

METROLINK

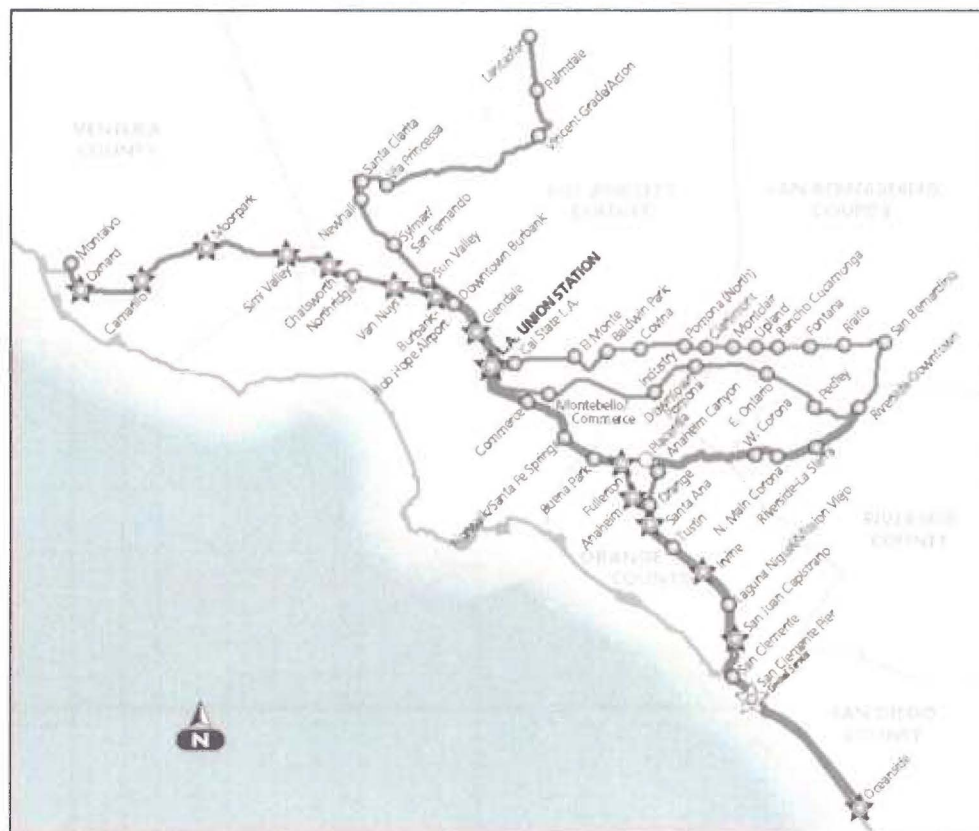
Southern California Regional Rail Authority



CONFORMED CONTRACT

NO. OP137-17

**EQUIPMENT MAINTENANCE
SERVICES**



MEMBER AGENCIES

Los Angeles County
Metropolitan Transportation Authority

Orange County
Transportation Authority

Riverside County
Transportation Commission

San Bernardino
Associated Governments

Ventura County
Transportation Commission

AGREEMENT

between

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**This Contract Agreement may be funded in part by grants issued by the U.S.
Department of Transportation, Federal Transit Administration.**

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM**

**RFP NO. OP137-17
EQUIPMENT MAINTENACE SERVICES**

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**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM**

**Contract No. OP137-17
Equipment (Rolling Stock) Maintenance Services**

CONTRACT AGREEMENT

This Agreement is made and entered into as of this 23rd day of September, 2016, by and between the Southern California Regional Rail Authority (hereinafter referred to as "AUTHORITY") and Bombardier Mass Transit Corporation (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, Authority is a joint powers authority organized under §6500 *et seq.* of the California Government Code and §130255 of the California Public Utilities Code, with power to contract for the Services described in this Agreement,

WHEREAS, Authority desires to hire a Contractor to perform the Equipment (Rolling Stock) Maintenance Services,

WHEREAS, Contractor warrants and represents that it has the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise and financial resources, and that it will provide the necessary tools, not provided by Authority, to perform the Services in an efficient, professional and timely manner in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, for the consideration hereinafter stated, the parties agree to the following terms and conditions.

1. DEFINITIONS AND ABBREVIATIONS

AAR means Association of American Railroads.

ADA means Americans with Disabilities Act.

Approved Budget means the budget agreed upon by the parties pursuant to the process described in Section 5.4 of this Agreement, including any amendments to such budget.

