SECTION 5 - SPECIAL PROVISIONS

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5.1 PROJECT MANAGEMENT

5.1.1 PERFORMANCE OF WORK

SDOT's Project Engineer will issue the Notice to Proceed for this Contract after this Contract has been fully executed by both parties, (refer to CP 1.7.1). The Contractor shall proceed with performance of all activities under this Contract immediately after receipt of the Notice to Proceed issued by SDOT. The Contractor shall continuously and diligently prosecute the Work to completion on or before the time or times set forth in this Contract. "Work" means everything that the Contractor is required to do pursuant to this Contract.

5.1.2 CONTRACTOR'S PROJECT MANAGER

During performance of the Contract, the Contractor shall assign a competent Project Manager who shall have full authority to act on behalf of the Contractor and all of the Contractor's subcontractors at all tiers in all matters within the scope of the Contract. The Contractor’s Project Manager shall have experience acceptable to SDOT and must be thoroughly familiar with all procedures involved in streetcar production. If for any reason, and at any time, the Contractor’s Project Manager is not acceptable to SDOT, or becomes unacceptable, the Contractor shall propose additional candidates. If the Contractor wishes to replace its Project Manager at any time during the performance of this Contract, it first shall submit the resume of its new candidate to SDOT for SDOT's approval and shall not make the substitution without SDOT's approval.

5.1.3 SUBCONTRACTORS AND SUPPLIERS

The Contractor shall be fully responsible and liable for the products and actions of all subcontractors and suppliers at any tier.

5.1.4 SDOT PROJECT ENGINEER

SDOT's Project Engineer for this Contract shall be the formal contact between SDOT and the Contractor. SDOT's Project Engineer shall be responsible for, on behalf of SDOT, all matters relating to this Contract, except changes to the Contract involving scope, cost, or time. Such changes shall be made with the approval of the SDOT Project Engineer, but must be executed by the Director of PCSD or designee. Refer to CP 5.9, Contract Modification.

The Contractor shall not rely on representations or orders of any other SDOT representative, unless so authorized by the SDOT Project Engineer.

The SDOT Project Engineer's primary functions are:

- Conduct periodic meetings with the Contractor;

- Interpret the technical requirements of the Contract and reject work of the Contractor that does not conform to the Contract;
- Review the Contractor's submittals for conformance with the Contract requirements, approve submittals that are in conformance, or take other action upon review;
- Review Contractor's invoices and approve payment or take other action upon review;
- Prepare Change Orders for SDOT's and the Contractor's approval and execution, and evaluate the cost and benefit of any proposed changes;
- Order changes in the work not involving adjustment of the Contract price or an extension of the Contract time. Those changes shall be consistent with the intent of the Contract;
- Conduct inspections and tests required for streetcar shipment, delivery, and acceptance;
- Authorize shipment, authorize delivery and issue delivery receipt, and grant conditional acceptance and acceptance of streetcars; and
- Issue stop work orders in accordance with CP 5.10.

With reference to CP 4.2, Notices and Communications, SDOT's Project Engineer is hereby designated to be TBD, whose address is TBD.

5.1.5 PROJECT MEETINGS

The SDOT Project Engineer shall schedule and preside over pre-production, periodic, and special meetings throughout the progress of the work. Agendas for the meetings may include, but are not necessarily limited to, discussions of in-plant observations, problems, conflicts, production schedules, delivery schedules, supplier fabrication, quality standards, design review, Contract modifications, and any other topics that the SDOT Project Engineer determines to be relevant to the project. Refer to Section 19 of the Technical Specifications, for detailed requirements for project meetings.

5.1.6 PRODUCT OPTIONS, SUPPLIER APPROVAL AND SUBSTITUTIONS

For products specified by brand name or manufacturer, whether or not followed by the words "or approved equal", the Contractor shall select any product or manufacturer named, or shall submit a request to substitute an equal product or manufacturer. The Contractor may not make a substitution without SDOT's prior approval.

SDOT may, at its option, approve requests from the Contractor for substitution of products in place of those specified if the Contractor demonstrates satisfaction of at least one of the following criteria:

- The substitution is required for compliance with a final interpretation of code requirements or insurance regulations that was not available or reasonably known to the Contractor prior to execution of Contract;
- The substitution is due to the unavailability of the specified products, and the unavailability is not the Contractor's fault and was unknown to the Contractor prior to execution of Contract;
- The specified product will not perform properly or fit into the designated space; or
- The manufacturer or fabricator does not certify or warrant performance of the specified product as required for the intended purpose.
- The substitution is, in SDOT's judgment, in the best interest of SDOT.

The Contractor shall submit a separate request for each substitution. Each request shall include: Complete data substantiating compliance of the proposed substitution with the Contract; product identification, including manufacturer's name and address; manufacturer's literature, including product description, performance and test data, and reference standards; samples, if appropriate; name and address of similar streetcar deliveries on which the product was used and date of installation; itemized comparison of proposed substitution with product or method specified; and data relating to changes in production schedules.

In making a request for substitution, the Contractor shall represent that:

- It has investigated the proposed product, and has determined, with SDOT's concurrence, that it is equal or superior in all respects to that specified;
- It will provide the same or greater warranty for the substitution as for the product specified;
- It will coordinate installation of the accepted substitution into the work, making changes as may be required for the work to be complete in all respects; and
- It waives all claims for additional costs and changes to schedule related to the substitution that subsequently becomes apparent.

SDOT shall approve or disapprove the Contractor's requests for substitution of suppliers or products within fifteen (15) days of SDOT's receipt of all information required by SDOT for such determination according to the provisions set forth in this Section. In the event of SDOT disapproval of the Contractor's request for substitution of a supplier or product, the Contractor shall utilize the supplier or product specified in the Technical Specifications and/or in the Contractor's Proposal, or may request substitution of another supplier or product.

SDOT may not approve substitutions if they are indicated or implied on Shop Drawings or product data submittals without a request submitted in accordance with this Section, or if approval will result in significant non-conformance of the streetcar with the Technical Specifications, or if approval will require extensive revision of the Contract, or if approval is not in the best interest of SDOT.

5.1.7 PROJECT RECORDS AND COST AND PRICING DATA

Comprehensive records and documentation relating to this project shall be kept by the Contractor. The records shall include, but are not limited to Contract Documents, Drawings, Specifications, Addenda, Shop Drawings and Submittals, Change Orders, Modifications, Field Test Records, and As-Built Drawings and Records.

The Contractor shall keep and maintain reasonably complete and reliably detailed records of costs incurred in performing the Contract, including records of initial entry for every item for which payment is sought, sufficient to evaluate the accuracy, completeness, and currency of the costs or prices.

