State of Wisconsin
Department of Transportation
Contract for Purchase of
Intercity Passenger Rail Equipment
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THIS CONTRACT FOR PURCHASE OF INTERCITY PASSENGER RAIL EQUIPMENT (the "Contract") is made this 15th day of July 2009, by and between the State of Wisconsin (hereinafter "State") acting through its Department of Transportation (hereinafter "Department") and Talgo, Inc., a Washington corporation (hereinafter "Contractor").

WHEREAS, the State is a sovereign state within the United States of America, and the Department is an agency within Wisconsin's Executive Branch, with its principal office located in Madison, Wisconsin; and

WHEREAS, Contractor designs, manufactures and maintains high-speed passenger rail cars and train sets, and is headquartered in Seattle, Washington as a wholly-owned subsidiary of Patentes Talgo, S.L. which is headquartered in Spain; and

WHEREAS, the Department intends to establish high speed rail initiating in Chicago, Illinois and extending through Milwaukee and Madison, Wisconsin and onto the Twin Cities, Minnesota consistent with the Midwest High Speed Rail Initiative; and

WHEREAS, the Department currently contracts with Amtrak to operate the Hiawatha rail service between Chicago, Illinois and Milwaukee, Wisconsin; and

WHEREAS, the Department intends to upgrade the Hiawatha service to an intermediate high-speed rail service; and

WHEREAS, Contractor is recognized worldwide for innovation, technology, quality, reliability, safety and value of its passenger rail cars, train sets, and related services including maintenance services; and

WHEREAS, the Department issued a Request for Information on February 6, 2009 (the "RFI") to solicit from interested firms proposals for the sale and maintenance of two intercity passenger rail train sets; and

WHEREAS, Contractor submitted a proposal to the Department for this project on March 6, 2009 (attached hereto as Exhibit 1); and, following the Department's evaluation, the Department selected Contractor's proposal taking into consideration the RFI requirements and evaluation criteria, and clarifications; and

WHEREAS, the Department and Contractor entered into a Letter of Intent Regarding Acquisition of Train Sets and Establishment of Talgo Assembly Facility in Wisconsin on May 11, 2009 (the "LOI"), a copy of which is attached hereto as Exhibit 2 whereby the Department wants to acquire at least two Train Sets; and
WHEREAS, the Department wants to include an option to buy two additional Train Sets, which will be exercised if the Department identifies additional funds for the purchase of such additional equipment; and

WHEREAS, Contractor agrees to manufacture and sell at least two Train Sets to the State; and

WHEREAS, Contractor is duly authorized and qualified to provide the related maintenance upon the Train Sets and has signified its capability and willingness to perform such work in accordance with the terms of the Contract Documents; and

WHEREAS, Contractor intends to locate an assembly facility within the State of Wisconsin in order to utilize Wisconsin workers and skills to assemble and maintain the Train Sets;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein or attached, referenced and made a part hereof, the parties hereto agree as follows:

ARTICLE NO. 1. DEFINITIONS

1.01 “Acceptance” means the Department acknowledges in writing that Contractor has satisfactorily completed the work described in the stage of the Milestone Payment Schedule for which Contractor is seeking payment, provided that Department shall not withhold its acknowledgement of Acceptance without good cause.

1.02 “Business Day” means a day which is not a Saturday or Sunday, and also not a day on which banks are authorized to be closed in the State of Wisconsin or in Spain.

1.03 “Contract” means the entire agreement between the parties as set forth in this document, its Appendices and Exhibits, any Change Orders entered into pursuant to Article 40 hereof, or any amendments to any of the foregoing entered into pursuant to Article 34 hereof. Each of the individual documents described above is a “Contract Document.” Collectively they are referred to as the “Contract” or the “Contract Documents.”

1.04 “Contract Amount” means the purchase price for the Work pursuant to the Contract Documents.

1.05 “Day” as used in the Contract Documents shall mean one calendar day.

1.06 “Delegate” shall have the meaning ascribed to it in Article 11.03 hereof.

1.07 “Final Acceptance” means the Department acknowledges in writing that Contractor has satisfactorily completed the work described in all stages, including the final stage with
respect to each Train Set, of the Milestone Payment Schedule as well as all other material requirements of the Contract, provided that Department shall not withhold its acknowledgment of Final Acceptance without good cause.

1.08 “Force Majeure” means an event or condition beyond the control of a party to this Contract, including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected, which causes delay or adversely affects the ability of such party to perform its obligations under this Contract.

1.09 “Main Spare Parts” means those high unit-cost components described on Exhibit 3 hereto, which are purchased by the Department hereunder as set forth in Article 45 of this Contract.

1.10 “Milestone Payment” means any payment described in the “Milestone Payment Schedule” which is set forth in Exhibit 4.

1.11 “Notice” means any notification required or permitted to be given hereunder and properly served as described in Article 33 of this Contract.

1.12 “Operator” means Amtrak or any successor train operator that contracts with State to provide regularly scheduled passenger rail service as described in Article 4.01.

1.13 “Project Manager” means the individual duly authorized by the Contractor in writing to act on its behalf as described herein.

1.14 “Representative” means the individual duly authorized by Department in writing to act on its behalf as described herein.

1.15 “Significant Additional Burden” means a change resulting in any increase in the cost of producing the Train Set or a delay in delivery of the Train Sets, or a 5% reduction in passenger seating capacity.

1.16 “Spare Parts” refers to both “Main Spare Parts” and “Start-up Inventory.”

1.17 “Standard Trade Practice” is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor or Department.

1.18 “Start-up Inventory” refers to those Spare Parts described on Exhibit 3 hereto, which are purchased by Department hereunder as set forth in Article 45 of this Contract which are those non high unit-cost parts or components necessary for performing scheduled (preventive) and unscheduled (corrective) maintenance on the Train Sets.
1.19 "Substantial Change" means a change that results in the need for structural changes to the
Train Sets such that Contractor is required to obtain recertification of the Train Set(s)'
compliance with applicable FRA regulations.

1.20 "Technical Specification," "Technical Specifications" and "Specifications" are used
interchangeably and shall mean the Technical Specifications described in Exhibit 1 as
amended or supplemented pursuant to Articles 34 or 40 hereof.

1.21 "Train Set" refers to a Train Set to be purchased by the Department, as provided herein,
whether rolling stock or other passenger rail equipment, which shall meet the
requirements of the Technical Specifications as amended or supplemented pursuant to
Articles 34 or 40 hereof.

1.22 "Work" refers to all the products and services (including labor and material) required
from the Contractor in accordance with the Contract Documents.

ARTICLE NO. 2. INTERPRETATION

2.01 Contract to Be Construed Liberally -- Not For the Benefit of Third Parties. This Contract
shall be construed liberally so as to secure to each party hereto all of the rights,
privileges, and benefits herein provided or manifestly intended. This Contract and each
and every provision hereof is for the exclusive benefit of the parties hereto and not for the
benefit of any third party. Nothing herein contained shall be taken as creating or
increasing any right of a third party to recover by way of damages or otherwise against
Department or Contractor.

2.02 Construction. This contract was negotiated between the parties. Ambiguities are not to
be construed against either party.

2.03 Government Regulations. In case any lawful government regulatory authority shall after
the effective date of this Contract promulgate any new regulation or amendment to any
existing regulation with respect to the Train Sets or any part thereof, or the parties hereto
or either of them, each of the parties hereto will cooperate with the other in carrying out
such regulation and each will arrange its operation and business so as to enable the other
to comply with the terms of the regulation so made or amended. In the event that
compliance with the provisions of this Section 2.03 imposes a Significant Additional
Burden on any party, the parties will enter into an appropriate Change Order pursuant to
Article 40 hereof or agree to other equitable adjustments in this Contract before
proceeding as required by the regulation in question. If the parties are unable to reach
agreement on a Change Order or other equitable adjustment within thirty (30) days of
Notice provided by either party to the other party that such regulation requires a change
to Contractor's Work, any party may submit the matter to dispute resolution pursuant to
Article 32 of this Agreement.
2.03.1 In case any lawful government authority shall after the effective date of this Contract make any order or issue any ruling or interpretation with respect to the Americans with Disabilities Act ("ADA") such that compliance with the order would impose a Significant Additional Burden on the Contractor (including, but not limited to, requiring a Substantial Change) the parties will enter into an appropriate Change Order or other equitable adjustment in this Contract before proceeding as required by the order, ruling, or interpretation in question. If the parties are unable to reach agreement on a Change Order or other equitable adjustment within thirty (30) days of Notice provided by either party to the other party that such regulation requires a change to Contractor’s Work, any party may submit the matter to dispute resolution pursuant to Article 32 of this Agreement.

2.04 Effect of the Invalidity of any Provision. If any covenant or provision, or part thereof, of this Contract, shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this Contract. No controversy concerning any covenant or provision shall delay their performance of any other provisions except as herein allowed.

2.05 Article Headings. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Contract.

2.06 Remedies Cumulative. Except as otherwise provided herein, all remedies provided in this Contract are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively therewith.

2.07 Forbearance By Parties Not a Waiver. Any forbearance by the parties in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy at any other time or in any other circumstance.

2.08 Changed Conditions Affecting Performance. Each party hereby agrees to immediately notify the other in the manner prescribed in Article 33 of any change in conditions of law, or any other event, which may significantly affect its ability to perform the Work in accordance with the provisions of this Contract. It shall be the Contractor’s responsibility to monitor change in applicable Federal and State laws, ordinances and regulations, and Contractor shall be deemed to be aware of such changes within thirty (30) days of the enactment of any such change.

2.09 No State Obligation to Third Parties. No contract between Contractor and its contractors and/or their subcontractors, and/or material suppliers shall create any obligation or liability of the State with regard to this Contract without Department's specific written consent to such obligation or liability and notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitation thereof. Contractor hereby agrees to include this provision in all contracts entered into by Contractor for
employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this Contract.

2.10 No Contractor Obligations to Third Parties. No contract between Department and its contractors and/or their subcontractors and/or material suppliers shall create any obligation or liability of the Contractor with regard to this Contract without the Contractor’s specific written consent to such obligation or liability and notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitation thereof. Department hereby agrees to include this provision in all contracts entered into by Department for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this Contract.

2.11 Department Advice. Contractor bears complete responsibility for the performance of its obligations as defined by this Contract and by any amendments thereto. Although Contractor is encouraged to seek the advice and opinions of Department on problems that may arise, the giving of such advice shall not shift the responsibility of Contractor hereunder.