APTA means American Public Transportation Association.

ASCD means Agreement Service Commencement Date.

Asset means an item with a unit cost of Five Thousand Dollars (\$5,000) or more and a useful life of more than one (1) year.

Authority means the Southern California Regional Rail Authority, a joint powers authority (JPA) created pursuant to California Public Utilities Code §130255 and California Government Code §6500 *et seq.* and pursuant to an agreement, which is currently in force among the Member Agencies.

CARB means California Air Resources Board.

CBM means Condition Based Maintenance.

CFR means the Code of Federal Regulations.

CMF means Authority's Central Maintenance Facility.

CPUC means the California Public Utilities Commission.

Configuration Management means a process for establishing and maintaining consistency of a product's functional and physical attributes with its requirements, design and operational information throughout its life.

Configuration Change means an alteration to a product and/or its product configuration information.

Contractor means the firm(s) or entity(ies) chosen by Authority to provide or execute the Services under the terms and conditions of this Agreement.

Controllable Item means an item of any value with a manufacturer's serial number, which allows the item to be tracked, assigned and controlled, and includes but is not limited to, computer hardware or software, office equipment and communications equipment. Rolling stock is not included as a Controllable Item under the terms of this Agreement.

Corrective Maintenance means maintenance required as a result of a failure or defect of a component or system in advance of the replacement of the component or system at the end of its useful life.

Cost Proposal means the cost proposal submitted by Contractor to Authority in response to Request for Proposal No. OP137-15 dated September 14, 2016.

Covered Employee means an employee of the Contractor who is covered by or subject to any term or terms of a collectively bargained agreement between the Contractor and any group of its employees or that group's duly designated representative.

Days are defined as calendar days, unless specifically stated otherwise.

Direct Costs shall have the meaning stated in Section 6.2.1.B of this Agreement.

Direct Labor Costs shall mean Exempt Employee Salaries and Covered Employee wages and related employee benefit and injury costs incurred directly for the provision of the Services.

DTSC means Department of Toxic Substances Control.

Effective Date shall mean the date this Agreement is awarded by the Authority Board of Directors.

EMF means Eastern Maintenance Facility.

Exempt Employee means an employee of Contractor who is not in any way covered by or subject to the terms of a collectively bargained agreement between Contractor and any group of its employees or that group's duly designated representative.

Failure means a malfunction that originates on the vehicle that affects the performance of any single vehicle or base consist. Failures can occur in one car or multiple cars or in the locomotive in the base consist. Any failure, regardless of whether it is on one car, multiple cars or the locomotive, is considered a failure for the base-consist. This includes any component on any coach or locomotive, or coach-to-coach or coach-to-locomotive connection that can malfunction. The Failure shall be tracked on a "per trip" basis. If the vehicle is kept in service and fails on a subsequent trip, it is counted as a new Failure, unless such Failure is due to the lack of availability of material, whose lack of availability is attributable to the Authority, to correct the problem at the location where the subsequent trip begins which did not allow the Contractor to correct the original Failure. The term Failure also applies to the Non-Revenue Service Vehicle Fleet, on a locomotive or work vehicle, and shall be defined as a system malfunction that affects performance of the vehicle or base consist.

Fiscal Year is the fiscal year used by Authority, which is July 1 through June 30.

Fleet Management and Maintenance Plan means the detailed description of the Services to be performed in a Fiscal Year, and shall reflect train consists, employee counts and job assignments, work shifts, units of Rolling Stock to be maintained, maintenance program descriptions and other related services, all as agreed upon by the parties, prior to the start of each Fiscal Year, or as amended by agreement of the parties during the course of the Fiscal Year.

FRA means the Federal Railroad Administration.

FTA means the Federal Transit Administration.

Full Time Equivalent or **FTE** means the equivalent of one person working a forty (40) hour workweek.

Fully Burdened Cost (referred to herein as “FBC”): “FBC” shall mean the cost for all Services that Contractor bills to Authority, including all of the elements listed in Section 6 and Appendix L.

General and Administrative (G&A) and Overhead shall have the meaning stated in Section 6.2.1.A.4.

HEP means Head End Power.

HVAC means Heating Ventilation and Air Conditioning.

Incremental means added labor hours or added Direct Costs for providing added Services under this Agreement, which are not otherwise reimbursed as Direct Costs under this Agreement.

JSA means Job Safety Analysis.

IT means Information Technology.