5.1.8 OWNERSHIP AND USE OF DOCUMENTS

All drawings, specifications, and copies thereof furnished by SDOT shall remain the property of SDOT. They are to be used only with respect to this Contract. With the exception of one contract set for each party to the Contract, those documents are to be returned (or suitably accounted for) to SDOT upon request at the completion of the work.

All drawings, product samples, parts and materials created specifically for this contract and for which progress payments have been made, are the property of SDOT, except as provided otherwise in Section CP 4.15.

5.1.9 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

Shop drawings are drawings, diagrams, schedules, or other data prepared for the work by the Contractor or any subcontractor of any tier, manufacturer, supplier, or distributor to illustrate or detail some portion of the work.

Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, or other information furnished by the Contractor to illustrate materials, products, systems, or equipment for some portion of the work.

Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the work shall be judged.

Shop drawings, product data, samples, and similar submittals shall not modify any Contract requirement, except as expressly allowed by this Contract. The purpose of their submittal is to demonstrate for those portions of the work for which submittals are required the way the Contractor proposes to conform to the information given and the Technical Specifications expressed in this Contract.

The Contractor shall review, approve, and submit to the Project Engineer with reasonable promptness and in a sequence that causes no delay in the work, or in the work of SDOT or any other SDOT contractor, all shop drawings, product data, samples, or similar submittals required by this Contract, or that are necessary for its proper completion.

By approving and submitting shop drawings, product data, samples, or similar submittals, the Contractor represents that it has determined and verified all related materials, measurements, and construction criteria, and that it has checked and coordinated the

information contained within its submittals with the requirements of the work and this Contract.

The Contractor shall not be relieved of responsibility for any deviation from the requirements of this Contract by SDOT's approval of shop drawings, product data, samples, or similar submittals unless the Contractor has specifically informed SDOT at the time of submission in writing of the deviation and SDOT has given written approval of the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples, or similar submittals by SDOT's approval of the submittal. The Contractor shall not deviate from approved shop drawings, product data, samples, or similar submittals without SDOT's written approval.

The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data, samples, or similar submittals, to revisions other than those required by the Project Engineer on previous submittals.

5.1.10 INTERPRETATION OF DRAWINGS AND SPECIFICATIONS

Omissions from the Contract specifications, or incorrect description of details of work that are manifestly necessary to carry out the intent of the Contract specifications shall not relieve the Contractor from performing such omitted work or incorrectly described details of the work, and they shall be performed as if fully and correctly set forth and described.

In the event of differences between small- and large-scale drawings, the large-scale drawings shall govern. In the event of discrepancies between any drawing and a dimension written on it the written dimension shall govern over scaled dimensions.

In the event of discrepancies between information on any drawing and the written specifications, the discrepancy shall be resolved in favor of the written specifications.

5.1.11 DISCIPLINE AND ORDER

The Contractor shall enforce strict discipline and good order among its employees at all times and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him or her. Any person employed on the project by the Contractor or any of its subcontractors who, in the opinion of SDOT, does not perform his or her work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of SDOT, be removed forthwith by his or her employer, and shall not again be employed on this project without the prior approval of SDOT.

5.1.12 NOISE CONTROL

The Contractor shall comply with all applicable federal, state, and local laws, ordinances and regulations regarding noise control. All equipment shall comply with pertinent equipment noise standards of the U.S. Environmental Protection Agency.

5.1.13 INSURANCE

During the term of this Contract, the Contractor shall purchase and maintain any insurance required by this Contract. Policies shall be purchased only from companies that are authorized to do business in Washington. The Contractor shall furnish acceptable certificates of insurance to SDOT within ten (10) days after Contract award, and prior to commencement of any Contract work. The Contractor shall pay all premiums and deductibles. All required policies shall name SDOT and its directors, officers, representatives, employees, and agents as additional named insureds. The Contractor shall indemnify SDOT for any liability or damages that SDOT may incur due to the Contractor's failure to purchase or maintain any required insurance.

Contractor shall provide at its own expense the following insurance:

A. Washington statutory workers' compensation and employers liability coverage.

B. Broad form comprehensive general liability coverage, at $10,000,000.00 minimum combined single limit bodily injury and property damage, including at a minimum the following coverage:

   1. Operations (M & C);
   2. Products and Completed Operations;
   3. Broad Form Personal Injury;
   4. Owners and Contractors Protective;
   5. Broad Form Contractual;
   6. Cross Liability;
   7. Mobile ("Contractors") Equipment Liability (but not vehicles principally designed for road and highway use); and
   8. The equivalent to, or better than, ISO Comprehensive General Liability Extensions.

C. Property damage liability coverage of streetcars and all other Contract deliverables, at 100% of the Contract amount or at replacement cost at the time of loss, whichever is greater.

The insurance required under this Section 5.1.16 shall:

D. Require the insurer to give SDOT not less than thirty (30) days notice prior to termination or cancellation of coverage; and

E. Include an endorsement providing that the insurance is primary insurance and that no insurance that may be provided by SDOT may be called in to contribute to payment for a loss.

The Contractor and its subcontractors shall be solely responsible for damage to their own equipment. The Contractor shall be responsible for all materials until they have been incorporated into the Contract work and the work has been finally accepted by SDOT.

5.1.14 CONSULTANT CONFLICT OF INTEREST

Unless specifically approved by SDOT, the Contractor shall not use any consultant who concurrently is employed by SDOT or by SDOT's consultants, including, but not limited to, engineers and testing laboratories.

5.2 SCHEDULE

5.2.1 PROGRESS SCHEDULE

A progress schedule shall be produced and maintained, according to TS 1.9.

5.2.2 DELIVERY SCHEDULE

The Contractor shall deliver (see CP 5.4.5 and 5.4.6) all cars and materials in accordance with the following schedule, no later than the dates specified:

EVENT	MONTHS AFTER NOTICE TO PROCEED
Delivery of the first car:	18
Delivery of the second car:	19
Delivery of the third car:	20
Delivery of the fourth car:	21
Delivery of the fifth and sixth car:	22
Conditional Acceptance of all six cars:	25
Completion of spare parts delivery:	24
Delivery of all required manuals and drawings:	24
Delivery of all diagnostic test equipment and special tools:	24

5.2.3 LIQUIDATED DAMAGES

Streetcars and materials procured under this Contract are needed to support opening of the First Hill Streetcar Line in the fall of 2013. SDOT will suffer significant tangible and intangible damages if the opening has to be delayed. SDOT has determined that the project opening will be delayed unless all 6 streetcars are conditionally accepted 25 months after NTP. Because of the difficulty of determining the actual loss to SDOT, the parties agree that the Contractor shall pay to SDOT liquidated damages at the rates set forth below.