2.12 This Contract may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.

2.13 It is understood that this Contract shall not be valid and binding upon Department until accepted and approved by the Secretary of Transportation, or his authorized designee.

2.14 Non-Appropriation of Funds. With respect to any payment required to be made by Department under this Contract, the parties acknowledge Department’s authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either Contractor or Department may terminate this Contract after providing not less than thirty (30) days notice consistent with Article 33. Department agrees not to effect such termination for the purpose of replacing the Train Sets with equivalent Train Sets supplied by others, or otherwise as a purposeful means of terminating the contractual relationship between the parties. Notwithstanding the foregoing, if Department terminates this Contract pursuant to this Section 2.14 more than thirty (30) days after the execution of this Contract, then Contractor is entitled to keep any Milestone Payment received from Department hereunder and Department is entitled to all rights of ownership, including possession, with regard to all Work paid for by Department to that point in time.

ARTICLE NO. 3. COORDINATION OF CONTRACT DOCUMENTS

3.01 The Contract Documents, as delineated in 3.03 below, represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral, including the RFI and Contractor’s responses thereto and any other bidding documents except to the specific extent those documents are referenced herein. The Contract Documents may be amended or modified
only by Change Order pursuant to Article 40 hereof or amendment pursuant to Article 34 herein.

3.02 Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one Contract Document is binding as though occurring in all. All Contract Documents complement one another in describing a complete work. Any requirement in one part binds as if stated in all parts. Each of the parties hereby agrees to take such further steps, including the execution of further documents, as may be reasonably requested by the other party in order to fully effectuate the provisions of this contract.

3.03 There are no intentional conflicts or omissions in the Contract Documents, other than provisions that have been marked intentionally deleted. In the event of any conflicts or omissions in the Contract Documents, the order of precedence shall be as follows:

(1) Change Orders.

(2) Contract Amendments.

(3) This Contract Form.

(4) Technical Specifications in Exhibit 1.

(5) Other Exhibits and Appendices.

3.04 If any part of the Contract requires work but does not include a description for how the work is to be performed, the work shall be performed in accordance with Standard Trade Practice(s).

ARTICLE NO. 4. SERVICE OBJECTIVES

4.01 The Department desires to improve rail passenger service between Chicago, IL, and Milwaukee, WI by providing improved equipment. Department further desires to extend rail passenger service from Milwaukee, WI to Madison, WI, and ultimately onto the Twin Cities, MN and Green Bay, WI consistent with the rail passenger network described in the Midwest High Speed Rail Initiative.

4.02 The Contractor shall design, manufacture, deliver, test and commission Train Sets pursuant to the Contract Documents for purchase by Department hereunder.

4.03 The parties agree that Contractor may contract with, and use services provided by any of Contractor’s affiliates for the construction of the Train Sets, maintenance of all Train Sets, pursuant to the separate Maintenance Agreement identified in Article 5, and for other obligations of the Contractor hereunder in addition to other subcontracting by Contractor. The existence of such arrangements shall in no way alter Contractor’s obligations to the Department hereunder.
ARTICLE NO. 5. MAINTENANCE AGREEMENT

5.01 The parties agree to negotiate in good faith concerning the terms and conditions of an agreement pursuant to which Contractor will provide maintenance services for the Train Sets for a period of at least 20 years after their delivery.

5.02 The parties acknowledge that the Train Sets will be primarily maintained in the State of Wisconsin preferably using Wisconsin workers. The parties recognize that the ultimate goal of the State of Wisconsin is to provide the passenger rail service described in Section 4.01 subsequent to the delivery of the Train Sets. Therefore the parties agree to work together to provide an adequate temporary maintenance facility in Milwaukee, Wisconsin or another Wisconsin location as otherwise agreed by the parties, which facility shall be supplied at no expense to Contractor. In the event the Department exercises its option to purchase additional Talgo Train Sets (beyond the first two Train Sets, three spare cars and spare parts inventory), a larger maintenance facility may be necessary. To the extent practicable, and except as provided otherwise in subsequent maintenance agreements, Contractor shall utilize the Wisconsin maintenance facility to maintain additional trains subsequently sold or provided to other entities for Midwest service.

5.03 If Department contracts with any party other than Contractor to provide maintenance services for the Train Sets, Department acknowledges that such other party’s work on the Train Sets may adversely affect the warranty coverage otherwise provided by Contractor for the Train Sets.

ARTICLE NO. 6. OPTION TO PURCHASE ADDITIONAL TRAIN SETS

6.01 The parties acknowledge that Department may order two additional train sets with the same Technical Specifications as the Train Sets hereunder (which additional train sets shall, for the purposes of this contract, also be “Train Sets”), which additional purchase shall be documented in a Change Order to this Contract. The purchase price of each additional Train Set shall be the price set forth in Exhibit 4 of this Contract provided that: (i) the specifications of each Train Set finally delivered under this option are not different from the specifications included in this Contract, (ii) such additional Change Order is signed within nine (9) months of the date of execution of this Contract, and (iii) if at any time during the last three (3) months of this nine-month period Contractor becomes aware of an increase of any cost related to its Work (whether for a tangible product or financial costs, such as an increase in Contractor’s expenses due to a change in the exchange rate), then Contractor may adjust the pricing in Exhibit 4 to reflect such increased cost(s).

6.02 If, within nine (9) months of the execution of this Contract, other states or entities order train sets from Contractor which are to be manufactured in the same location and under substantially the same specifications as the Train Sets, Department will pay a lower price per Train Set according to the table set forth in Exhibit 4, provided that, if at any time
during the last three (3) months of this nine-month period Contractor becomes aware of an increase of any cost related to its Work (whether for a tangible product or financial costs, such as an increase in Contractor's expenses due to a change in the exchange rate), then Contractor may adjust the credit described in Exhibit 4 to reflect such increased cost(s). Any discount pursuant to this Section 6.02 will be applied by issuing a credit on the last Milestone Payment on each Train Set.

ARTICLE NO. 7. ASSEMBLY FACILITY

Contractor shall establish its own assembly facility in the State of Wisconsin or subcontract the work to other entities located in Wisconsin. Contractor shall manufacture and construct body shell and wheel assemblies in its factory in Spain and ship the uncompleted body shell and wheel assemblies to Wisconsin for final assembly. The assembly components will be purchased preferably from Wisconsin and other United States vendors where available and feasible. Contractor intends that as much of the build-out and assembly of the trains as possible and feasible will be performed at the Wisconsin assembly facility rather than in Spain. Contractor will use this Wisconsin facility to perform final assembly for other Talgo train sets subsequently sold to Amtrak, other states, or other entities, provided that the purchase terms of those train sets does not provide otherwise. Notwithstanding the foregoing, in order to ensure watertightness, Contractor may ship the body shells from Spain with certain assembly completed (such as exterior doors and windows already mounted on the rail cars and seals required for painting).

ARTICLE NO. 8. INTENTIONALLY OMITTED

ARTICLE NO. 9. OPERATION OF THE TRAINSETS IN REVENUE SERVICE

The parties agree that Department shall contract with an Operator under separate agreement to provide operation of its Train Sets in daily revenue service. Payment for the State funded portion of Operator's operation will be made by Department directly to Operator as specified under such separate agreement.

ARTICLE NO. 10. TRAINING OF PERSONNEL

10.01 Contractor shall provide Department, and/or Operator, with the necessary instruction and/or supporting equipment and materials, hereinafter referred to as the Training Program, for competent and experienced operators to operate the Train Sets. The Training Program and all training manuals and other materials provided pursuant to this Article 10.01 shall conform to standard trade practices. The number of individuals to be trained, their qualifications, and the timing and location of the training to be received shall be subject to separate agreement between Department and Contractor in cooperation with Operator, which agreement shall include allocation of financial responsibility for such training. Contractor will provide the training herein referred with the personnel it
hires to provide maintenance of the Train Sets, subject to approval by Department. Notwithstanding the foregoing, Contractor shall not be required to provide the training in this Article 10 if the parties do not agree upon a maintenance contract before the Train Sets enter revenue service.

10.02 Contractor is responsible for providing training to Operator's competent and experienced on-board personnel, including training on all operating and safety systems, to operate the two (2) Train Sets in revenue service. The training on the Train Sets shall be completed prior to the beginning of revenue service. The Contractor agrees to have the Train Sets available in Milwaukee, Wisconsin or another mutually agreed location for inspection, trial runs, and training of Operator personnel at least two (2) weeks prior to the beginning of revenue service.

10.03 Contractor shall not be required to train personnel hired by Department to build any maintenance facility for the Train Sets.

ARTICLE NO. 11. SUPERVISION OF WORK

11.01 The Contractor shall employ or contract with management personnel sufficient to manage Contractor's obligations hereunder and the satisfactory progress of the Work. Among such management, Contractor shall appoint one person as its "Project Manager" to represent the Contractor with regard to Contractor's obligations hereunder and Contractor's performance of the Work. The Project Manager shall possess appropriate technical qualifications. Contractor will provide Department with Project Manager's qualifications for the job and, Contractor's appointment of Project Manager shall be subject to Department's approval. The Project Manager shall represent the Contractor, and all communications from or to the Project Manager shall be as if received from or given to the Contractor. Such communications will be confirmed in writing to the Contractor upon request in each case.

11.02 The Representative for this Contract shall be designated by the Department and will provide contract administration on behalf of the Department. The Representative (and up to two delegates designated in writing) will also act as the technical representative of the Department to the Contractor. The Representative and the delegates shall possess appropriate technical qualifications. Department will use reasonable efforts to maintain continuity in the identity of the Representative and delegates. The Representative and the delegates shall represent the Department, and all communications from or to the Representative or the delegates shall be as if received from or given to the Department, as the case may be. Such communications will be confirmed in writing to the Department upon request in each case. The Representative's and each delegate's authority will include review and interpretation of drawings and Contract technical submissions, schedules and design reviews, review invoices and progress payments, Acceptance of the Train Sets and their accessories and all other interface functions of a technical or commercial nature between the Contractor and Department. All orders and directives issued by the Representative and any delegate affecting the Work will be in writing. The
Representative and the delegates shall each have authority to issue Change Orders on behalf of Department to the Contractor in accord with Article 11.03 and Article 40. Prior to obtaining access to any Confidential Information of the Contractor or any subcontractor, the Representative and the delegates shall execute Confidentiality Agreements, as defined in Article 42.03.

