

Project Name: Commuter Rail Vehicle Cleaning

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**1.0 CONTRACT PRICE**

- 1.1 Full compensation to Contractor for full and complete performance by Contractor of all the Work, compliance with all terms and conditions of this Contract, and for Contractor's payment of all obligations incurred in, or applicable to, performance of the Work, shall be the sum of the following value:

Scope Cycle	Cost per MP
Class A Daily	\$
Class B Monthly	\$
Class C 92 Day	\$
Special Task	Cost per MP per occurrence
Large Graffiti Removal	\$
Special Task	Cost per car per occurrence
Bodily fluids and bio hazard clean up	\$

**2.0 PRICING BASIS**

- 2.1 The Contract Price shall be the sum of the price portions set forth in Article 1.0 of this PART II COMMERCIAL TERMS. The unit prices are deemed to cover the compensation relative to performance of the Work described in the preamble.
- 2.2 Notwithstanding Section 2.1 above, the Contract Price shall cover all compensation to perform the Work, as described in CONTRACT PART I SCOPE OF WORK, even if specific work activities or requirements are not detailed in the preamble.
- 2.3 The Contract Price, pricing for changes, and all other prices and rates set forth herein shall include, but shall not be limited to all taxes, duties, fees, and insurance.
- 2.4 The Contract Price, pricing for changes, and all other prices and rates set forth herein includes each and every item of Contractor's costs, expenses, overhead, and profit for complete performance of the Work.
- 2.5 The Contract Price, pricing for changes, and all other prices and rates set forth herein shall include receipt, offloading, storage and subsequent handling of materials to be installed under the Contract, and the loading, transport and disposal of surplus materials.
- 2.6 The Contract Price, pricing for changes, unit prices, all-in rates, and all other

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prices and rates set forth in herein are firm for the duration of the Work until acceptance by Company.

- 2.7 The Contract Price is estimated to the extent only that it is derived from the unit prices extended by the estimated quantities set forth herein. The final Contract Price shall be determined from the unit prices extended by the actual installed quantities of Work. A future Contract modification shall be executed to reflect any difference between the provisional and the final Contract Price. All quantities are estimated and not guaranteed. The established unit price will apply irrespective to the actual quantities expended.
- 2.8 All prices and rates set forth herein shall include all costs associated with, and relative to, performing Work in accordance with all applicable local state and federal safety regulations, as well as Owner's and Company's safety, security and fire regulations.
- 2.9 The unit prices shall apply regardless of when the Work is performed, be it day or night or a holiday, unless Company accepts in writing, prior to performance that work performed outside of expected working hours is subject to additional compensation to Contractor.
- 2.10 The unit prices contained in the Contract are based on estimated quantities and shall remain firm, regardless of the final quantities.
- 2.11 The unit prices shall be deemed to include each and every item of expense to perform the Work in the respective categories.
- 2.12 The unit price set forth in this Contract shall apply whether the Work is performed by Contractor's own labor or by sub-contractor's labor. Work may be subcontracted only with the approval of the Company.
- 2.13 Failure by the Contractor to assess fully the scope of work as required and described by CONTRACT PART I - SCOPE OF WORK to the Contract shall not be accepted as a basis for variations to the lump sums or the unit prices for changes.
- 2.14 No increase in price shall be permitted for causes which the Contractor has failed to take into account, but which could have been foreseen.
- 2.15 All prices and rates utilized as part of this Contract shall be expressed in U.S. Dollars and such pricing shall not be subject to change in the event of fluctuation in the rate of exchange of any other currency to the U.S. Dollar.