Should the Contractor fail to have all 6 cars conditionally accepted within 25 months of NTP, Contractor shall pay to SDOT a lump sum of $25,000, plus $1,000 for each calendar day thereafter until 6 cars have been conditionally accepted. This payment is not a penalty, but is a reasonable forecast of the actual damages that SDOT would suffer.

The total amount for liquidated damages shall not exceed ten percent (10%) of the Total Base Contract Price. SDOT may deduct the sum of liquidated damages from progress payments due under this Contract.

5.2.4 EXCUSABLE DELAYS

Except with respect to defaults of Subcontractors, the Contractor shall not be considered in default by reason of any failure to perform in accordance with the Contract delivery schedule if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of the Contractor, and without the fault or negligence of the Contractor, the Contractor shall not be in default by reason of any failure to perform. As used herein, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) or Supplier(s) at any tier.

Should the Contractor anticipate or suffer delay because of cause(s) as described in this guideline, SDOT shall make an equitable revision in the delivery schedule, upon the Contractor's fully documented and supported written request timely made, unless SDOT should decide instead to terminate the Contract for convenience.

5.3 SDOT INSPECTION AND TESTING

5.3.1 GENERAL

SDOT may test and inspect all streetcar components, subsystems or workmanship prior to assembly of such components or work into the streetcar production and prior to acceptance of the cars by SDOT. SDOT may either reject or require correction of defective material, workmanship, or nonconformity to this Contract. The Contractor shall make available tools, pits, hoists, scaffolds, platforms, other equipment, and assistance as may be necessary for inspections or tests. The SDOT Project Engineer or his or her designee(s) shall at all times have access to the work wherever it is in preparation or progress.

5.3.2 INSPECTORS

SDOT may employ inspectors, who shall be representatives of the SDOT Project Engineer. They shall have access to the design, fabrication, assembly, and testing of the cars at all

times, wherever in progress at the Contractor's, Contractor's subcontractors', or SDOT's facilities. Inspectors are employed solely for SDOT's benefit, and are not intended as a source of advice for the Contractor's employees, subcontractors, or suppliers. The Contractor shall provide any reasonable facilities including a private office that the inspectors may require for the performance of their duties. The inspectors shall observe and may inspect the work, and shall report their observations to the SDOT Project Engineer. Except as expressly authorized by the SDOT Project Engineer in writing, the inspectors shall have no authority to accept, reject, or approve the work, to stop the work, to authorize any changes in the work, or to direct any extra work.

5.3.3 TESTING

The Contractor shall pay the costs of any inspection or test required of the Contractor by the Technical Specifications or which it requests for its own convenience.

SDOT shall pay the costs of any testing it requests in addition to that required by the Technical Specifications, except that the Contractor shall pay the cost of any of those tests that are performed to evaluate non-conforming work or that demonstrate the Contractor's failure to meet the requirements of the Contract. The Contractor shall cooperate with and assist SDOT and any testing representatives in conducting any tests or inspections requested or approved by SDOT. Tests performed by SDOT shall not relieve the Contractor of the responsibility for conformance to the Contract.

5.4 SHIPMENT AND DELIVERY

5.4.1 SHIPMENT AUTHORIZATION

Each car shipped from the Contractor's plant to SDOT shall be complete, ready to run, and in compliance with all provisions of the Technical Specification, except as noted below. Prior to shipment of each car, the Contractor shall obtain a shipping release signed by SDOT's Project Engineer or his or her designee. The shipping release shall certify that the car is complete, has passed all pre-shipment tests described in the Technical Specification and complies with approved Contractor's drawings, samples, is accompanied by an up-to-date car history book, and other agreed upon conditions for shipping. The SDOT Project Engineer, at his or her sole discretion, may permit shipment of a car with minor defects that will not affect testing and can easily be corrected after shipment. All known defects shall be submitted by the Contractor with the request for shipping release. The shipping release shall not be construed nor inferred to constitute to any degree car acceptance by SDOT.

SDOT shall have the right to delay shipment for up to three months solely for its convenience but shall be obligated to make progress payments J, K, and M as applicable. Any such delay shall extend the time frame for Liquidated Damages per Section CP 5.2.3.

5.4.2 SHIPMENT

If shipped by sea, all cars or car components shall be below deck and shall be enclosed to protect against damage from handling and from exposure to the marine environment.

Shipment over land to SDOT's facility shall be by truck. SDOT will not accept shipment of streetcars by rail, due to the higher cost to SDOT for unloading and handling and to the loss of time in the schedule.

The Contractor shall arrange for shipment of cars and car components to be controlled so as to prevent damage to cars and car components. All sub-systems shall be protected from damage during shipment. All parts removed for shipment shall be boxed securely and shipped with the car to which they belong.

During shipment, each car shall be equipped with an impact recorder provided by the Contractor and approved by SDOT. The recorder shall record all handling impacts. All records shall become the property of SDOT and shall be included in the Car History Book.

The Contractor shall require shippers to log and record any incidents of damage or potential damage to the cars and car components, and of interruption of shipments. The Contractor shall report such shipment incidents to SDOT promptly upon the Contractor's receipt of such information, describing the nature of the shipment damage, potential damage or interruption, and the actions taken and to be taken to complete the shipment and repair any damage.

The Contractor shall be responsible for safely and efficiently maintaining traffic in all areas affected by its shipment of cars on public roadways or by any other activities of the Contractor affecting roadway traffic, and shall comply with all requirements of any authority having jurisdiction over the roadway.

5.4.3 SHIPPING DESTINATION

All cars shall be shipped to SDOT's First Hill Streetcar Maintenance Facility, on S. Charles St. between 7th Ave. S. and 8th Ave. S., in Seattle, Washington. The Contractor shall be responsible for all work and all costs associate with the placing of cars in a ready to run condition on the rails of SDOT's Streetcar System.

5.4.4 RECEIVING INSPECTION

After arrival at SDOT's streetcar maintenance facility, each car shall be examined jointly by representatives of SDOT and the Contractor for shipping damage. SDOT then will issue a receiving notice to the Contractor, which will acknowledge receipt of the car and describe any missing parts or visible damage that may have occurred during shipment.

5.4.5 DELIVERY

Delivery of a car is defined as the completely assembled car on the yard track of SDOT's streetcar maintenance facility, with a receiving notice completed and ready to commence post-shipment testing.