11.03 Department reserves the right to issue Change Orders and to work with Contractor to modify the Work and Contract language at any time during the contract performance period, in accordance with Article 40 hereof. The Representative's delegates shall have the authority to issue changes the full impact of which does not result in more than a Five Thousand Dollar ($5,000.00) increase in Contract Amount. Change Orders, the full impact of which exceeds ($5,000) increase in the Contract Amount, must be approved by the Representative. Change Orders increasing the contract amount by more than $25,000 must be approved by the Secretary of the Department or his designee. All Change Orders shall be in writing.

ARTICLE NO. 12. INSPECTION

12.01 The Representative and the delegates shall have access, at all reasonable times and as prearranged with the Contractor, to those parts of the plants of the Contractor or its subcontractors in which any portion of the Work is performed for the purposes of inspecting materials and workmanship, and of verifying conformity to the Technical Specifications during the progress of construction and assembly of the Train Sets. The parties shall use reasonable efforts to conduct inspections in such a way as to minimize disruptions in the performance of the Work while not impairing Department's verification of compliance with the Contract. The Department shall also use reasonable efforts to maintain the availability of the persons conducting inspections on a short notice basis, which may include appointing a local agent/representative near the location where the Work is being performed. All persons conducting inspections shall possess all necessary technical qualifications for the inspections that they perform. All persons conducting inspections or otherwise receiving Confidential Information (as defined in Article 42.03) shall enter into Confidentiality Agreements prior to having access to any Confidential Information of Contractor or any subcontractor. If the Representative or any delegate does not advise the Contractor's project manager in writing within five (5) Business Days after completion of an inspection, test or other examination of any materials, components or apparatus that such items do not meet the requirements of the Contract, said inspection, test or examination shall be deemed to have been satisfactorily completed.

12.02 Contractor and its affiliated entities shall extend to Department's Representative and delegates referred to in Article 12.01, full cooperation and necessary facilities to permit the convenient inspection of all materials, work, and equipment supplied per the Technical Specifications.

12.03 The Representative and delegates referred to in Article 12.01 shall be allowed to observe all tests and inspections of Train Set components at the Contractor's and, subject to
Article 12.02, subcontractor's plants for the purpose of quality control and shall be allowed to participate in all tests and inspections pursuant to Articles 12.06 and 12.07.

12.04 Should Department have reasonable evidence or concern that work not in conformity with the Contract has been permitted by the Contractor, or that materials not in conformity with the Contract were used, Department has a duty to promptly and fully disclose such evidence or concern to Contractor as a mitigation of any resulting damages.

12.05 The cost of Department's inspection and compensation to the Department's inspection personnel will be the responsibility of the Department, and no provision for these costs shall be included in the Contract Amount.

12.06 Major components and/or apparatus may be inspected at the source of manufacture by the Department's representatives identified in section 12.01. Major components and apparatus include, but are not limited to:

- couplers and draft gear
- hot journal detector
- door motor and controls
- doors
- journal bearings
- air brake equipment
- air conditioning equipment
- truck weldments and/or castings
- electrical control panel
- cabinets
- wheels, axles and their mountings
- heating equipment
- water system
- microprocessors
- seats
- battery charger
- kitchen equipment
- windows
- toilets (including piping)

12.07 Department shall be given reasonable prior Notice when any of the items listed in Article 12.06 are to be available for the first article inspection. Department or its Representative or designee shall be allowed the opportunity to attend all inspections. In addition to the above, Department reserves the right to require a functional demonstration of any of the items listed in Article 12.06, if from Department's engineering standpoint such a demonstration is reasonably feasible; provided, however, that if the Contractor establishes that such functional demonstration will cause a delay to the delivery of the Train Sets, then if Department continues to desire the functional demonstration, the parties shall first agree on an appropriate extension of the delivery schedule. This demonstration may include measurement of operating characteristics, performance
parameters, and any other qualities relevant to the intended purpose and/or service intended of the specified item. The Contractor must be prepared to show how the specified item satisfies applicable contractual requirements including, but not limited to, the Technical Specifications. The demonstration must be performed using means that can be readily observed, repeated, and documented. Specific pass/fail criteria will be established by mutual agreement for the performance of the product prior to the demonstration and be based on standard trade practices to the maximum extent feasible. Notwithstanding the foregoing, Department acknowledges that the manufacturing process is fluid and active and such Notice may vary accordingly. In conducting its inspections, Department agrees to use its best efforts to avoid delaying or impeding the manufacturing process and further agrees that any inspection, approval process or request for testing shall not impose an undue burden on Contractor. For the purposes of this Section, Department shall endeavor to identify an inspection agent/representative.

12.08 Department’s Representative and any delegate or agent/representative shall sign Contractor’s standard waiver before entering any Contractor work area or facility, which waiver shall include a release of liability and agreement to hold Contractor’s proprietary information confidential.

ARTICLE NO. 13. TESTING

13.01 If the Contract Documents, or any laws, ordinances, rules, regulations or orders by any public authority having jurisdiction, permit any Work to be inspected, tested or approved, the Contractor shall give the Department reasonable prior written Notice of its readiness and of the date arranged (or in the case of inspections by governmental agencies, such lesser amount of notice as Contractor has been given) so the Department or its Representative or delegate or agent/representative may observe such inspection, testing or approval. The Contractor shall perform and bear all costs of performing such inspections, tests and approvals unless otherwise provided in the Contract Documents. If after the commencement of the Work, the Department reasonably determines that any Work requires inspection, testing, or approval in addition to inspections and tests provided under Articles 12 and 14, the Contractor will, upon written authorization from the Department, order such special inspection, testing or approval and the Contractor shall give Department reasonable prior written Notice as provided hereunder. These additional inspections or tests shall be conducted at the initial expense of the Department, and the Department shall grant an extension of time equal to any delay caused by such tests; but if such additional inspection or testing reveals a failure of the Work to materially comply (1) with the requirements of the Contract Documents or (2) with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction with which Contractor is required to comply pursuant to the Contract Documents, the Contractor shall bear all costs of correction and re-testing thereof, and no extension of the delivery schedule will be granted. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to the Department. Neither the observations of the Department in its administration of the Contract, nor the Department’s inspections, tests or approvals, shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract.
ARTICLE NO. 14. DELIVERY AND ACCEPTANCE

14.01 Upon Contractor’s completion of any of the Work described in the relevant stage of the Milestone Payment Schedule, Department shall make payment of the Contract Amount in the manner set forth in Exhibit 4 and Article 18. Delivery of the first two Train Sets for pre-revenue testing by the Operator shall be accomplished no later than twenty-four (24) months after the Contract execution date except to the extent that said delivery deadline may be extended as provided in this Contract. Delivery shall be “ex works” Contractor’s assembly facility in Wisconsin or at some other location mutually agreed to by the Parties.

14.02 All parties acknowledge and accept that 49 CFR 238.111 provides that the Operator (or railroad, as the case may be) and not the Contractor is responsible for performing a pre-revenue service acceptance testing plan. Contractor will diligently work with Department and any such Operator to ensure that the Operator’s pre-revenue service acceptance testing plan is efficiently implemented. To this end, the Department shall have access to make a technical inspection and testing of such Train Set together with Contractor for a period of seven (7) days to determine whether the Train Set meets the requirements of the Contract. Contractor shall provide written Notice of not less than twenty (20) days to inform the Department of the date a Train Set is available for such inspection. Prior to the Contractor’s notification to the Department to carry out a technical inspection and testing of any Train Set, Contractor shall provide documentation to the Department verifying that all single components of such Train Set fulfills the Technical Specifications and the functional requirements set up therein for such components. The Department’s inspection shall start on the date specified in the Contractor's Notice and continue for seven (7) days thereafter, unless the Department advises the Contractor within three (3) Business Days after receipt of the Notice that the Contractor's proposed date is unacceptable and proposes an alternate date which is a Business Day not later than one (1) week later than the date proposed by Contractor. After the technical inspection and testing, Department shall provide a delivery report containing the findings in connection with the technical inspection and testing. A deadline shall be fixed in the report for the curing of defects, if any.

14.03 The inspection shall be conducted as required by Article 14.02. Department shall accept the Train Set(s) or shall identify discrepancies between a Train Set and the requirements of this Contract with reasonable specificity within seven (7) Business Days after the last day provided for the inspection. In the event there are such discrepancies between a Train Set and the requirements of this Contract, then the Contractor shall promptly remedy the deficiencies and notify the Department of the schedule to remedy the deficiencies.

14.04 Final Acceptance of a Train Set by the Department shall be based upon the Department’s reasonable, good faith determination that the Train Set meets all of the material requirements of the Contract, and that all material approvals, waivers, if any, and
permissions required by this Contract have been granted to make the Train Set available for daily scheduled revenue service, provided that Department shall not unreasonably withhold this determination. The Contractor shall be responsible for obtaining any approvals, waivers and permits required in order to assure that the regulatory requirements of this Contract applicable to the Train Sets are satisfied, and Department shall cooperate with Contractor, and encourage Operator to cooperate with Contractor in obtaining said approvals, waivers and permits. If Contractor is unable to obtain any approval, waiver or permit due to Operator's or Department's failure to provide reasonable cooperation, then Contractor shall not be responsible for the inability to obtain such approval, waiver or permit.

ARTICLE NO. 15. TITLE AND RISK OF LOSS

15.01 Contractor agrees to bear all risks of loss, injury or destruction of goods and materials ordered herein which occur prior to Final Acceptance. Such loss, injury or destruction shall not release Contractor from any obligation hereunder except in cases of Force Majeure. Risk of loss for a Train Set shall pass on the date of Final Acceptance of such Train Set or when the Train Set has been placed into revenue service, whichever is earlier. Legal title for a Train Set shall pass to Department immediately after both Final Acceptance and final payment to Contractor for the Train Set has occurred.

ARTICLE NO. 16. INTENTIONALLY OMITTED

ARTICLE NO. 17. INTENTIONALLY OMITTED

ARTICLE NO. 18. TRAINSET PURCHASE

18.01 The total purchase price and payment schedule for each Train Set (including three spare cars, Spare Parts and, if exercised, the two additional optional Train Sets) is set forth in Exhibit 4.

18.02 At the time any complete Train Set has been Finally Accepted, Contractor shall credit in favor of the Department against the Contract Amount all payments which have been made by Department with regard to such Train Set, and invoice the Department for the balance of the Contract Amount regarding such Train Set, with adjustments for any properly executed Change Orders or as otherwise provided in this Contract. Department shall pay this remaining balance within 30 days after invoice from Contractor.