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### 3.0 PRICING FOR CHANGES

- 3.1 Adjustments to the Contract Price for any change in the Scope of Work shall be in accordance with the provisions of the Article entitled CHANGES set forth in PART III.
- 3.2 Any changes initiated by or in conjunction with the Owner shall be in accordance with Part 36, Changes, of the Concession Agreement. All other changes shall be in accordance with the term set forth in this Article 3.0.
- 3.3 Company may request, and Contractor shall provide, proposals for Scope of Work of the change (additions and deletions) which are priced, at Company's option, by one or a combination of the following methods:
- a. Negotiated Lump Sum based upon a mutually agreed Scope of Work.
  - b. Applicable Unit Price items established in the Subcontract.
  - c. Negotiated Unit Prices not established in the Subcontract.
- 3.4 Sub-tier Contracts
- 3.4.1 All contracts and services provided by others for performance of changes or extra work requested by Company, which have not been objected to by Company shall be at actual cost to Contractor of such Contracts or services provided by others (not to exceed such subcontract price) plus a mark-up, for all profit and overhead expense of Contractor thereon which shall not exceed 5%.
- 3.4.2 Contractor's invoices for work performed by any of Contractor's sub-tier subcontractors may include an allowance for the sub-tier subcontractor's overhead and profit of 5%.
- 3.4.3 In no instance shall the mark-ups or rates for changes provided by sub-tier subcontractor to Contractor exceed the mark-ups or rates for changes as stipulated in this Article 3.0.
- 3.5 Materials
- 3.5.1 Materials provided by Contract and incorporated into the work are incorporated in the unit price.
- 3.5.2 Company reserves the right to provide, at no cost to Contractor, materials, equipment, services, supplies or incidentals required to perform the Work. All refunds, trade discounts, rebates on materials, supplies and services, and all monies obtained from the disposal of surplus materials or supplies shall accrue to Company.

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- 3.5.3 For materials drawn from Contractor's stock, Contractor shall obtain approval from Company regarding the price and discounts. In no instance shall the price of Contractor's material drawn from Contractor's stock exceed the prevailing price that Company could obtain for comparable quantities and types of material from commercial suppliers.

#### **4.0 TAXES**

- 4.1 Except as otherwise set forth in Sections 4.4 and 4.5 below, Contract Price, pricing for changes, and all other prices and rates set forth herein, includes all taxes, duties, fees and other assessments of whatever nature imposed by governmental authorities and applicable to the performance of the Work and this Contract. Contractor shall not be reimbursed for personal property taxes on construction equipment and other property owned by Contractor, and taxes on net income of Contractor. Contractor shall promptly pay when due, all such taxes, duties, fees and other assessments of whatever nature.
- 4.2 Contractor shall promptly pay when due, all such taxes, duties, fees and other assessments set forth in Section 4.1.
- 4.3 Contractor shall be responsible for maintaining and furnishing the necessary records and documentation required by government authorities and Company to apply for and obtain tax and duty refunds.
- 4.4 Company is required to obtain correct taxpayer identification numbers from all non-corporate payees who receive payment for services, rents, royalties or interest that would be subject to IRS Form 1099 reporting. Thirty-one percent (31%) back-up tax withholding will be imposed on all Form 1099 reportable payments made to Contractor, if Contractor fails to provide a correct taxpayer identification number.

Taxpayer I.D. No. xxxxxxxxx

- 4.5 If Contractor imports and exports materials, equipment, supplies, tools, or any item for performance of the Work, any custom duties, value added, import or export taxes, document fees, handling charges, or other fees related to the importation or exportation of such materials, equipment, supplies, tools or other items shall be paid by Contractor.

#### **5.0 PAYMENT TERMS**

- 5.1 The Contract Price shall be payable in monthly progress payments, payable thirty (30) calendar days after receipt and approval by Company. Each progress payment shall be for one hundred percent (100%) of the earned value of Work completed by Contractor, as determined by Contractor in accordance with the

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terms of this Contract and approved by Company, as of the working day nearest the mutually agreed cut-off date.