5.4.6 DELIVERY OF SPARE PARTS, SPECIAL TOOLS, TEST EQUIPMENT, AND MANUALS

The Contractor shall notify SDOT's Project Engineer at least ten (10) days in advance of delivery of all spare parts, special tools and test equipment, and manuals. All such materials shall be delivered to SDOT's streetcar maintenance facility. Shipping documents shall accompany delivery of all materials. The shipping documents shall identify all parts by part number, SDOT symbol number (part number), serial number (where applicable), and SDOT purchase order item number.

Parts lists corresponding to Form III-A Schedule B shall be submitted for approval at least 30 days before notice of shipping. Upon approval of the parts lists, SDOT will issue a no-cost purchase order under which the materials will be shipped. No deliveries shall be made without prior issuance of the spare parts purchase order. SDOT will inspect all materials to confirm the accuracy of the shipping documents and to check for damage to the materials.

5.4.7 SUBSTANTIAL COMPLETION

Substantial Completion is defined as a delivered car with all post-shipment acceptance testing completed and approved by SDOT, and ready-to-run for “burn-in” testing. The Contractor shall provide each substantially complete car in excellent condition in all details, and shall assume all liability and risk of loss incidental to Substantial Completion of cars.

Substantial Completion of each car shall require written approval by SDOT's Project Engineer or his or her representative. An executed copy of a Substantial Completion receipt shall be furnished by SDOT upon the Contractor's acceptable presentation of each car for Substantial Completion. SDOT may issue Substantial Completion receipts for streetcars that have identified deficiencies, at its sole discretion.

Title to each streetcar shall pass to SDOT upon issuance of the Substantial Completion receipt, and the Contractor shall furnish and execute all necessary documentation of title at that time. Passage of title shall not constitute acceptance of the car nor relieve the Contractor of any of its obligations under the Contract, nor preclude rejection of the car by SDOT. Following Substantial Completion, SDOT shall bear the risk of any loss or damage to the car, except for that due to equipment failure or failure due to design or workmanship deficiencies, or damage to the cars during testing and pre-delivery operations resulting from the acts or omissions of the Contractor.

5.5 USE OF SDOT FACILITIES

5.5.1 WORK POSITIONS AND OFFICE SPACE

For the Contractor's preparation and testing of cars for delivery to SDOT, SDOT shall make available two adjoining bays within the maintenance facility, with an under-car inspection pit and roof access. SDOT shall make available to the Contractor, to the extent possible as determined in the sole discretion of SDOT, electric power, storage for car components, and

use of employee facilities at the streetcar maintenance facility. The Contractor shall furnish all personnel, supplies, and tools for car pre-delivery work at SDOT's facilities, and shall furnish all equipment and other requirements for the car pre-delivery work position not made available to the Contractor by SDOT.

SDOT will make one office available at the streetcar maintenance facility for use by the Contractor's field service personnel.

5.5.2 CARE OF PREMISES

The Contractor shall maintain its premises on SDOT property in a neat and orderly condition, equal or better than the general maintenance facility condition. Upon completion of the entire project, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus materials, and rubbish of every kind from the site of the Contractor's work on SDOT property.

5.5.3 USE OF SDOT TRACK FOR TESTING

The Contractor shall conduct post-shipment testing on each car on SDOT's streetcar system as described in TS 15.7. SDOT shall make available to the Contractor car operating personnel and access to yard and mainline tracks of SDOT's streetcar system for the Contractor's post-shipment car testing, to the extent and at such times possible for non-interference with and safety of SDOT operations, as determined by the sole discretion of SDOT. Operation or movement of cars on SDOT's system at any location other than at the car work position made available to the Contractor within the car shop shall be by SDOT operating personnel only. SDOT shall exercise reasonable care in operation of cars for the Contractor's post-shipment acceptance testing. SDOT shall be liable for any damage to the cars resulting from the acts or omissions of SDOT, unless the damage is attributable to a fault of the Contractor. Any other such post-shipment car operations shall be at the Contractor's sole risk and liability. The Contractor shall furnish all personnel, supplies, tools, equipment and other requirements for the car post-shipment tests, except as provided in this paragraph. The Contractor shall provide SDOT's Project Engineer, three (3) days notice of the scheduled date and time of each car post-shipment test, so that SDOT’s Project Engineer or designee may witness each such test.

5.5.4 COOPERATION

The Contractor shall cooperate with SDOT in scheduling and coordinating the Contractor's work on SDOT property with the work and operations of SDOT.

5.6 ACCEPTANCE

SDOT will, at its expense, conduct acceptance tests on each car as set forth in TS 15.7. In advance of Final Acceptance, METRO may conditionally accept a car if in METRO’s determination the car is suitable for revenue service but not all Contract requirements have been met. Final Acceptance will occur after successful completion of all testing and

SDOT's determination that the car conforms in all respects to the Contract requirements. Neither Conditional Acceptance nor Final Acceptance of a car shall not relieve the Contractor from responsibility for errors, improper fabrication, non-conformance to a requirement, or for deficiencies within the Contractor's control. The Contractor shall correct all recorded defects, damage, or failures during burn-in testing.

5.6.1 CONDITIONAL ACCEPTANCE

SDOT may conditionally accept a car if SDOT determines after inspection, post-shipment and burn-in testing that the car is suitable for operation in revenue service, but that it is not yet totally responsive to all Contract requirements. Conditionally accepted cars shall be available to SDOT for revenue service until the Contractor is able to initiate and execute corrective action. The warranty period shall begin with Conditional Acceptance except for parts and systems that require corrective action. Any Conditional Acceptance for revenue service does not relieve the Contractor of the liability to correct defects as required by the Contract.

5.6.2 FINAL ACCEPTANCE

Final Acceptance of a car shall occur upon successful completion of all testing, burn-in, closing of all open items, and SDOT's determination that the car conforms in all respects to the Contract requirements.

5.7 PAYMENT PROVISIONS

5.7.1 PAYMENT PROCEDURES

SDOT shall pay to the Contractor, at the times and in the manner hereinafter provided, the amounts set forth in the Contract for the cars and other work furnished pursuant to the Contract. The Contractor agrees to accept such amounts as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by the Contractor in performing its obligations under the Contract.

The Contractor shall submit invoices to SDOT detailing the payment milestones completed in the payment period. The Contractor may submit only one invoice per month. The invoice shall be accompanied by all documentation that supports the amount of the payment being requested. SDOT reserves the right to inspect any and all items relating to payment verification, on the Contractor’s premises. The Contractor must submit the monthly progress report and schedule update (TS 19.1) with or before the invoice in order to receive payment.

Progress payments are specified percentages for each milestone listed below and are based on the Price Items 1, 2, and 3 as shown on Form III, Schedule of Prices. As shown on Form III Schedule A, Price Item 2 includes <u>all</u> shipping, duty, and customs costs.