18.03 Upon Contractor's submission of any invoice for a Milestone Payment, Contractor shall identify the Train Set on the invoice, and shall certify under oath that the Work has been completed as set forth on the invoice under the terms of this Contract.
18.04 Whenever a properly executed Change Order increases the Contract Amount, the increased amount shall not be due until the next progress payment is due for the applicable Train Set, and then such amount shall be shown as an individual line item on the invoice. Whenever a properly executed Change Order decreases the Contract Amount, the decreased amount shall be shown as an individual line item on the invoice at the time the next payment is due for the applicable Train Set.

18.05 The Department will make all approved payments in U.S. dollars within 30 days of receipt of actual invoice. If any invoice amount is reasonably disputed by Department, Department may withhold payment of the disputed amount until the dispute is settled. Department will not be liable for any interest or penalty for delay of payment of any reasonably disputed billings. The parties will be obligated to work in good faith to diligently resolve such dispute.

18.06 The Contractor shall be responsible for the payment of any tax, fee or cost of any governmental-imposed permit, license or similar authorization required to render complete performance under the Contract. The Contractor's prices shall be deemed to include all such taxes, fees or other costs, and no extra payments will be made on that account by Department.

18.07 The final payment for a Train Set shall not become due until the Contractor submits to Department (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Department might in any way be liable have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) if reasonably required by Department, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract Documents, to the extent and in such form as shall be reasonably satisfactory to Department and (4) all documentation required pursuant to the Contract Documents. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to Department all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees. Final payment is subject to adjustment for liquidated damages and/or disputed payments or claims.

18.08 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

18.09 Department may deduct from subsequent payments due the Contractor under any contract with Contractor or from any sums retained, all or such part of any liquidated sums as may be required to pay any damages or credits owed to Department by Contractor.

ARTICLE NO. 19. MAINTENANCE OF RECORDS

19.01 During the term of performance of this Contract, and for a period not less than three years from the date of final payment to the Contractor, records and accounts pertaining to the performance of this Contract and accounting therefore are to be kept available for
inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. Contractor shall provide appropriate accommodations for such audit and inspection.

19.02 In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

19.03 Except as otherwise described in Article 42, records pertaining to the performance of the Contract are subject to disclosure pursuant to and consistent with Wis. Stat. s. 19.31 et seq., provided that, to the extent possible, Department shall use its best efforts to preserve Contractor's proprietary technical and financial information.

ARTICLE NO. 20. INDEMNIFICATION, INSURANCE, AND BONDS

20.01 Indemnification. Contractor agrees to defend, indemnify and hold harmless the Department and their officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively, "Indemnitees"), from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, and expenses incidental thereto (including cost of defense and attorneys' fees) (collectively, "Losses"), which any and all of them may hereafter incur, be responsible for or pay as a result of injury, death, disease, or occupational disease ("Personal Injury") to any person, and for damage to or loss (including loss of use) of any property ("Property Damage"), arising out of or in any degree directly or indirectly caused by or resulting from (1) products liability and/or defect in the Train Sets; (2) activities of or work performed by Contractors or Contractor's officers, employees, agents, servants, subcontractors, subcontractors or any other person acting for or by permission of Contractor or Contractor's agents; provided, however, that with respect to Losses as a result of Personal Injury or Property Damage suffered by any person or entity, other than Contractor or Contractor's agents, Contractor shall not be obliged to indemnify the Indemnitees to the extent such Losses were caused by the negligence, gross negligence or willful misconduct of any of the Indemnitees.

20.02 Insurance. Contractor shall procure and maintain, at its own cost and expense, during the entire period of performance under this Contract, including the warranty and maintenance period the types of insurance specified below. Contractor shall submit a certificate or certificates of insurance giving evidence of the required coverages, prior to commencing any work under this Contract. All insurance, excepting only general liability insurance, shall be procured from insurers authorized to do business in the jurisdiction where operations are to be performed. General liability insurance may, with the prior written consent of Department, be procured from insurers not authorized to do business in the jurisdiction where operations are to be performed. Contractor shall require all subcontractors to carry the insurance required herein, or Contractor may, at its option, provide the coverage for any or all subcontractors, and if so, the evidence of insurance submitted shall so stipulate. In no event shall any work be performed until the required
certificate(s) of insurance have been furnished to Department. If the insurance provided is not in compliance with the requirements listed below, Department maintains the right to stop work until proper evidence is provided. The insurance shall provide for 30 days' prior written Notice to be given to Department in the event coverage is substantially changed, canceled or non-renewed. All insurance shall be procured from insurers whose A.M. Best & Company Rating Classification is "A-" or better, and whose financial Size Category is "Class VIII" or higher. If Contractor's insurers are not rated by A.M. Best & Company, then the insurer(s) must be approved by Department and Operator.

The insurance requirements under this Article 20 are mandatory minimums.

The indemnification obligation under this Article or otherwise arising pursuant to this Contract shall be limited to the amounts of the proceeds of any available insurance.

Prior to first payment required of Department to Contractor hereunder, Contractor must provide evidence of insurance as herein required, and copies of the required insurance policies to be provided within 60 days thereafter.

20.02.01 Workers' Compensation Insurance. A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed, covering all employees of Contractor. Employer's liability coverage with limits of liability of not less than $1 million each accident or illness shall be included.

20.02.02 Commercial General Liability Insurance. A policy issued to and covering liability imposed upon Contractor arising out of the Train Set design, manufacturing, and testing, and all other work to be performed and all obligations assumed by Contractor under the terms of this Contract. Products/Completed Operations Liability, Independent Contractors Liability, Contractual Liability (with railroad exclusions deleted) and Personal Injury/Advertising Liability coverages are to be included. Department and Operator are to be named as additional insureds with respect to operations to be performed; and the policy shall contain a waiver of subrogation against Department, Operator, and their employees and agents. The policy shall contain a cross liability endorsement. Coverage under this policy shall have combined single limits for bodily injury (including disease or death) and property damage (including loss of use) of not less than Fifty Million Dollars ($50,000,000) per occurrence and One-Hundred Million Dollars ($100,000,000) in the aggregate. This coverage shall be obtained on an occurrence basis.

20.02.03 Automobile Liability Insurance. A policy issued to and covering the liability of Contractor arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's general liability insurance. The policy shall name Department and operator as additional insureds with respect to operations to be performed in connection with this Contract; and shall contain a waiver of subrogation against Department and operator, their employees and agents, and a waiver of liability for the payment of premiums.
Coverage under this policy shall have limits of liability of not less than One Million Dollars ($1,000,000) per occurrence, combined single limit, for bodily injury, and property damage liability.

20.02.04 Valuable Papers and Records Insurance. A policy covering loss or damage to valuable papers including blueprints, reports, surveys, designs or specifications in connection with this Contract, on an all risk basis, in an amount not less than 100% of the replacement cost of such property. This insurance shall name Department and operator as loss payees as their interest may appear, and contain a waiver of subrogation against Department and Operator.

20.02.05 Railroad Protective Insurance. Railroad Protective Insurance shall be obtained if Contractor is performing work or operations on or near railroad right of ways. The policy shall name both the Department and Operator as additional insureds. Coverage under this policy shall have combined single limits for bodily injury (including disease or death) and property damage (including loss of use) of not less than Fifty Million Dollars ($50,000,000) per occurrence and One-Hundred Million Dollars ($100,000,000) in the aggregate.

20.03 The State shall provide liability protection for its officers, employees and agents while acting within the scope of their employment. The State further agrees to indemnify and hold harmless Contractor, its directors, officials, agents and employees for any and all liability, including claims, demands, losses, costs or damages to persons or property arising out of, or in connection with, this Contract, where such liability is founded upon or grows out of acts or omissions of any of the State's officers, employees or agents while acting within the scope of their employment, only where that protection is afforded by sections 893.22 and 895.46(1) of the Wisconsin statutes.

ARTICLE NO. 21. INTENTIONALLY OMITTED

ARTICLE NO. 22. DAMAGES FOR LATE DELIVERY

22.01 Contractor shall give reasonable Notice to Department if Contractor cannot meet the delivery deadline for either of the Train Sets.

22.02 Except as provided in Article 22.03, failure to deliver either or both of the Train Sets by Delivery Date without Department's written approval shall result in a credit, to be applied against the Contract Amount, of One Thousand Dollars ($1,000.00) per day for each day delivery of such Train Set(s) is delayed. The foregoing credit shall be increased to $2,000 per day for each day of delay in excess of seventy-five (75) days.

22.03 The provisions of this Article shall constitute Department's sole remedy for delays in the delivery of one or more of the Train Sets that, in the aggregate, do not exceed 180 days. Such delays of less than 180 days shall not be considered Events of Default pursuant to this Contract.
ARTICLE NO. 23. AVAILABILITY OF SEATING FOR CONTRACTOR PURPOSES

23.01 Department recognizes the promotional value to Contractor of providing seating to parties interested in evaluating the Train Sets. Department agrees to allow up to a total of four (4) seats per week, if available and not previously reserved by revenue generating passengers, for the free use of Contractor during the regularly scheduled revenue service, under the following conditions:

(1) Contractor must request the seating a minimum of 5 days in advance.

(2) Contractor shall reserve promotional seating through Operator.

(3) Contractor promotional seating shall be for business purposes only.

(4) Contractor may request seats for trains traveling Monday through Thursday only; excluding U.S. and Canadian National Holidays.

ARTICLE NO. 24. INTENTIONALLY OMITTED

ARTICLE NO. 25. DEFAULT

25.01 "Events of Default" of Contractor under this Contract shall consist solely of the following:

25.01.01 Contractor's failure to prosecute the contract work with such diligence and in such manner as will enable it to complete such work on or before the delivery date;

25.01.02 Contractor's failure to provide sufficient, properly skilled workers or satisfactory materials and equipment so as to be able to perform the contract work within the contract time;

25.01.03 Contractor's failure in any material respect to perform any of its covenants, agreements, or undertakings under this Contract, including failure to deliver the Train Sets within 180 days after the scheduled delivery date;

25.01.04 The existence of any material inaccuracy in any warranty or representation made by Contractor as of the time such warranty or representation was made; or
25.01.05 If Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning Contractor, or if a trustee or receiver is appointed for Contractor or for any of the Contractor's property on account of Contractor's insolvency, and Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the contract within forty-five (45) calendar days of receipt of a request for assurance from Department.