- 5.2 Contractor is required to transmit to Company all applicable Contract documents. Failure to submit these Contract documents in accordance with the instructions set forth herein will delay any and all approved progress payments until these requirements are met. The following is a non-exclusive listing of applicable Contract documents and the condition in which they must be provided to Company in order to be acceptable:
- 5.2.1 Contract Agreement – fully and correctly executed in accordance with the instructions set forth in the cover letter transmitted therewith, with no physical modifications made to any part of the Contract.
- 5.2.2 Evidence of Insurance – certificate(s) of insurance submitted on the proper forms, from acceptable underwriters, addressed to Company, and evidencing the minimum coverage limits required by the Contract are in effect.
- 5.2.3 Performance and Payment Bonds (if required) – submitted on the proper forms, from acceptable sureties, addressed to Company and in the amounts required by the Contract.
- 5.2.4 Partial/Final Payment Release Certificates – submitted on proper notarized forms satisfactory to Company and which evidence that Contractor has paid in full for all labor or materials furnished, all equipment used, and all subcontractors employed during the time period covered by the invoice.
- 5.3 The final and/or retention invoice shall be submitted for final payment after completion and acceptance of Work by Company and compliance by Contractor with all terms of this Contract. This invoice shall contain a complete itemized listing of progress and additional work invoices by number, date, gross amount, retention amount, and the total amount of sums retained and due. Unless otherwise required by applicable law, final payment shall not be made less than forty-five (45) calendar days after completion and acceptance of all work and in any event shall not be sooner than forty-five (45) calendar days after receipt of a proper invoice and supporting documents to Company. Final payment shall not relieve Contractor of any obligation under Contract guarantees. This final invoice may not be presented for payment until Contractor has complied with the requirements of Article 43.0 entitled FINAL PAYMENT CERTIFICATION AND RELEASE of CONTRACT PART III GENERAL TERMS – STANDARD.
- 5.4 Contractor shall prepare all invoices in a form satisfactory to and approved by Company. In the event an invoice is submitted, in accordance with Contract terms, for Work accomplished on a reimbursable or unit price/unit rate basis, it

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shall be accompanied by documentation supporting each element of measurement and/or cost. Any invoice submitted, which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to Contractor. Any costs associated with the resubmission of a proper invoice shall be to Contractor's account.

- 5.5 At Company's request, Contractor shall furnish evidence, satisfactory to Company, that all labor and materials furnished and equipment used during the period covered by an invoice have been paid for in full and that the Work is not subject to liens or claims on account thereof. Company may withhold payment of invoices until Contractor furnishes such evidence.

## 6.0 DETERMINATION OF UNITS

All units of Work performed for the Contract Price set forth in Article 1.0 entitled CONTRACT PRICE and Article 3.0 entitled PRICING FOR CHANGES of this PART II COMMERCIAL TERMS, shall be determined and documented in accordance with the provisions set forth in Article 40.0 entitled DOCUMENTATION AND RIGHT OF AUDIT of CONTRACT PART III GENERAL TERMS - STANDARD.

## 7.0 INVOICING INSTRUCTIONS

- 7.1 Contractor shall submit consecutively numbered invoices, with the Contract number clearly displayed at the top of each page. Invoice will be sent via email to the following email address:

[DTO\\_ACCOUNTS\\_PAYABLE@RTDCRAIL.COM](mailto:DTO_ACCOUNTS_PAYABLE@RTDCRAIL.COM)

- 7.2 The invoices shall be addressed to Company in its name and address as set forth in the Contract Signature Document.
- 7.3 Company will advise Contractor of the cut-off date for monthly progress invoices and Contractor shall submit its invoices within five (5) calendar days after such cut-off date. Invoices submitted later than five (5) calendar days after the cut-off date may be paid an additional thirty (30) calendar days later than the payment terms set forth in this Contract.
- 7.4 Contractor's invoices shall follow the Payment Schedule in a format prescribed by Company. Invoice must include a summary report with quantity totals for the month that are consistent with the reporting in Article 7.9.
- 7.5 Contractor's invoices shall indicate the time period during which the Work was performed and for which the invoice is submitted.
- 7.6 Company will not be obligated to pay invoice items not fully supported by approved progress measurements and any other such documentation, as may



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be required. Company reserves the right to make partial or provisional payment on an invoice in dispute, pending audit and reconciliation of the total charge.