LAN means Local Area Network.

LCM means Life Cycle Maintenance.

Light Engine Move means the movement of motive power units without passenger cars attached.

Line Replaceable Unit (LRU) means a unit/component or subsystem that is normally replaced in line, without cutting the vehicle from the train consist.

Line Supervisor means an officer, special agent, or other employee who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Lowest Level Replaceable Unit (LLRU) means the lowest unit (component) of a subsystem which can be replaced from an installed position by use of standard attachments.

Margin means the percentage added to the cost of parts, materials, subcontracts, and non-labor costs billed for provision of the Services.

MDBF means Mean Distance Between Failure.

MDBSE means Mean Distance Between Service Event.

MDBSF means Mean Distance Between Service Failure.

Member Agencies means the Los Angeles County Metropolitan Transportation Authority (LACMTA), Orange County Transportation Authority (OCTA), Riverside County Transportation Commission (RCTC), San Bernardino County Associated Governments (SANBAG), and Ventura County Transportation Commission (VCTC), or their successors in interest.

Metrolink Commuter Rail System means the entire rail transportation system, including rights-of-way, pavement, tracks, structures, Rolling Stock, equipment, facilities, appurtenances and all other property owned or operated by Authority, or by the Member Agencies if such property is used in the Commuter Rail operations.

MI means Maintenance Interval.

MMS means Maintenance Management System.

Mobilization Period means the period of time between the date of the Notice to Proceed, and successful completion of all plans defined in Section 2.5. Mobilization Period shall be no more than six (6) months.

Modified Services means any additional Services, or other changes to existing Services, of the kind currently provided, on existing or new routes or facilities.

NPDES means National Pollutant Discharge Elimination System.

NOI means Notice of Intent.

Non-Revenue Service Vehicle Fleet means cars defined in Section 2.9.1.C.

Notice to Proceed (NTP) means the written authorization from Authority to Contractor specifying the date on which the Contractor can begin mobilization activities.

NTD means National Transit Database.

OEM means Original Equipment Manufacturer.

Operator, when used in this Agreement, or the Appendices to it, means the Train Operations Contractor.

OSHA means Occupational Safety and Health Administration.

QAP means Quality Assurance Program.

QAPP means Quality Assurance Program Plan.

QAR means Quality Assurance Representatives.

QCPM means Quality Control Process Manual.

Qualified means that a person has satisfied the training requirements for a position and possesses the background, skills and experience necessary to fulfill the duties of a job included in the provision of Services.

Qualified Maintenance Person (QMP) means a Qualified Maintenance person as defined in 49 CFR 238.5.

Qualified Person (QP) means a Qualified person as defined in 49 CFR 238.5.

Rescue Train means a train required to support services in the event of an operating anomaly, including, but not limited to, equipment (Rolling Stock) failure, track outages, freight interference or accidents.

Revenue Service Vehicle Fleet means locomotives and cars defined in Sections 2.9.1.A and 2.9.1.B.

Rolling Stock means the locomotives, passenger coaches, cab cars, ballast cars, flat cars and caboose.

SCRRA Commuter Rail Operations means the railroad passenger services to be provided under the auspices of Authority, and all related and/or ancillary functions that are part of the provision of those services.

SR/Ds means Service Requests/ Defects.

Services means collectively the work associated with the performance of all tasks and duties required for the inspection, testing, maintenance, and repair of Authority rolling stock and all related support functions required pursuant to this Agreement.

Service Failure means a failure of a vehicle system that does not impact the on time performance of the train but does affect the passengers, e.g., HVAC system failure, door system failure, cleanliness failure, ride quality failure.

Service Facility refer to Appendix A

Service Equipment refer to Appendix A

Support Facility refer to Appendix A

Service Plan means the detailed description of the Services Authority expects the Contractor to perform in the following Fiscal Year as described in Section 5.1.

Service Property means tracks, land, structures, and other facilities (including stations), that are located on or adjacent to the rail lines and at the yards listed in Appendix A, parts of which are to be used by Contractor in the provision of the Services

under this Agreement. The Service Property does not include any structures, land or other facilities owned or controlled by Authority and located on or adjacent to the property listed in Appendix A, which Contractor does not require to provide the Services. The parties may supplement the list of rail lines and yard facilities in Appendix A, to be included in the Service Property by including a description of any such additional rail lines and yards in the Fleet Management and Maintenance Plan.