25.01.06 A material breach of this Contract.

25.02 If Department believes that sufficient cause exists to terminate the Contract for default, Department shall give written Notice pursuant to Article 33 to the Contractor specifying that the Contractor is in breach of the Contract, and that Contractor is to remedy the breach within a reasonable period of time under the circumstances to remedy such breach.

25.03 After the expiration of the default Notice period, if one or more of the defaults described in such Notice then remains unremedied, the Department may, by serving written Notice to the Contractor, terminate the Contract.

25.04 The rights conferred upon Department under the terms of this Article shall be cumulative (unless clearly inconsistent) and in addition to, and not in substitution of, any other rights that Department has under this Contract, in law or in equity. The failure of Department to exercise the rights and remedies conferred upon it hereunder shall not constitute a waiver of any of its rights or remedies at any subsequent time. Any retention or payment of moneys to Contractor by Department will not release the Contractor from liability.

25.05 Events of Default on the part of the Department shall consist solely of the following:

a. Any representation of warranty of Department given hereunder shall prove to be untrue when made and when discovered and is not cured within thirty (30) days from Notice thereof from Contractor;

b. The lack of validity or enforceability in accordance with their express terms, in whole or in part of any of the indemnities required to be provided by Department hereunder; or

c. Any material breach by Department of the provisions of this Contract.

25.06 In the case of a default by Department, Contractor shall give Department Notice of default, and if said default is not cured within thirty (30) days after receipt of said Notice, Contractor shall, in addition to all other remedies available at law or in equity, be entitled to terminate this Contract. Said termination shall not affect the previously accrued liabilities of the Parties.
25.07 In the event that Contractor becomes unable to perform its duties under this Contract and this Contract is properly terminated by Department, Contractor shall: (i) pay to Department a fee of $500,000 for the purpose of compensating Department for anticipated administrative costs to complete the Work, (ii) deliver to Department all plans, drawings, bills of materials, and other documentation necessary for Department to complete the Work, and (iii) ensure that Department enjoys all rights of ownership, including possession, regarding all Work paid for by Department to that point in time.

ARTICLE NO. 26. TERMINATION FOR PUBLIC CONVENIENCE

Department, upon thirty (30) days written Notice to Contractor consistent with Article 33, may terminate the Contract in whole, or from time to time in part, whenever:

a. Contractor is prevented from proceeding with the Contract Work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or

b. Contractor is prevented from proceeding with the contract work by reason of a preliminary, special or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of persons or agencies other than Contractor and is not dismissed within thirty (30) days;

provided that, any progress payments made to Contractor up to that time shall be retained by Contractor and the value of any accrued but unpaid Work by Contractor shall be paid by Department.

The Parties may also terminate this Contract by mutual consent.

ARTICLE NO. 27. INTENTIONALLY OMITTED

ARTICLE NO. 28. REPRESENTATIONS AND WARRANTIES

28.01 Department and Contractor agree as follows:

a. That this Contract contains the entire agreement of the parties;

b. That this Contract shall in all respects be governed by the laws of the State of Wisconsin.

c. That Contractor and Department shall comply with all applicable federal and State laws as required to fulfill this Contract.
ARTICLE NO. 29. ASSIGNMENT AND SUCCESSION

Neither Department nor Contractor may assign or in any manner transfer either in whole or in part this Contract or any right or privilege granted to it hereunder, nor permit any person or persons, company or companies to share in any such rights or privileges without the prior written consent of the parties hereto obtained, except as otherwise herein provided. Notwithstanding the foregoing, Contractor may assign or transfer its rights and obligations under this Contract to any affiliate, provided that Contractor remains liable for its obligations hereunder pursuant to such assignment or transfer. Nothing in this Contract shall be construed to permit any other railway company or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

ARTICLE NO. 30. TIME

30.01 All time limits stated in the Contract Documents are of the essence. The time of beginning, rate of progress, and time of completion are essential conditions of the Contract Documents.

30.02 Except with respect to defaults of subcontractors of any tier, the Contractor shall not be considered in default by reason of any failure to perform in accordance with the time requirements of the Contract if such failure arises out of causes beyond the reasonable 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 or the state in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In any case where the failure to perform in a timely manner is caused by the default of a subcontractor of any tier, and if such default arises out of causes beyond the reasonable control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be in default by reason of any such failure to perform, unless the supplies or services to be furnished by the subcontractor are reasonably obtainable, as reasonably determined by Department, from other sources on similar terms and in sufficient time to permit the Contractor to meet the time requirements specified in the Contract Documents. This provision shall not apply, however, if Department reasonably determines that other factors within the control of the Contractor would have caused a delay independent of any outside causes beyond its control of at least half of the actual length of the delay.

30.03 All requests for extension of time shall be made in writing to Department no more than two (2) weeks after the incident likely to cause delay is known to Contractor. In case of delay, Contractor shall immediately take effective measures by all available reasonable means in order to overcome the delay or reduce its effects and inform the Department of such delay and measures. This obligation shall remain in force during the whole term of this Contract until the Train Set has been accepted.
It is Contractor's responsibility to substantiate that a delay is due to such circumstances as justify a delay, that Contractor has taken such steps in consequence of the event as prescribed in this provision and that the circumstances stated have caused a delay of a duration as stated by the Contractor.

30.04 In the event of delays or hindrances to the Work which are beyond the control and without the fault or negligence of the Contractor, the Contractor will be granted an extension of time sufficient to compensate for such delay, provided that Contractor gives timely Notice of the delay and complies with the other provisions of this Article. The Contractor shall not be entitled to any other compensation or damages of any kind for such delay.

ARTICLE NO. 31. LAWS TO BE OBSERVED

31.01 Subject to Article 2.03, Contractor shall comply with all applicable federal, state, and municipal laws, rules, regulations, and orders pertaining to the construction of the Train Sets, and if failure on the part of Contractor to comply therewith shall result in a fine, penalty, cost, or charge being imposed or assessed on or against Department or Operator, Contractor shall assume and bear all such fines, penalties, cost and charges, and in the event Department or Operator shall in the first instance pay the same, Contractor upon demand shall promptly reimburse, indemnify and hold harmless Department or Operator for or on account of such fine, penalty, cost or charge and all expenses and attorney's fees incurred in defending any action, which may be brought against Department or Operator on account thereof, provided however, that, in the event of any such action or claim, Department or Operator (as applicable) shall promptly give Notice thereof to the Contractor, and Contractor shall defend such actions free of cost, charge and expense to Department or Operator and shall be entitled to Department's and/or Operator's reasonable cooperation in such defense.

31.02 Independent Contractor. Contractor shall be deemed an independent contractor for all purposes and the employees of the Contractor or any of its contractors, subcontractors, lessees and the employees thereof, shall not in any manner be deemed the employees of Department.

31.03 No Waiver of Department's Rights. Department shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion of the Contract and Contract work and payment therefore from showing the true amount and character of the Contract work performed or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the equipment does not conform in fact to the Contract Documents. Department shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, and payment in accordance therewith, from recovering from Contractor such damages as Department may sustain by reason of Contractor's failure to comply with the terms of the Contract Documents. Neither the acceptance by Department nor any payment for the whole or any part of the Contract, nor any extension of time, nor any portion of the Contract or of any
power herein reserved or any right to damages herein provided, shall bar recovery of any money wrongfully or erroneously paid to the Contractor. A waiver of any breach of Contract shall not be held to be a waiver of any other or subsequent breach. All claims pursuant to this Article 31.04 shall be made no later than three years following the delivery of the Train Sets.

31.04 Personal Liability of Individuals. No officer or employee of Department or of Contractor or its subcontractors of any tier, shall be personally liable for any act, or failure to act, in connection with this Contract, it being understood that in such matters they are acting solely as agent(s) of the State, Contractor or the subcontractor as the case may be.

31.05 Compliance with Social Laws. During the term of the Contract, Contractor and its contractors, subcontractors, and lessees shall comply with all applicable State and Federal employment laws, including but not limited to workers' compensation laws, health and safety laws and the Americans with Disabilities Act.

31.06 ADA Compliance. Subject to Article 2.03, Contractor shall comply with 49 CFR 37, specifically 37.85 and 37.91) and 38 as to the Train Sets. If Contractor's proposed method of compliance is not approved as provided in 49 CFR 37.7, Contractor must take action to bring the proposed method into compliance and additional costs or any delays resulting from non-approval and subsequent compliance shall be the sole responsibility of Contractor except as otherwise provided in Article 2.03.

ARTICLE NO. 32. DISPUTE RESOLUTION

32.01 Disputes between the parties relating to the Work or this Contract shall be resolved in accordance with the dispute resolution provisions set forth in this Article 32.

32.02 The parties shall first attempt to informally resolve the dispute directly with the other party by giving written Notice of the dispute. Such Notice shall describe the nature of the dispute, the position of the party giving the notice and the proposed resolution of the dispute in reasonable detail. If, despite such efforts, the dispute is not resolved within thirty (30) days after the date the Notice is delivered, then either party shall have the right to refer the dispute to a third-party expert who shall be knowledgeable about the technical and legal matters contained herein. If the parties cannot agree to such an expert within fourteen (14) days, then such expert shall be appointed by any independent retired judge mutually agreed to by the parties who has experience on the bench in Dade County. The 30-day time limitation set forth above may be changed if the parties so agree in writing.

32.03 The expert selected or appointed in Section 32.02 shall consider the dispute upon written presentation by each party and any other such factfinding requested by the expert. The expert shall inform the parties of his or her opinion and conclusion with regard to the dispute as soon as practicable. Where the expert's opinion favors one party's position, the non-prevailing party shall bear all the costs of the expert for such dispute. Where the
expert cannot ascertain the prevailing party, each party shall bear one-half of the cost of the expert for such dispute.

32.05 To the extent permitted by Wisconsin law, the parties agree that the opinion and conclusion of the expert shall be the controlling and only expert testimony with regard to such dispute if the dispute results in litigation.

32.06 In any informal attempt between the parties to resolve disputes, and in any proceedings before the expert or the court, the parties shall diligently cooperate with one another and the person or body appointed to resolve the matter, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the disputes.

32.07 Nothing in this Contract shall be deemed as a waiver of the State's sovereign immunity consistent with Wisconsin State law.

ARTICLE NO. 33. NOTIFICATION

33.01 Notices. Any Notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if sent by electronic mail to the Project Manager for Contractor or Representative for Department as well as either of the following: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below. The date of receipt of any such Notice shall be deemed to be the date of delivery.