The Contractor's invoices shall account the work events described in the progress payment schedule below. Progress payment invoices shall not exceed the following stated percentages of the Contract price at the time of the following stated work events:

		CUMULATIVE PERCENTAGE			
		PRICE ITEM 1:	PRICE ITEM 2:	PRICE ITEM 3:	
	MILESTONE DESCRIPTION	6 STREET CARS	SYSTEM SUPPORT	SPARE PARTS, SPECIAL TOOLS AND TEST EQUIPMENT	
A	Three percent (3%) of Price Items 1, 2 and 3 upon NTP.	3	3	3	
B	Three percent (3%) of Price Items 1, 2 and 3 upon approval of the project schedule.	6	6	6	
C	Four percent (4%) of Price Items 1, 2 and 3 upon award of subcontracts for: carbody, truck frames, propulsion system, friction brake system, doors, HVAC, auxiliary power system, communication system, and TWC.	10	10	10	
D	Five percent (5%) of Price Items 1, 2 and 3 upon approval of all truck frame fatigue tests and carbody structural tests, including any required follow-on stress analyses.	15	15	15	
E	Ten percent (10%) of the total price for Price Item 1 (6 streetcars) upon SDOT approval of the first car shell completely assembled and painted (not including windows).	25	15	15	
F	Twenty percent (20%) of the unit price for each streetcar upon completion of the car shell (6 times).	45	15	15	
G	Fifteen percent (15%) of the unit price for each streetcar upon completion of installation of all roof equipment, interior electrical lockers and panels, carbody wiring, and terminations (6 times).	60	15	15	
H	Fifty percent (50%) of the price for System Support upon approval of the following first article inspections: coupler, cab, doors, HVAC, auxiliary power system, propulsion system, and friction brakes	60	65	15	

	Milestone Description	Cumulative Percentage			
		Price Item 1:	Price Item 2:	Price Item 3:	
		6 Street Cars	System Support	Spare Parts, Special Tools and Test Equipment	
I	Fifteen percent (15%) of the total price for Price Item 1 (6 streetcars) on shipment of the first car from the Contractor's plant.	75	65	15	
J	Five percent (5%) of the unit price for each streetcar on shipment of each streetcar from the Contractor's plant (6 times).	80	65	15	
K	Twenty-five percent (25%) of the price for System Support upon delivery of approved training, operating and maintenance manuals.	80	90	15	
L	Five percent (5%) of the unit price for each streetcar upon delivery of the car per CP 5.4.5 (6 times)	85	90	15	
M	Five percent (5%) of the total price for Price Item 1 (6 streetcars) upon conditional acceptance of the first car by SDOT per CP 5.6.1.	90	90	15	
N	Five percent (5%) of the unit price for each streetcar upon conditional acceptance of the car by SDOT per CP 5.6.1 (6 times).	95	90	15	
O	Fifty percent (50%) of the price for spare parts, special tools, and test equipment upon delivery of fifty percent (50%) of the total value of spare parts, special tools, and test equipment.	95	90	65	
P	Thirty-five percent (35%) of the price for spare parts, special tools, and test equipment upon delivery of all spare parts, special tools, and test equipment.	95	90	100	
Q	Five percent (5%) of the unit price for each streetcar upon final acceptance of the car by SDOT per CP 5.6.2 (6 times).	100	90	100	
R	Ten percent (10%) of the price for System Support at Contract close-out.	100	100	100	

Within thirty (30) days after receipt of an invoice by SDOT, SDOT shall either

- Pay 100% of the invoice, or

- Pay the amount SDOT determines is properly due, and inform the Contractor in writing of the reason for withholding any amounts not paid, or
- Notify the Contractor in writing that SDOT elects to defer payment as specified in Section CP 5.7.2.

SDOT may withhold all or part of a payment to protect SDOT from loss because of:

- Defective work not remedied;
- Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;
- Failure of the Contractor to make payments properly to subcontractors or suppliers, or for labor, materials, or equipment;
- Damage to SDOT;
- The Contractor's failure to carry out the work in accordance with the Contract; or
- The Contractor's failure to comply with any provision or requirement of the Contract.

SDOT may withhold accrued liquidated damages from payments due to the Contractor.

No approval for payment, nor any payment by SDOT, shall constitute an acceptance of any cars or other Contract deliverables that are not in accordance with the Contract.

5.7.2 OPTION TO DEFER PAYMENTS

SDOT shall have the option to defer, in whole or in part, any one or more progress payments to the Contractor, based on SDOT's assessment that the level and timing of federal appropriations warrant such deferral. If payments to the Contractor are deferred, an equitable adjustment shall be made to the Contract Price. The adjustment shall reflect the interest on the deferred amount for the period of the deferral, at the rate and subject to the conditions specified herein.

SDOT shall pay the Contractor interest on the outstanding principal amount of the deferred payments as provided in this paragraph. Interest shall accrue on the outstanding principal amount of each deferred payment from the date such payment would have been due to the Contractor in the absence of such deferral (the "Nominal Due Date") until paid, at a variable rate equal to the 3-Month-LIBOR Rate (as herein defined) plus 1.0 %. The rate of interest applicable to the outstanding principal amount of the payments deferred hereunder shall change in response to changes in the LIBOR Rate as of each Determination Date. Interest shall be calculated on the basis of a 365-366 day year and the actual number of days elapsed. All accrued and unpaid interest shall be due and payable quarterly in arrears on the first day of each January, April, July and October, commencing with the first such day following the Nominal Due Date of the outstanding deferred payment on which such interest has accrued. In connection with each payment deferral hereunder, SDOT and the Contractor shall specify in writing the Nominal Due Date of the payment being deferred. As used herein:

"LIBOR Rate" shall mean the 3-Month London Inter-Bank Offered Rate for deposits in United States Dollars as published in The Wall Street Journal on the first publication day after the Determination Date.

"Determination Date" shall be the first day of each January, April, July and October or if any such date is not a business day, then the business day immediately preceding such date.

SDOT may pay to Contractor at any time all or any portion of the outstanding principal amount of the progress payments deferred hereunder. SDOT shall pay in full the outstanding principal amount of all deferred progress payments, together with accrued and unpaid interest thereon, no later than 30 days prior to the date upon which the final payment under this Contract is due and payable to the Contractor.

5.7.3 PAYMENTS TO SUBCONTRACTORS OR SUPPLIERS

The Contractor shall pay promptly each subcontractor (including supplier) the amount to which the subcontractor is entitled.

5.7.4 FINAL COMPLETION AND FINAL PAYMENT

Before requesting final payment, the Contractor shall complete all work, and shall correct any deficiencies in the work and any work rejected by SDOT.

