to the purchaser/lessee subject to the terms and conditions set forth herein. Such repair or replacement shall be the sole and exclusive remedy for any breach of warranty contained herein. This is a limited warranty subject to the terms and conditions stated below.

Proterra’s Standard Limited Charging Systems Warranty covers the parts, assemblies, and components in the charge system listed below. This warranty covers 100% of the parts, labor reimbursement (if applicable in accordance with the terms of this warranty and the sales agreement) and any associated freight costs during the warranty time period identified below.

Coverage Period:

60kW Power Control System (PCS) and Charge Dispenser 2 years

The “charge systems” as referred to in this document is comprised of but not limited to the following components:

- 60kW Power Control System (PCS)
- Charge Dispenser
- Power cabling and conduit between charger and dispenser IF installed by Proterra or Proterra managed contractors
- If provided, pedestal mount, wall and overhead mounting brackets, cable hanger, and cable reel.

Items and components NOT covered by the Standard Limited Charging Warranty include but are not limited to the following:

- Switchgear
- Data communication link from transit authority
- Transformers upstream of the switchgear
- Facility related items (including but not limited to buildings or enclosures, concrete pads, HVAC)
- Power cabling and conduit between charger and dispenser NOT installed by Proterra or Proterra managed contractors

The warranty does NOT cover malfunction or failure of the charge system due to the following events induced or caused by the purchaser/lessee or other third party:

- Alteration or modification of any part of the charge system or assembly or combination of the charge system with a system that is not authorized in writing by the manufacturer or performed by the manufacturer
- Misuse or negligent use of the Charge System, including but not limited to, purchaser/lessee or maintenance provider’s failure to follow Proterra’s operating manual
- Intentional or accidental collision, destruction, tampering or vandalism
- Acts of Nature
- Neglect or Failure to perform the Preventative Maintenance outlined in the Service Maintenance documentation for the Charge System
- Unauthorized use or operation outside the terms and conditions of the applicable sales/lease agreement
- Improper maintenance or repair by purchase or any third party servicer
- Charger cord and connector failures due to wear or damage from being run over or improperly stowed

This warranty does not cover the repair or replacement of normal maintenance items including but not limited to: charger cord and connector failures due to wear, filters, or any consumable items that are the sole responsibility of the purchaser/lessee

The start of the Standard Limited Charging Warranty term is the date of purchaser/lessee's acceptance of the charge system in accordance with the terms of the purchase/lease agreement.

EXCEPT FOR THE OBLIGATIONS, WARRANTIES AND REPRESENTATIONS SPECIFIED HEREIN, PROTERRA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING.

Proterra administers the warranty process and all warranty claims are at the sole and absolute discretion of Proterra.

In connection with any claim brought under this limited warranty, the purchaser/lessee must provide the failed component along with the proper documentation and warranty claim form. Proterra will perform an inspection of the failed component and supporting documentation to make a claim determination. Proterra will not provide any compensation, labor, repairs or replacement part to the purchaser/lessee without the above documentation.



PROTERRA

Standard Limited Warranty **Proterra Catalyst Battery Electric Bus**

Proterra Inc. (“Proterra”) warrants to the original purchaser/lessee that its Catalyst battery electric bus will be free from defects in material and workmanship under normal use and when properly serviced. Proterra agrees to repair or replace defective parts at no additional cost to the purchaser/lessee subject to the terms and conditions set forth herein. Such repair or replacement shall be the sole and exclusive remedy for any breach of warranty contained herein. This is a limited warranty subject to the terms and conditions stated below and is referred to as Proterra’s Standard Limited Catalyst Bus Warranty.

Proterra’s Standard Limited Catalyst Bus Warranty applies to the Class A and Class B parts, assemblies, components listed below. The warranty covers 100% of the parts, labor reimbursement (if applicable in accordance with the terms of this warranty and the purchase/lease agreement) and any associated freight costs during the warranty time period identified below.

Class A:

This class includes manufactured or assembled components and systems, including some purchased assemblies listed below.