33.02 Contractor. In the case of the contractor, Notices shall be served simultaneously upon:

A. Antonio Perez, President (or current President)
Talgo, Inc.
505 Fifth Avenue, Suite 630
Seattle, WA 98104
Facsimile (206) 748-6147
Electronic mail: aperez@talgo-inc.com
cc: Steven J. Kelley
Kelley Donion, PLLC
1700 Seventh Ave., Suite 2100
Suite 2100
Seattle, WA 98101
Facsimile (206) 525-5371
Electronic mail: stevek@kelleydonion.com

B. Project Manager as identified pursuant to Article 11.01

33.03 Department. In the case of Department, Notices shall be served simultaneously upon:
A. Frank J. Busalacchi, Secretary (or current Secretary)
Department of Transportation
4802 Sheboygan Ave., Rm. 120B
P. O. Box 7910
Madison, WI 53707-7910
Facsimile (608) 266-9912
Electronic mail: sec.exec@dot.wi.gov

B. Representative as identified pursuant to Article 11.02.
Ronald Adams
4802 Sheboygan Avenue, Room 701
Madison, WI 53702
1-608-267-9284

ARTICLE NO. 34. AMENDMENTS

This Contract and any provisions hereof may be amended by written agreement of the parties or by change order as provided herein. No modification, addition, or amendment to this Contract shall be effective unless and until such modification, addition or amendment has been executed in writing by the authorized officers or agents of each party.

ARTICLE NO. 35. AUTHORIZATION

35.01 Contractor represents and warrants that it has received all approvals necessary for it to enter into this Contract and to perform its obligations hereunder and that this Contract constitutes the valid and binding obligation of the Contractor.

35.02 Department represents and warrants that it has received all approvals necessary for it to enter into this Contract and to perform its obligations hereunder, except to the extent noted in Article 2.14 and Article 26(c) of this Contract, and that this Contract constitutes the valid and binding obligation of the State of Wisconsin.

ARTICLE NO. 36. NONDISCRIMINATION AND AFFIRMATIVE ACTION

The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in Wis. Stat. s. 51.01(5), or sexual orientations defined in Wis Stat. s. 111.32(13m). This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection fr training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.
Unless exempted by workforce size (25 or fewer employees) or Contract amount ($25,000 or less), the Contractor must submit a written affirmative action plan to Department.

The Contractor shall post the notice provided by Department, setting forth the provisions of the State’s nondiscrimination laws, in its workplace, website or conspicuous places in order that the Contractor’s employees and applicants for employment are able to read it.

ARTICLE NO. 37. INTENTIONALLY OMITTED

ARTICLE NO. 38. INTENTIONALLY OMITTED

ARTICLE NO. 39. GIFTS AND GRATUITIES

In accordance with Wisconsin law, it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with State business practices.

ARTICLE NO. 40. CHANGES IN THE WORK

40.01 No departure shall be made from the Technical Specifications, nor any change made in materials, design, or selection of equipment specified herein, without the written approval of Department, as provided herein. Changes ordered and authorized by Department during the course of design and construction of the Train Sets shall be made promptly by the Contractor and manuals furnished shall be updated as necessary to incorporate all such changes. Where changes require the cooperation of a subcontractor, the Contractor shall be responsible for such changes and shall inform the subcontractor of such change. Changes requested by Department’s Representative or delegates as described in Article 12.02 which affect the Contract Amount of the Train Sets or any of the time limits specified by the Contract Documents in any way shall be approved by means of a Change Order before the proposed changes are made to any Train Set. The Contractor may also propose changes in the Train Sets that it believes are necessary or desirable. When a change is proposed, it shall be the responsibility of the Contractor to bring information regarding the effect of such change request on the Contract Amount, the weight of the Train Sets, or the projected delivery date of the Train Sets to the attention of the Representative, or in the case of changes involving a maximum additional cost to Department of $50,000.00 or less to one of the delegates as provided in subsection 40.03.2 so that a timely decision can be rendered without delay to construction. If, after submission by Contractor of supporting documentation on the requested change request, Department does not provide a response within fifteen (15) business days, then Contractor may consider that the change request is rejected.

40.02 No material shall be ordered or any manufacturing commenced by the Contractor in order to incorporate a change until such time as that particular aspect of the design has been
approved by Department. This is not intended to prevent the Contractor from entering into commercial agreements with subcontractors for the supply of certain apparatus, providing any such agreements are flexible enough to allow reasonable latitude for design change. All commitments prior to Department's approval shall be at the Contractor's risk.

40.03 Department, by means of a written Notice to the Contractor shall have the right to order any changes in the nature or dimensions of the Work, either before or after its commencement. Such changes shall only become effective upon execution of a Change Order by the Representative of Department and an authorized representative of the Contractor, and shall then be deemed incorporated as part of the Contract. A "Change Order" may be accomplished by signed minutes of a meeting or other memorandum of understanding signed by both parties.

40.03.1 Any other written order (which terms as used in this paragraph shall include direction, instruction, interpretation, or determination) from Department, which causes any such change, shall be treated as a Change Order under this clause, provided that the following conditions are met: (a) within ten (10) days if at all practicable but in no event more than twenty (20) days from such order, the Contractor shall give the Representative written Notice stating (i) the date, circumstances, and source of the order, (ii) that the Contractor regards the order as a Change Order, and (iii) the estimated maximum impact of the order on price, delivery and weight; and (b) that Department ratifies such order in writing, signed by Department's Representative, within ten (10) days after receipt of Contractor's written Notice. Upon Contractor's request, Department shall submit in writing any change that is has requested orally. An equitable adjustment in the Contract Amount for any such change order shall not take into account any costs incurred by Contractor more than twenty (20) days prior to the Contractor's written Notice.

40.03.2 Except as herein provided, no order, statement, or conduct of any representative or agent of Department shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder. Variations in quantities caused by changes for which no Change Order is executed shall not form a basis for claims by the Contractor for damages or loss of anticipated profits. If such changes affect the cost of the Work to the Contractor, the weight of the Train Set or delivery schedule, the Contractor shall, before proceeding with the change, so notify the Representative or one of the delegates in the case of changes involving a maximum additional expense to Department of $5,000.00 or less in writing and the impact of the change shall be agreed upon by means of an executed Change Order prior to proceeding with the change.

40.04 The value of any ordered extra work or change shall be determined by the agreement between Contractor and Department as set forth in a Change Order.
40.05 The amount of credit to be allowed by the Contractor for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease (including G&A, overhead and profit). When both additions and credits are involved in any one change, the allowance for overhead and profit shall be computed on the basis of net increase, if any.

40.06 Any claim of Contractor for adjustment under this Article must be asserted in writing within twenty (20) days of the receipt by Contractor of the written notification of change.

40.07 Upon reasonable notice, Contractor shall make available to Department such information as will permit Department to make a proper audit of the adjustments to be made in this Contract as a result of Department's exercise of its rights under this Article. If such audit shows the adjustment in this Contract to be excessive then such adjustment will be appropriately reduced. Any such audit shall be based upon information readily available without undue cost or hardship. Any information beyond such readily available information shall be gathered at the expense of Department.

ARTICLE NO. 41. WARRANTY

41.01 The Contractor covenants and warrants to Department that each Train Set and all parts and equipment accessories furnished under the Contract Documents will be new (unless otherwise specified in the Technical Specification or, as regards spare parts, in the event of an emergency), free from defects in design, material and workmanship and suitable for the purpose stated in this Contract, or capable of operating in conformance with all requirements of the Contract Documents. If required by Department, the Contractor shall furnish evidence reasonably satisfactory to Department as to the kind and quality of materials and equipment.

41.01.1 This warranty includes that all electric, electronic and mechanical systems incorporated in the Train Sets will be integrated so that they operate without any electric, electronic, magnetic, mechanical, chemical or other interference between them whatsoever. This applies whether the systems concerned are supplied by Contractor or its subcontractors.

41.01.2 The warranty for any particular Train Set shall commence upon the delivery of the Train Set to Department for pre-revenue testing and shall run for a period of ten (10) years on car body structure and truck frames, and two (2) years on all other components, parts and accessories. On those elements or systems that have been identified as defective at the time of delivery, the warranty on those elements will not start until the time when the defects are corrected or the elements replaced and the items accepted. Spare parts supplied under this Contract shall be warranted according to the respective vendor's warranty.

41.01.3 These warranty requirements do not apply to consumable or expendable items of material, as identified by part number and description by the Contractor and
agreed to by the Representative, such as brake pads, light bulbs, air filters, etc., unless Department reasonably determines that the failure of said consumable items was caused by defective manufacture or design rather than normal wear and tear expected for such consumable items.

41.01.4 During the warranty period, a failure analysis to determine the cause and frequency of defects covered by this warranty shall be performed by the Contractor and submitted to Department for concurrence. Such analysis shall be performed and reported within 30 days from the date of each failure, unless a longer test period is required to determine the root cause of the defect.

41.01.5 Within twenty (20) days of Department giving Notice to Contractor of a valid warranty claim, Department shall identify the scope of any repair or replacement warranty work necessary and the optimum manner of accomplishing such work (taking into account out-of-service time, skill levels, space restraints, cost and other relevant factors). Every reasonable effort shall be made to allow Contractor to perform the warranty work. If Department or a third party performs repair or replacement warranty work, Contractor shall be responsible for ensuring the correction of each breach of warranty and shall reimburse Department for costs and expenses incurred in connection with such work, provided that if a third party performs such warranty work, Department acknowledges that such third party’s work may adversely affect Contractor’s warranty on the affected Train Set, component or part thereafter. If Contractor takes action to perform repair or replacement warranty work, such action shall be undertaken promptly and at Contractor’s own cost and expense and without expense to Department. If Contractor fails promptly to perform the repair or replacement warranty work, Department may take such actions as it reasonably deems appropriate to perform such work and Contractor will reimburse Department for all reasonable costs incurred thereby.

41.01.6 The provisions of this Article 41.01 shall not apply to any repairs or replacements made necessary by (a) any abuse of any of the Train Sets, or (b) any use of any of the Train Sets not in accordance with this Contract or (c) maintenance of the Train Sets by other than Contractor or its subcontractor which is not performed strictly in accordance with the maintenance instructions provided by Contractor.