Upon receipt of the Contractor's notice that all deliverables due under the Contract have been furnished, SDOT shall make inspection, and when SDOT finds all such deliverables acceptable under the Contract and the Contract fully performed, SDOT shall make final payment to the Contractor.

The final payment shall not become due until the Contractor submits to SDOT (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work have been paid or otherwise satisfied, and (b) consent of surety, if any, to final payment.

5.7.5 UNITS OF CURRENCY

All Contractor invoices for payment shall be accounted in U.S. dollars, and all SDOT payments to the Contractor shall be in U.S. dollars.

5.7.6 CURRENCY ADJUSTMENTS AND ESCALATION

There shall be no adjustments to the Total Base Contract Price for currency fluctuations or price escalation through the term of this Contract.

5.7.7 ESCALATION FOR OPTION CARS

Adjustments to the Contract Price to account for changes in labor and material costs shall be made for any order of option cars. An adjustment of the number of base order cars as described in Section CP 5.8.1 is not an order of option cars for purposes of this Section.

An Escalation Factor will be calculated as detailed below:

A. 80% of the escalation factor will be based on the Consumer Price Index – All Urban Consumers (CPI-U), U. S. city average, 1982-84 = 100, All Items, not seasonally adjusted, published monthly in the United States Department of Labor Bureau of Labor Statistics. The Base Index is the referenced index for the month of NTP.

B. 20% of the Escalation Factor will be based on the Producer Price Index for Steel Mill Products, published monthly in the Producer Price Indexes by the United States Department of Labor Bureau of Labor Statistics. Its Series ID is WPU1017. The Base Index is the Four Month Revised Producer Price Index for Steel Mill Products for the month of NTP.

C. The escalation factor for each index is determined by dividing each Index for the month the option is exercised by the respective Base Index. This is done for each of the indices described above, and the Escalation Factor is the weighted average of the two factors.

D. The Escalated Price is calculated by multiplying the Base Price times the Escalation Factor.

E. Since the indices will not be available at the time of exercising an option, the option execution may be by written notice and a Change Order issued after the four-month revised Producer Price Index is published.

If the Bureau of Labor Statistics discontinues either of these indexes, then SDOT and the Contractor shall mutually agree on an appropriate substitute index published by the Bureau of Labor Statistics. In the event that either index is rebased by the Bureau of Labor Statistics, SDOT and the Contractor agree to accept the rebased indexes.

5.8 OPTION FOR ADDITIONAL CARS AND SPARE PARTS

All items purchased as options as defined in this Section shall be identical in every way to corresponding items purchased under this initial Contract. All conditions, technical specifications, and requirements of this Contract shall apply to items purchased as option, except as noted below.

5.8.1 ADJUSTMENT TO MODIFY NUMBER OF BASE ORDER CARS

SDOT may make a “one-time-only” adjustment to the number of base order cars procured under this Contract as described in this Section. SDOT may add one streetcar to the base order of six (6) streetcars ordered under this Contract within six (6) months after NTP at the Unit Price shown in Item 1 in Section I of Form III Schedule of Prices-Price Summary.

Should SDOT exercise this Adjustment, the Base Contract Price shall be increased accordingly by adjusting the quantity in Item 1 of Price Form III.

5.8.2 OPTION FOR ADDITIONAL CARS

At the option of SDOT, the Contractor shall provide additional cars at the applicable Option Unit Price per additional streetcar as defined in this Section and listed on the Form III Schedule of Prices-Price Summary. SDOT shall order additional cars by written notice to the Contractor. The notice shall specify the quantity of additional cars being ordered. SDOT may place one or more orders for additional cars.

An option to order additional cars may be exercised at any time of SDOT's choosing up to thirty-six (36) months after NTP. Delivery of additional cars shall be in accordance with the following: The first additional car shall be delivered not more than eighteen (18) months after exercising of the option, but not before delivery of the last car of the base order or previous option order. All following cars procured under this provision shall be delivered at a rate of one (1) car per month.

5.8.2.1 PRICES FOR OPTION CARS

The Option Unit Price before Escalation shall include the Contractor’s cost for management, engineering, design, testing, training, field support, and warranty associated with the option cars.

Price of option cars shall reflect prior change orders and escalation in price. There shall be no currency adjustment for option cars.

If an option is exercised more than six (6) months but less than eighteen (18) months after NTP, the Option Unit Price before Escalation in Item 1 of Section II of the Form III Schedule of Prices-Price Summary shall apply.

If an option is exercised from eighteen (18) months to thirty-six (36) months after NTP, the Option Unit Price before Escalation in Item 2 of Section II of the Price Summary shall apply.

The base price of option cars shall be calculated using the applicable Option Unit Price before Escalation contained on the Price Summary.

First, this price is revised to include any price increase or decrease adjustment on a per-car basis due to executed change orders to the base contract accrued at the time of exercising the option.

Second, including the price adjustment described above for executed change orders, the option prices on the Schedule of Prices shall be escalated as described in CP 5.7.7, resulting in the Escalated Option Unit Price. This escalation adjustment shall be the sole remedy for increases in the Contractor's costs for option cars due to inflation and shall be applied independently for each option exercised.

5.8.2.2 PAYMENT FOR OPTION CARS

Payment for options shall be made in accordance with the progress payment schedule below:

	MILESTONE DESCRIPTION	CUMULATIVE PERCENTAGE
A	Ten percent (10%) of the total option price immediately following execution of the option.	10
B	Twenty-five percent (25%) of the unit price for each option streetcar upon completion of the car shell.	35
C	Twenty percent (20%) of the unit price for each option streetcar upon installation and completion of wiring of the car body mounted components of the following major sub-systems: Propulsion System, Friction Brake System, Auxiliary Electrical Equipment, HVAC, and Doors.	55
D	Twenty percent (20%) of the unit price for each option streetcar on shipment of each streetcar from the Contractor's plant.	75
E	Ten percent (10%) of the unit price for each option streetcar upon issuance of delivery receipt by SDOT.	85
F	Ten percent (10%) of the unit price for each streetcar upon conditional acceptance of the car by SDOT.	95
G	Five percent (5%) of the unit price for each streetcar upon final acceptance of the car by SDOT.	100

5.8.3 OPTION FOR SPARE PARTS, SPECIAL TOOLS, AND TEST EQUIPMENT

At the option of SDOT, the Contractor shall provide additional spare parts, special tools, and test equipment at the prices set forth in Schedule B of the Schedule of Prices. SDOT shall order additional spare parts, special tools or test equipment by written notice to the Contractor. The notice shall specify the quantity of additional materials being ordered. SDOT may place one or more such orders for additional materials, or none.