Special Train means a train, which is not regularly scheduled in the public timetable, including charter trains, leased trains, work trains, or agency trains.

Start Date-Agreement Services Commencement Date means the date upon which the Contractor is responsible for the provision of all Services required under this contract.

Subcontractor means a party or parties who takes, from the Contractor, a specific part of the Services undertaken by the Contractor, and who is subject to the terms of this Agreement.

SMP means Safety Management Plan.

SPCC means Spill Prevention Control and Countermeasures.

SSPP means System Safety Program Plan.

Supplier means a person or entity that provides equipment, tools, consumables or other goods to the Contractor, which are to be used in the provision of the Services.

Support Equipment refer to Appendix A

SWPP means Storm Water Prevention Plans.

TQDP means Training, Qualification, and Designation Program.

Task Order means a supplementary document issued by the Authority that includes the description and cost for a task that is in addition to the Contract defined scope of services and the authorization to perform the task.

Third Party Contractor means contractors who provide, under separate contracts to Authority, services other than the Services specified under this Agreement. In addition, the Train Operations Contractor, the maintenance of way services contractor and the communications and signal maintenance service contractor are not considered Third Party Contractors under this Agreement.

Train Consist means the base train set inclusive of cars and locomotives sized for the peak demand load of its equipment cycle.

Train Operations Operating Plan means the detailed description of services to be performed in the Fiscal Year by the Train Operations Contractor.

Train Operations Contractor means the entity and its employees under contract to Authority to provide engineers and conductors for operation of commuter rail services, and the associated support functions.

Train-Specific Miles means the miles traveled by the base consist for each train designated for daily revenue service.

UPS means Uninterruptible Power Supply.

Useful Life means the component life used in the Contractor's Life Cycle Maintenance (LCM) Program and Maintenance Requirements Database (MRD) for maintainable components (e.g. tread brake unit) and the design life for non-maintainable components (e.g. brackets).

Vehicle Fleets means the rolling stock included in the Revenue Service Vehicle Fleet of locomotives and cars defined in Sections 2.9.1.A and 2.9.1.B and the Non-Revenue Service Vehicle Fleet of cars defined in Section 2.9.1.C.

VFMP means Vehicle Fleets Maintenance Program.

WIP Report means Work in Progress Report.

Work Stoppage means an occasion when employees do not report for work as a result of a dispute under the terms and conditions of a collectively bargained agreement, or about the formation of such an agreement, and either the employer has, or the employees have, elected to exercise any self-help rights that may be available to them under the applicable law.

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM**

**Contract No. OP137-17
Equipment (Rolling Stock) Maintenance Services**

SCOPE OF SERVICES

2. SCOPE OF SERVICES

2.1. OVERVIEW

Working with the Authority, the Contractor shall be responsible for the delivery of safe, reliable and quality Vehicle Fleets for service. The Contractor shall be required to develop and implement plans, processes, procedures and programs that enhance the performance and availability of the Vehicle Fleets by prioritizing short range and long range inspection, testing and maintenance goals and objectives. The Contractor shall be responsible to have the Vehicle Fleets available for service, for planned maintenance and for non-scheduled maintenance. The Contractor shall be responsible for repairs to rolling stock resulting from crossing accidents, debris damage and other operating anomalies. Unless otherwise designated by the Authority, such repairs will be considered extra work.

The Contractor shall provide the resources for scheduled and unscheduled maintenance and repair of the Authority Vehicle Fleets. The Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of the work, it being understood that the Authority will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Contractor.

All preventive maintenance and corrective repairs part of this Agreement are considered the base scope of work. Overhaul work shall be identified in the VFMP. Overhaul work will not be included in the base scope of work. For overhaul work, the Authority will issue a written request for a proposal to Contractor, to elicit from Contractor a detailed proposal for the overhaul work. The Contractor's proposal shall include, as needed, a description of the overhaul work to be performed, the required schedule, and any special conditions related to the performance of the Services. Whether/when the Contractor will perform overhaul work will be The Authority's discretion.

The Contractor shall provide an integrated inspection, testing and maintenance program that includes details for inspection procedures, intervals and criteria; test procedures and intervals; scheduled preventive maintenance intervals; maintenance procedures; and testing and measuring equipment required to perform inspections, tests and maintenance. The program shall include provisions to address the reliability of the Vehicle Fleets by considering that availability and performance are directly dependent on the prediction, detection and correction of vehicle malfunctions. As part of the program, the Contractor shall include provisions for full time (24/7) coverage days, nights, weekends, and holidays with qualified maintenance persons and management personnel on duty to ensure equipment is properly prepared and operational for service requirements. To support operations, there should be one QMP for Antelope Valley territory, one QMP for San Gabriel territory, one QMP for Orange County territory, and two QMPs at the Authority's Operations Center.