The Coverage Period is the lesser of:

	<u>Term (yrs)</u>	<u>OR</u>	<u>Miles</u>
Complete Bus ⁽¹⁾	1 yr		50,000
Main Composite Monocoque Structure ⁽²⁾	12 yrs		500,000
Structural Systems ⁽³⁾	3 yrs		150,000
Corrosion ⁽⁴⁾	12 yrs		500,000

Class B:

This class includes major components purchased and installed by Proterra and listed below.

The Coverage Period is the lesser of:

	<u>Term (yrs)</u>	<u>OR</u>	<u>Miles</u>
Brake System	2 yrs		100,000
Transmission	2 yrs		100,000
Axle	2 yrs		100,000
Destination Signs	2 yrs		100,000
Defroster	2 yrs		100,000
Door Systems	2 yrs		100,000

Catalyst Bus Warranty_V6

Air Compressor	2 yrs	100,000
Air Dryers	2 yrs	100,000
Wheelchair Lift and Ramp System	2 yrs	100,000
Fire Suppression	2 yrs	100,000
Passenger Seating (excluding upholstery)	2 yrs	100,000
Windows	2 yrs	100,000
Traction Motor and Inverter	2 yrs	100,000
Power Steering	2 yrs	100,000
A/C Unit and Compressor	2 yrs	100,000

(1) Complete Bus is defined as bumper-to-bumper coverage excluding the following:

- a. Provided Customer Equipment (including but not limited to: ITS)
- b. Consumables (including but not limited to: brake pads, wiper blades)

(2) Main Composite Monocoque is defined as the main composite body excluding non-structural members.

(3) Structural Systems is defined as the structural elements of the suspension and powertrain cradle.

(4) The components indicated in notes (2) and (3) above are covered for structural failure due to corrosion.

Exclusions:

- a. Surface and non-structural corrosion, oxidation, or patina
- b. Corrosion caused by high-pressure washing, severe wash solutions, cleaning solvents or detergents
- c. Corrosion caused by acid rain or other industrial fallout
- d. Corrosion due to improper prevention measures during storage or use
- e. Corrosion due to environmental damage (including ocean spray); airborne fallout (chemicals, tree sap, etc). or other atmospheric conditions or act of nature
- f. Corrosion due to improper use, misuse or abuse including insufficient maintenance

This warranty does NOT cover malfunction or failure of the bus due to the following events induced or caused by the purchaser/lessee or other third party:

- o Alteration or modification of any part of the bus or assembly or combination of any part of the bus with any third party item
- o Misuse or negligent use of the bus, including but not limited to purchaser's, lessee's or a third party's failure to follow Proterra's operating manual
- o Intentional or accidental Collision
- o Acts of Nature
- o Neglect or Failure to perform the Preventative Maintenance outlined in the maintenance documentation for the bus
- o Unauthorized use or operation outside of the terms and conditions of the applicable lease contract
- o Improper maintenance and repair
- o Intentional acts of destruction, tampering or vandalism

For the avoidance of doubt, this warranty does not include the replacement of normal maintenance items including, but not limited to, brake pads, filters, light bulbs, or any consumable items that are the sole responsibility of the purchaser/lessee.

The start of the Standard Limited Catalyst Bus Warranty term is the date of acceptance of each bus in accordance with the terms of the applicable purchaser/lease contract.

EXCEPT FOR THE OBLIGATIONS, WARRANTIES AND REPRESENTATIONS SPECIFIED HEREIN, PROTERRA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING.

Proterra administers the warranty process and all warranty claims are at the sole and absolute discretion of Proterra.

In connection with any claim brought under this limited warranty, the purchaser/lessee must provide the failed component along with the proper documentation and warranty claim form. Proterra will perform an inspection of the failed component and supporting documentation to make a claim determination. Proterra will not provide any compensation, labor, repairs, or replacement part to the purchaser/lessee without the above documentation.

This warranty document does not include the Fast Charge System, Depot Charger, or Battery System. Please refer to those specific system warranty documents.

BUY AMERICA CERTIFICATION

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

SMART Electric 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)(1), 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: _____