41.01.7 The parties agree that the remedies in this Article 41 shall be the sole and exclusive remedies available to Department for any warranty problems arising out of or relating to the Train Sets, except for the indemnity obligations under Article 20. Without limiting the generality of the foregoing, the Contractor, its subcontractors, officers, employees and agents shall have no liability for any incidental or consequential damages of any sort except as expressly provided in this Article 41. THE PARTIES ALSO EXPRESSLY AGREE THAT ANY AND ALL WARRANTIES PROVIDED BY LAW INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS
FOR A SPECIFIC PURPOSE, ARE HEREBY WAIVED, EXCLUDED AND DISCLAIMED, IT BEING THE PARTIES' INTENTION THAT THE PROVISIONS OF THIS ARTICLE 41 SHALL BE THE EXCLUSIVE REMEDIES FOR ANY DEFECTS OF ANY TYPE IN THE TRAIN SETS, EXCEPT FOR THE INDEMNITY OBLIGATIONS UNDER ARTICLE 20. IN THE EVENT THAT THE FOREGOING EXCLUSION OF REMEDIES IS DECLARED INVALID OR UNENFORCEABLE IN WHOLE OR IN PART FOR ANY REASON, THE PARTIES AGREE THAT DEPARTMENT'S RECOVERY IN ANY SUCH CASE UNDER ANY APPLICABLE PROVISIONS OF LAW SHALL BE LIMITED TO THE PROVISIONS OF ARTICLE 41 AND ARTICLE 20.

41.02 The Contractor covenants and warrants that title to each item of material or equipment supplied under this Contract shall pass to and vest with Department, free and clear of any lien or encumbrance of any kind or type other than any liens or encumbrances created by or through Department, including any State financing arrangement, upon final acceptance by Department. The Contractor shall issue appropriate title documents, upon Final Acceptance of each Train Set, and perform such actions that are necessary to perfect Department's title as set forth above at no cost to Department. Department shall cooperate with the Contractor in accomplishing the foregoing.

41.03 The Contractor covenants and warrants that each and every workman and subcontractor will be satisfied by the Contractor prior to the Contractor rendering any invoice to Department for delivery of the Train Sets so that, at the time Department makes payment to the Contractor for said Train Sets, no part of the performance under this Contract shall be subject to any claim or lien. The Contractor agrees to defend, indemnify and hold harmless Department, its directors, officers, agents, servants and employees, irrespective of any negligence or fault on their part against all liens or claims by subcontractors and/or sub-subcontractors and suppliers at any tier.

41.04 The Contractor covenants and warrants that the Train Sets shall conform to representations and descriptions provided in the Technical Specifications. The sole remedy of Department for any breach of this covenant and warranty shall be as provided in Article 41 and Article 20.

41.05 In the event that during the warranty period specified in Article 41.01, specific repairs, replacements or modifications necessitated by defects in design, material or workmanship of the same kind or type are required 5 or more times in any rolling 12 month period or on any one component or on 10 percent or more of any one component in the Train Sets in any rolling 12 month period, the Contractor shall promptly institute a modification program approved by Department for the Train Sets. The Representative shall give the Contractor prompt Notice of such defects or failures as they are identified and Contractor shall initiate a modification program within thirty (30) days from receipt of Notice and verification that the threshold for such program has been met. In the event that such defects or failures require the removal of major components or assemblies for the purpose of repairs or modifications, and such removals render the Train Sets inoperable or unfit
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for safe and efficient operation in regular service, the Contractor shall use all reasonable efforts to promptly furnish an adequate number of spare components or assemblies for the temporary use by Department so as to minimize downtime of the affected Train Set while repairs or modifications are being done. Contractor will advise Department and perform any appropriate retrofit in Department's Train Sets whenever, during the warranty period, Contractor discovers components in its worldwide fleet requiring retrofit.

41.06 Contractor shall maintain (or shall manage Department’s own inventory of), at Department’s expense, a sufficient quantity of spare components to enable it to provide warranty service without delay. Contractor shall have the right to use all such spare components in performing its warranty obligations under this Contract in addition to Contractor’s maintenance and repair services upon the Train Sets.

41.07 All materials, parts and equipment which are repaired or which replace items which were found to have had defects in design, material or workmanship shall be warranted under the provisions of Article 41 for the remainder of the applicable warranty period or one year from the date on which the applicable Train Set is returned to service, whichever is later.

41.08 In the event during the warranty period that warranty repairs and/or modifications on all or any Train Sets are not permanent or completed due to lack of material or inability to provide the proper repair, the warranty period for all parts and materials on such Train Set will be extended by the amount of time the Train Set is not in operation in regular service due to lack of Contractor material or inability to provide the proper repair, as reasonably determined by the Representative. In the event a fleet-wide retrofit is required due to defects in design, material or workmanship during the warranty period, the warranty period on all the parts which have been identified with systemic defects on each Train Set or assembly requiring retrofit shall be extended for two years after completion of retrofit of the Train Sets.

41.09 If separate or additional warranties covering material and/or equipment are furnished by the subcontractor or sub-subcontractor of component part or parts of any items of said material and/or equipment, Contractor shall use all reasonable efforts to provide these warranties to Department in addition to the warranties set forth herein. Department shall look only to the Contractor for fulfillment of all warranty requirements of this Contract. The existence of any separate or additional warranties which run to the Contractor from the manufacturer, subcontractor or sub-subcontractor of a component part of an item of material and/or equipment shall not relieve the Contractor of its obligation to repair or replace any of the material and/or equipment on account of faulty design, manufacture or workmanship during the warranty period. Department shall not be required to look to any other party for fulfillment of warranty provisions.

41.10 Contractor shall, during the first two-years following delivery of the Train Sets, station an expert service engineer in the United States at a location approved by Department and without any charge to Department, for the making good of any faults and defects, which may have occurred and for the guidance of personnel. The stationing of the service
engineer shall not involve any limitation on or expansion of Contractor's warranties or service obligations.

41.11 During the warranty period, Contractor shall keep a log of all faults and defects found in the Train Sets for which repairs or replacements under warranty have been made, and of any repairs or replacements made in order to remedy such faults and defects. A report of warranty work shall be submitted to Department every two weeks.

41.12 The warranties hereunder shall run to Department, its successors and assigns; provided, however, that if the Contractor's costs for providing the warranties to any successor or assign are increased as a result of the assignment, then Department shall reimburse Contractor for such increase if Department chooses to assign the warranties. In the absence of such reimbursement, where required, no warranty provided herein shall inure to the benefit of any person other than Department.

41.13 The operation of the Train Sets in revenue service is intended to be on tracks that comply with the Federal Railroad Administration's Track Safety Standards at various speeds up to 110 MPH (49 CFR 213). Operation of the Train Sets on such tracks shall not void the warranty.

ARTICLE NO. 42. DOCUMENTATION

42.01 Contractor shall bear the responsibility for providing such documentation as is necessary for the proper operation, maintenance and repair of the Train Sets. All documentation shall be in American English. All dimensions in the documentation shall be in both U.S. and metric, decimal form, except that drawings which have not previously been placed in CAD format need not be translated from metric measurements. Legible handwritten translations in charts, drawings, diagrams and similar materials are acceptable for purposes of this Article 42.

42.01.1 Contractor will supply to Department, within 90 days after termination of the maintenance contract, two sets of 35mm aperture cards and two sets of CD's of the following drawings of the Train Sets as finally furnished.

- wire list
- electrical schematic diagram
- safety and appliance
- location of apparatus
- truck outline
- fully dimensioned Train Sets outline
- fluid schematic
- piping schematic
- air schematic
- all detailed manufacturer's final drawings that have been submitted for approval
The Contractor will retain the original microfilm on file.

42.01.2 Contractor will supply to Department, within 90 days after Final Acceptance of the entire order (delivery of all the Train Sets and spare cars), one copy of the completely detailed Train Set Specifications showing the Train Sets as delivered.

42.01.3 In addition, the Contractor will make available in both paper and electronic format in the event of damage to the Train Sets requiring extraordinary repairs, complete detailed drawings in the necessary detail required for Department to use in support of the efforts which may be required for such repairs. In the event that Contractor is responsible for making the extraordinary repairs, it shall not be required to furnish drawings under this Article 42.01.4; provided, however, that the Contractor shall make such drawings reasonably available to Department upon request for the purpose of reviewing and inspecting the repairs. The level of drawing detail will be usable for damage repair and will include:

- cross sectional views
- Principal framing members with their cross sectional area, type of material and metal thickness
- sheathing material thickness
- other information sufficient to manufacture structural parts.

Contractor shall use all reasonable efforts to impose this requirement on its subcontractors.

42.01.4 Contractor will provide Department with 3 paper copies and one additional copy in electronic format of Operator's Manual within 90 days of delivery of the first Train Set; provided, however, that Operator's Manuals shall be delivered no later than thirty (30) days prior to delivery of the first Train Set. Manuals will reflect the Train Sets as built and will contain a level of detail which is comparable to that typically provided by other North American passenger railcar manufacturers to persons acquiring their equipment. A draft copy of the Operator's Manual will be submitted to Operator for review and comment 90 days before delivery of the first Train Set. Copy-ready material for all books will be provided.

42.01.5 Contractor shall provide Renewal Parts Manuals that will show components listed with the Contractor's part numbers and, for those items not manufactured by the Contractor, the original equipment manufacturer's name and part number. Electronic components will be available as renewal parts from the Contractor or from recognized electronic distributors in the United States. A separate listing of all common hardware will be provided. Any Contractor fee for the Manuals required by this paragraph shall be included in the price of the Main Spare Parts Inventory.
42.01.6 Contractor shall furnish to Department a loose-leaf History Book for each Train Set, the pages of which shall be reproducible by white print process. It shall record the following information:

(a) Train Set number and class.

(b) Written report of each test performed on the Train Set or its apparatus.

(c) Serial numbers of all major components, such as wheels, axles, motors, and other apparatus with serial numbers.

(d) Weight of the Train Set.

(e) Wheel and axle mounting records.

(f) All approved changes incorporated in the unit by Contractor after delivery of the first Train Set.

Contractor shall confer with Department as to the format of these records. It shall be the responsibility of the Contractor to the employ an acceptable system of configuration control in keeping individual History Books current. The History Books for each Train Set shall be delivered not later than 25 days after the acceptance date for the unit.

42.01.7 Department will be supplied for its approval, a complete summary of stress analyses of the Train Sets' structure, trucks and major equipment securement, at least 180 days prior to the delivery of the Train Sets. This same analysis shall be completed for each car of the Train Sets prior to shipment from Spain to Wisconsin State. If these analyses reveal a failure to meet requirements of this Contract, Contractor shall take such steps as are necessary to come into compliance with said requirements.

42.01.8 A totally integrated schematic wiring diagram in Contractor's standard format relating all electrical systems and including all components and all wiring will be provided to Department. The schematic will be in the form of a book with sheets dimensioned 8 1/2" x 11".