An option to order additional spare parts, special tools and test equipment may be exercised at any time up to thirty-six (36) months after NTP.

5.8.3.1 PAYMENTS FOR OPTIONAL SPARE PARTS, SPECIAL TOOLS AND TEST EQUIPMENT

Payments for optional spare parts, special tools and test equipment shall be made after all special tools, spare parts and test equipment in the option order has arrived on SDOT property.

5.9 CONTRACT MODIFICATIONS

5.9.1 CHANGE ORDERS

A Change Order is a written document, executed by PCSD, that (1) changes the total Contract price as of the date this Contract is fully executed, including any previously executed Change Orders, or (2) alters the design of the cars as specified in the Technical Specifications, or (3) alters the schedule for delivery of the Contract deliverables as set forth in the currently approved delivery schedule, or (4) makes any other change to the Contract, or makes a combination of any of the aforementioned Contract changes.

Change Orders shall be prepared by SDOT's Project Engineer. However, no Change Order shall be binding unless executed in writing by the Director of PCSD or designee.

The Contractor shall deliver a Request for Change Order to PCSD within fifteen (15) days of receipt of any order, direction, instruction, interpretation, or determination of SDOT that the Contractor believes will cause a change in the cost of the work or in the schedule for delivery of the Contract deliverables as set forth in CP 5.2.2 or in the currently approved progress schedule, or in any other change in the Contract. Additionally, the Contractor may deliver a Request for Change Order to PCSD for any new or different work in the Contract or adjustments to the Contract that the Contractor believes should be implemented.

With any Request for Change Order, the Contractor shall provide to PCSD a detailed description of the proposed adjustment to the Contract price or currently approved progress schedule, or both, and describing any other provisions of the Contract that will require modification because of the change. If the Contractor's proposal is acceptable to the City, PCSD will issue a Contract Change Order consistent with such proposal.

In connection with any Request for Change Order including a proposed adjustment in the Contract price, the Contractor shall submit a complete breakdown costs associated with the Change Order work.

In addition to the change order procedure described above, the City may at any time unilaterally direct changes within the general scope of the Contract by a written order to the Contractor. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, the parties shall attempt to negotiate an equitable adjustment in Contract price or delivery schedule or both. In the event that PCSD and the Contractor are unable to agree on the equitable adjustment, the Contractor shall proceed with SDOT's directed change, and the disagreement shall be resolved in accordance with CP 5.11, Disputes and Claims.

5.10 STOP WORK ORDER

The Project Engineer has the authority to stop any work whenever he or she deems necessary.

In addition to the right to terminate work under any other provision of this Contract, SDOT may require the Contractor to stop all, or any part of, the work called for by this Contract at

any time for up to ninety (90) days after a written stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a "Stop Work Order" issued pursuant to this Paragraph. As a minimum, a Stop Work Order shall include the following in writing:

- A clear description of the work to be suspended;
- Guidance as to the action to be taken on subcontracts; and
- Other suggestions to the Contractor for minimizing costs.

Upon receipt of a Stop Work Order, the Contractor shall comply with its terms immediately and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within the period specified by the order, or within any extension of that period, to which the parties agreed, SDOT may:

- Terminate the work covered by the order as set forth in CP 4.11 and 4.12;
- Cancel the Stop Work Order; or
- Allow the period of the Stop Work Order to expire.

5.10.1 COSTS OF STOP WORK

If a Stop Work Order is canceled or expires, the Contractor shall resume work. An equitable adjustment shall be made in the work scope, Contract price, or Contract time, as appropriate, and the Contract shall be modified in writing accordingly if:

- The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
- The Contractor asserts a claim for an adjustment within thirty (30) days after the end of the period of work stoppage; and
- The Stop Work Order was not caused by the Contractor's default or other act or omission within the control or responsibility of the Contractor.

5.10.2 MAINTENANCE DURING SUSPENSION

In preparation for and during suspensions of work, the Contractor shall take every reasonable precaution to prevent damage to or deterioration of the work. The Contractor shall repair or replace at no cost to SDOT work that is damaged or deteriorated during a work suspension due to the Contractor's failure to comply with this Paragraph. If SDOT finds that the Contractor is not taking a reasonable precaution and the Contractor fails to take the precaution within five (5) days after written notice from SDOT, SDOT may cause the precaution to be taken and recover the reasonable cost of taking the precaution from the Contractor.

5.11 DISPUTES AND CLAIMS

5.11.1 DISPUTES

If the Contractor and the SDOT Project Engineer are not able to resolve a dispute involving issues of fact arising from this Contract, SDOT shall refer the dispute to the PCSD director or designee. PCSD shall issue a written decision resolving the dispute. The decision of the Streetcar Project Manager may be appealed in writing to the Director of PCSD. The written decision of the Director shall be the City's final action regarding the dispute, except that the parties shall follow a course of mediation per CP 4.16.

Pending resolution of a dispute during the Contractor's pursuit of a remedy after the City's final agency action regarding the dispute, the Contractor shall proceed as directed by the Project Engineer. The Contractor's actions pursuant to orders by the Project Engineer under this Paragraph shall not be deemed to prejudice its disputed claims.

Nothing in this Paragraph shall be deemed to preclude the City or the Contractor from seeking any remedy available under the law after all other remedies have been exhausted.

5.11.2 CLAIMS

The Contractor must submit claims, arising under this Contract, in writing within thirty (30) days after the Contractor learns of, or should learn of, the event giving rise to the claim. The claim must state in as much detail as possible the basis for the claim and the Contractor's best estimate of its right to additional compensation or extra time arising in connection with the claim. If the claim is silent regarding a claim for extra time, the Contractor shall be entitled to no extra time in connection with the claim. If the claim is silent regarding additional compensation, the Contractor shall be entitled to no additional compensation in connection with the claim. The Contractor must notify SDOT promptly in writing if its estimates of additional compensation or extra time change, and the notification must state the reasons for the changes.

SDOT shall respond to the Contractor's claim within thirty (30) days after SDOT's receipt of the claim by:

- Approving the claim;
- Denying the claim;
- Requesting necessary information from the Contractor to enable SDOT to resolve the claim within thirty (30) days after its receipt of the requested information; or
- Determining that the claim presents a disputed issue of fact that must be resolved in accordance with CP 5.11.1.

The Contractor agrees to consolidate any claim or dispute involving multiple parties involved in this project.

If SDOT approves a claim based upon delay or hindrance of Contract work for any reason whatsoever, including, but not limited to, avoidable or unavoidable delays, or delays due to

acts or omissions by SDOT, SDOT shall adjust the schedule to help mitigate the Contractor's damages, or pay the Contractor damages and accelerate Contract work to ensure completion on schedule.