- 7.7 Contractor shall comply with the requirements of this Contract to furnish the reports and deliverables in a timely manner and in a format satisfactory to Company. If Contractor does not submit the reports or deliverables on schedule, in the time frame stipulated in the Contract, or as requested from time to time by Company, Company may, at its discretion, withhold an amount from Contractor's monthly progress payments. The amount withheld shall continue to be withheld until Contractor submits the reports or deliverables to Company's satisfaction.
- 7.8 Changes to the Work and/or additions must be incorporated into the Contract by way of an approved Contract modification before being incorporated into an invoice and submitted for payment. In general, the actual charges shall have been agreed and incorporated into the Contract by a fixed price modification that may be invoiced without further substantiation.
- 7.8.1 Charges for materials shall be accompanied by Company signed field receiving documentation, a copy of Contractor's purchase order and invoice from the supplier.
- A For materials purchased on an emergency or small quantity basis not exceeding \$1,000.00 USD, Contractor may submit an itemized supplier invoice in lieu of a purchase order subject to approval by Company.
- B. For materials drawn from Contractor's stock, Contractor shall obtain approval from Company regarding the price and discounts. In no instance shall the price of Contractor's material drawn from Contractor's stock exceed the prevailing price that Company could obtain for comparable quantities and types of material from commercial suppliers. Materials from Contractor's stock must have proper certifications.
- 7.9 The Contractor shall fill out the Contract Daily Log in Attachment C and submit it to the Company within forty eight (48) hours after each day of work.
- 7.10 Contractor shall certify on each invoice that all Work covered by the invoice is complete and that the invoice is correct, authentic and the only one issued for the Work described therein.

## **8.0 BACKCHARGES**

- 8.1 A backcharge is a cost sustained by Company and chargeable to Contractor for Company's performance of work that is the responsibility of Contractor.



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- 8.2 Without limitation and by way of example only, backcharges may result from:
- 8.2.1 Services performed by Company, at Contractor's request, for work which is within Contractor's scope of work under this Contract.
  - 8.2.2 Costs sustained by Company as a result of Contractor's non-compliance with the provisions of this Contract or Contractor's act of omission or negligence.
  - 8.2.3 Costs incurred by Company to fix all defects, deficiencies or errors that may appear in the Work during the warranty period.
- 8.3 Upon identification by Company of an actual or anticipated backcharge, Company will issue a backcharge notice to Contractor. This notice shall describe the backcharge Work to be performed, the schedule period for performance, the cost to be charged by Company to Contractor for the backcharge and other terms.
- 8.4 The backcharge cost shall consist of the following:
- Labor: at actual cost plus fifty-five percent (55%) to cover payroll additives;
  - Materials: at actual supplier and freight invoice cost delivered to jobsite;
  - Construction Equipment: at actual third party rental cost or at Company's equipment rental rates, whichever may be applicable;
  - Subcontracts: At actual cost;
  - All taxes, levies, duties and assessments attributable to the backcharge Work;
  - Twenty-five percent (25%) shall be added to the foregoing for indirect costs, overhead, supervision and administration.
- 8.5 Within twenty-four (24) hours after receipt of the backcharge notice, Contractor shall fax back to Company a signed copy of the backcharge notice, indicating either acceptance of the backcharge or agreement to perform the described backcharge work within the indicated schedule period for performance, utilizing Contractor supplied labor, material and equipment, as applicable.
- 8.6 Contractor will be required to sign the backcharge notice before commencement of the backcharge work by Company or others. In the event Contractor refuses to sign, Company shall at its option proceed with the backcharge work and charge the backcharge cost to Contractor's account. Thirty (30) calendar days after commencement of the backcharge work or on completion of the backcharge

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work, whichever occurs sooner, Company will invoice Contractor for the incurred backcharge cost.