42.01.9 A tabulation of all electrical components or devices will also be included with the drawing and physical location of these components on the Train Sets indicated. The location where each component appears on the drawing will be indicated, and where applicable, the location of page number of wiring interlocks will also be designated.

42.01.10 The Contractor will furnish supplier name and part numbers of any tools, jigs and fixtures required for maintenance.
42.01.11 All documentation must be provided to Department in hard copy format and in searchable electronic format.

42.01.12 Notwithstanding the foregoing, Contractor shall not be required to provide document necessary for the maintenance and repair of the Train Sets as specified in the opening paragraph of this Article 42.01, or the materials set forth in Articles 42.01.1, 42.01.3, 42.01.4 (other than Operator's Manuals), 42.01.5, 42.01.8, 42.01.9, 42.01.10, 42.01.11 and 45.01 during any period of time that the Contractor is providing maintenance for the Train Sets; provided; however that Contractor shall provide those materials to Department no later than thirty (30) days prior to ceasing provision of maintenance of the Train Sets.

42.02 Contractor shall further see to it that as built drawings and other documentation material together with the training material are updated in accordance with the changes carried through the Contractor. Updates need to be of such a quality as to keep the warranty in place, were the warranty period still to be in effect. In case changes of the information contained in the above mentioned documentation are made, revised portions of the relevant documents shall be supplied to Department three week after the said change has been agreed/made. Where Contractor determines that changes in maintenance materials provided to Department are required, Contractor shall notify Department as soon as possible in writing of any changes which Contractor determines require immediate implementation, and shall provide revised manual pages within three weeks thereafter. Where the Contractor determines that alterations to enhance the Train Sets are appropriate, Contractor shall so advise Department and inform it of the cost thereof.

42.03 All books, manuals, drawings, computer software, other documentation and know-how provided or made available to Department or it representatives (including the Representative and the delegates described in Article 12.02) pursuant to this Contract ("Confidential Information") is confidential and proprietary, and shall remain the property of Contractor or Patentes Talgo, S.L., as appropriate, at all times. Department is licensed to use such books, manuals, drawings, computer software and other documentation and know how as will be supplied to Department according to the Contractor Documents, solely as necessary for the operation, maintenance and repair of the Train Sets for the operations specified herein and for the manufacture of spare parts as necessary for operation, repair and maintenance of the Train Sets. Department's right and its obligations hereunder shall be in force irrespective of whether such books, manuals, drawings, documents and computer software and know how have been made by or are the property of Contractor itself or external consultants, or subcontractors. In no circumstances shall Department use or permit others to use any of the books, manuals, drawings, computer software and other documentation or know-how provided pursuant to this Contract for any purpose other than for maintenance of the Train Sets in operations in the Midwest. Department shall not make copies of the Confidential Information or provide any Confidential Information to third parties other than Operator or as required by law, or make any alterations in any Confidential Information without the prior written
consent of the Contractor. Department has advised Contractor that it is subject to certain public disclosure requirements. In the event that Department receives a request for any Confidential Information, it shall promptly advise Contractor. Department may not license any third party to use Confidential Information unless and until Contractor has given its consent to said license. Contractor shall not unreasonably withhold its consent (x) if the third party signs a confidentiality agreement satisfactory to Contractor, (y) if the third party is not a manufacturer of railcars, and (z) if Contractor and Patentes Talgo, S.L. have removed themselves from the rail passenger car and maintenance markets in the United States or any maintenance agreement entered into between Contractor and Department as described in Article 5 hereof has been terminated due to an event of default on the part of Contractor. Notwithstanding the foregoing, Department may make copies of the materials provided by Contractor pursuant to Article 42.01.4, available to third parties solely for the purpose of performing extraordinary repairs provided that said third parties first execute a confidentiality agreement reasonably satisfactory to Contractor, and provided that Contractor is not responsible for making such repairs. The provisions of this Article 42.03 shall survive the expiration or termination of this agreement for any reason.

42.04 Contractor shall prepare and submit to Department no later than thirty (90) days after execution of this Contract by both parties six copies of a complete and comprehensive arrangement drawing of the Train Sets. The drawing shall show the floor plan, under floor equipment arrangement, and inside longitudinal section of the Train Sets, exterior side elevation of the Train Sets, elevation view of both ends of the Train Sets, and a transverse section through the Train Sets. This drawing shall be updated and submitted to Department for review as revised until all changes have received final Department approval.

42.05 Contractor shall furnish Department updated Technical Specifications using the Technical Specifications attached hereto as a base, and a standard specification showing salient features of the completed Train Sets in condensed format.

42.06 During the course of the construction of the first Train Sets, the Technical Specifications will be revised to show all approved changes therein. Once every sixty (60) days from date of contract execution, ten (10) copies of revised pages showing date of revisions made within that sixty (60) day period will be submitted to Department.

42.07 Department shall inform Contractor of its comments on or approval of the drawings and documentation, submitted to it for approval not later than twenty (20) Calendar days after Department's receipt of such drawings and documentation, from Contractor, Department will use all reasonable efforts to inform the Contractor of its comments on or approval of drawings or documentation marked as critical within seven Business Days. Failure on the part of Department to inform Contractor to that effect not later than twenty (20) days after such receipt shall entitle Contractor to deem such drawings and documentation to be approved by Department.
ARTICLE NO. 43. PROGRESS OF WORK – SITE MEETINGS

43.01 Contractor shall organize its design work, purchase of materials and production of the Train Sets in such a manner that the individual milestones of the design and construction of the Train Sets will be completed on the dates set forth in the Contract Documents.

43.02 Within 60 days after the date of execution, and every month thereafter, or as the parties otherwise agree, Contractor shall submit an updated schedule for the design, testing and production of the Train Sets to Department. This Performance Report shall include a schedule in the form of a bar chart, or its equivalent, which shall be sufficiently detailed to show the milestones, design reviews and all critical items which could impact delivery, and the various stages of engineering and production. The degree of such detail shall be subject to Department's reasonable approval. The report shall also include updated information concerning Subcontractor status, status of completion of documentation, in-process inspections and production test results and any changes to the program. Each variation from reports already submitted shall be explained, and it must be stated how the variation is to be made good in the revised working and time plan submitted by Contractor.

43.03 During the period from the signing of this Contractor to the supply of the last Train Sets, regular meetings shall be held and attended by the representative of Department or the delegates, and the Contractor's project manager for the discussion of design and production details and the review of the stipulated design, production and delivery schedules.

43.04 Any communication to Department regarding the Work shall be made to Department's Representative or to a person nominated in writing by the Representative.

43.05 Contractor shall attend the meetings together with such subcontractors as it deems appropriate to involve in the discussions; likewise Department may at its discretion require one or more subcontractors to attend the meetings.

43.06 Unless otherwise agreed between the parties, meetings shall be held in the State of Wisconsin.

43.07 Contractor shall prepare minutes of the proceedings of all meetings. Such minutes shall be consecutively numbered, and references to Technical Specifications shall be numbered using a scheme that provides ready reference both to the Technical Specification and the particular meeting or conference. Items shall be referred to as "open" items if action or a decision is pending at the time the minutes are issued. A summary of all Technical Specifications changes and open items shall be included. Minutes shall be received by Department without delay and in any case not later than three weeks after a meeting is held. Minutes are not accepted until approved in writing by Department. Minutes shall be deemed approved if Department does not advise the Contractor in writing of any inaccuracies or omissions in the minutes submitted for its review at or by the next
ARTICLE NO. 44. QUALITY ASSURANCE

44.01 Contractor shall furnish Department within ninety (90) days after the date of execution of this Contract with a description of the quality control system in effect in Contractor's workshops and which is in force in connection when dealing with subcontractors. The quality control system shall specifically provide for:

(a) Subcontractor surveillance.

(b) Drawing and document control.

(c) Inspection procedures – in process and final.

(d) Production test requirements.

(e) Segregation and disposition of defective materials and products.

(f) Material and process control in plan identifying critical control points.

(g) Production equipment and instrumentation calibration, maintenance and data recording.

(h) Work procedures and instruction.

(i) Failure reporting analysis and corrective action.

(j) Material standards and control.

(k) Records of tests and inspections.

(l) Time and temperature control.

(m) Strength testing.

(n) Storage handling.

(o) Budget control procedures.

(p) Quality control organization chart showing all QC personnel and their level of authority.
44.02 The quality control system shall be organized in such a way as to ensure the fulfillment of the quality requirements of this Contract. Department shall, at any reasonable time during the production period and upon Notice to Contractor, be entitled to inspect the area with Contractor or its subcontractors in which the construction, manufacture and testing of the Train Sets or parts thereof, respectively, are being carried out.

44.03 Contractor shall upon request place measuring and control recordings at the disposal of Department, and provide copies of such documentation.

44.04 In case Contractor or Department, in connection with the testing and control of single components, finds that the component does not meet the functional requirements of the Technical Specifications defined for the component in question, the component shall be repaired or replaced with another component which meets the requirements concerned.

44.05 Contractor shall for the purposes of this Contract designate a person who has sufficiently defined responsibility, authority, resources and organizational freedom of action to be in charge of and implement on behalf of Contractor such quality control as is required to ensure a proper control of the production process. The QC organization must report independently from production and have fully independent authority to reject unsatisfactory material and subassemblies regardless of any affect on the progress of the work.

ARTICLE NO. 45. SPARE PARTS

45.01 As part of the Contract Amount, Department agrees to purchase the Main Spare Parts and Start-Up Inventory as identified in Exhibit 3 of this Contract. The Spare Parts will be located at Department's maintenance warehouse location provided by Department to Contractor and will be used as required according to the Contractor's maintenance plan (or by unscheduled events, such as accidents or malfunctioning of the components). The price of the Spare Parts shall be the sum of (a) Contractor's actual cost of acquiring and delivering such Spare Parts and (b) a 15% markup on such actual costs. The payment schedule for such Spare Parts shall be as set forth on Exhibit 4 of this Contract.

// signature page to follow //
IN WITNESS WHEREOF, the parties hereto have entered into this Contract by duly authorized representatives as of the day and year first written above.

STATE OF WISCONSIN
acting by and through the
DEPARTMENT OF TRANSPORTATION

By: FRANK J. BUSALACCHI
Title: Secretary of Transportation

TALGO, INC.

By: ANTONIO PEREZ
Title: President and Chief Executive Officer

Approved as to Form:

By: Robert Jambois, General Counsel to Department of Transportation