Notwithstanding any other provision of this Contract, the Contractor shall be absolutely barred from recovering extra costs or obtaining extra time within which to complete Contract work if the notice required under this Paragraph is delivered to SDOT later than one hundred eighty (180) days after SDOT's acceptance of the last car. However, the Contractor may raise counterclaims for additional compensation for work performed under the Contract in the event that SDOT asserts a claim against the Contractor later than one hundred eighty (180) days after SDOT's acceptance of the last car.

5.12 WARRANTY

5.12.1 SCOPE OF WARRANTY

All materials, components and parts furnished under this Contract shall be new and of high quality, and all car workmanship shall be of high quality, and in conformance with the Contract.

The Contractor warrants all materials, components, parts and workmanship of each car, each car spare part or assembly, and all special tools and diagnostic test equipment provided under this Contract to be free of defects and faults in material, design and workmanship. Such warranties by the Contractor shall apply to all car components, parts and workmanship, whether performed or provided by the Contractor, subcontractors, or suppliers at any tier. Such warranties shall not apply to cars or car components abused or neglected by SDOT, or damaged by some unusual and unforeseeable supervening cause occurring after acceptance. No implied warranties of merchantability or of fitness for purpose shall apply.

The Contractor shall furnish, at its own expense, all materials, parts, labor, shipping costs and other expenses to fulfill its car warranty obligations, except as otherwise provided by this Section CP 5.12.

5.12.2 WARRANTY PERIOD

The warranty periods shall be as set forth below:

A. Five (5) years after Conditional Acceptance for each car shell, including under frame, side walls, roof and support brackets, truck frame, axles, floor panels and structure and exterior panels and painting.

B. Four (4) years after Conditional Acceptance on the gear units, couplings, traction motors, and propulsion equipment.

C. One (1) year after Conditional Acceptance for each car for all other parts and components except spare parts.

D. One (1) year after installation, but not more than two (2) years after delivery for spare parts.

E. One (1) year after delivery for special tools and test equipment.

If SDOT does not perform “burn-in” testing within sixty (60) days after Substantial Completion for a car, warranty will begin sixty days after Substantial Completion for that car.

Any warranty from a subcontractor or supplier to the Contractor exceeding the periods described herein shall be extended to SDOT for the same period of time as given to the Contractor.

5.12.3 REPAIR AND REPLACEMENT

For each car component or workmanship failure during the warranty period, SDOT shall determine whether to correct the failure by repair or replacement of part(s) within an assembly, or by replacement of the entire assembly, based upon minimization of time for return of the affected car for operation, or consideration that the life of the assembly has or may have been adversely affected by the failure of one or more of its component parts.

SDOT shall perform removal of failed parts or assemblies and installation of repaired or replacement parts or assemblies for accepted cars under warranty, unless SDOT and the Contractor agree to other arrangements for such work. The Contractor may provide technical supervision for such removal or installation work by SDOT. The Contractor shall receive such removed failed car parts or assemblies at SDOT's Light Rail Operations facility, unless the Contractor requests shipment of such failed parts or assemblies to its facilities; in such case, SDOT will ship such failed parts or assemblies at the Contractor's expense. The Contractor shall deliver to SDOT a replacement or repaired car part or assembly for each such returned failed part or assembly within thirty (30) days of the Contractor's receipt of each failed part or assembly. In the event that a failed part or assembly is manufactured to order only and cannot be repaired or replaced within the thirty (30) day period, the Contractor and SDOT mutually shall consider whether the defective unit is to be repaired or replaced. The decision as to which alternative will be used shall be based on minimizing down time of the streetcar, and the Contractor shall return the repaired or replaced unit at the earliest possible date.

If SDOT and the Contractor arrange for SDOT to perform repair or replacement of failed car parts or assemblies, the Contractor shall retain full responsibility for warranty of such repaired parts or assemblies.

The Contractor shall pay SDOT within thirty (30) days of SDOT invoicing any and all amounts billed by SDOT at its actual labor, material and shipping costs, plus applicable overhead costs, for its removal of failed car parts or assemblies and installation of replacement or repaired car parts or assemblies pursuant to the warranty program.

5.12.4 FAILURE ANALYSIS REPORT

All parts or material returned to the Contractor for repair or replacement shall be accompanied by a Failure Analysis Report Form, which will be provided by SDOT. The Contractor shall complete this form and shall deliver to SDOT a full and complete report of the exact nature and probable cause of each car component failure within ten (10) days of the Contractor's receipt of such failed component.

5.12.5 SYSTEMATIC FAILURES

In the event that, during any twelve-month window of the base warranty period, component failures occur to an extent in excess of ten percent (10%) of the same components used for the same function in the same assembly or subsystem among all cars furnished under this Contract, the Contractor shall, within thirty (30) days of notification of such instance, commence a modification program to repair or replace all such components, including those that have passed beyond the warranty period, to correct the cause(s) of such failures. The base warranty period extends from conditional acceptance of the first car to expiration of the one-year warranty period of the last base order car. The twelve-month window applies individually for each component systematic failure. The design of the repair or replacement for the component(s) involved in each such modification program shall be developed by the Contractor to remedy the nature and probable cause of the component failures and shall be approved by SDOT. Repair and/or replacement of components pursuant to each modification program shall be according to the same provisions herein as if such components were failed components requiring warranty repair and/or replacement, whether or not actual failures for some or most of the involved components have occurred following notification of a requirement for a modification program.

In no case shall the correction of defects in design, material or workmanship result in an increase in maintenance requirement beyond that specified in the Contract Documents.

5.12.6 WARRANTY ON REPLACED PARTS

Any materials, parts or components which are used for replacement under the initial warranty period shall be warranted again for either half the total original warranty period of the replaced particular component, or for the remainder of the original warranty period of the replaced component, whichever is greater. The remainder of the original warranty period for each such particular component shall be computed from the date of failure of such component as recorded in SDOT's car maintenance records. In the case of components that are to be replaced pursuant to a modification program but have not yet failed, the remainder of the original warranty period shall be computed from the date of SDOT notification to the Contractor of a requirement for the particular modification program.

If the Contractor fails to comply with the warranty/modification provisions herein, or within the times specified for such performance, SDOT may have the component failures or defects corrected. The Contractor and the Contractor's surety shall be liable for all expense incurred. In case of emergency where, in the opinion of the Project Engineer, correction of

component failures or defects pursuant to the procedures and durations specified for the warranty/modification programs may cause serious loss or damage, repairs or corrections may be made without notice to the Contractor, and the Contractor shall pay the cost of the repairs or corrections.