This Agreement is exclusive with respect to ordinary, necessary and recurring equipment maintenance services; however, the Authority may, at its sole discretion, separately contract for other services including, without limitation, collision repair and rolling stock rehabilitation. Contractor shall cooperate fully with Authority's staff or any other contractor or entity that may be providing similar or the same services for Authority. The Authority will be responsible for coordinating maintenance tasks for the Service and Support Facilities.

2.2. DOCUMENTATION

All reports, plans, programs, schedules, and other materials prepared for the Agreement services to be performed by the Contractor shall be the property of the Authority. The Authority shall be entitled to copies and access to these materials during the progress of the Agreement. All such reports, plans, programs, schedules, and other materials shall be readily accessible to the Authority.

2.3. CONFIGURATION CONTROL AND MANAGEMENT

The Contractor shall develop and employ an integrated configuration management and change control program that includes the processes and procedures required to systematically document and verify configuration information for each vehicle. The Contractor program shall be compatible with the Authority configuration management policy. The program shall be capable of fully documenting each vehicle in the Vehicle Fleets. The Contractor shall maintain configuration records of hardware, software and firmware for each vehicle. The Contractor shall be responsible for the control and documentation of all changes and modifications to each vehicle. The program shall maintain current configuration status reports for each vehicle and reports shall be retrievable using the Maintenance Management System.

2.4. USE OF SUBCONTRACTOR REQUIREMENTS

All Subcontractors shall be experienced in and qualified to perform, and knowledgeable about, the subcontracted work. The Contractor shall perform and require its Subcontractors to perform the work in accordance with the requirements of this Agreement and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing inspection, testing and maintenance services.

The Contractor shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the Authority. The Authority shall be entitled to receive copies of all subcontracts entered into by the Contractor for Services. Any Subcontractors engaged under written contract with the Contractor, shall be considered as agents of the Contractor, and shall be subject to all applicable provisions of this Agreement. Copies of all subcontracts shall be provided to the Authority upon written request. All Contractor subcontracts shall be assignable to the Authority. The Authority shall be notified of all subcontracting changes including terminations, replacements and additional functions being subcontracted.

The Contractor shall be responsible for performance of Subcontractors and fulfillment of the subcontracted requirements. When subcontracted work is not being performed in a manner satisfactory to the Authority, the Subcontractor shall be removed immediately on the written request of the Authority subject to the cure period defined in Section 9 Termination for Breach of Agreement.

2.5. MOBILIZATION, TRANSITION, AND START-UP

2.5.1. Mobilization, Transition and Start-Up Plan

2.5.1.A. Mobilization will begin when the Contractor receives a Notice to Proceed (NTP) from the Authority. Mobilization shall be completed within 6 months of receipt of NTP. The Contractor shall furnish a comprehensive **Mobilization Action Plan** (CDRL 2.5-01) covering all proposed key activities required for the assumption of Contractor responsibilities and assurance of service continuity during transition. The plan shall demonstrate how the Contractor intends to coordinate with the Authority and the Current Contractor in order to accomplish the deliverables and milestones required to be met during the mobilization, transition and start-up period. The plan shall be submitted to the Authority no later than 10 days prior to issuance of NTP and shall be updated with all material points agreed upon by the Parties during review meetings. At a minimum, this plan shall include the following organized into logical sections:

2.5.1.A.1 Flow chart(s) or other management diagram(s) which depicts all key activities and their interrelationships and the organizational/individual responsibilities thereof during mobilization, transition, start-up and commencement.

2.5.1.A.2 A milestone schedule for all key activities from NTP to successful completion of all required Mobilization, Transition and Start-Up plans.

2.5.1.A.3 A schedule of deliverables that shall include all plans, procedures and submittals, including FRA submittals, due to the Authority, timeframes for all approvals and training of all personnel once plans and procedures have been approved. This schedule shall comply with the deliverable due dates in Section 2.18 (Plans, Records, and Reports).

2.5.1.A.4 Contractor's plans for the securing of suitable Contractor facilities, identification of any specific facilities

proposed and relocation of functions and personnel from present facilities (if required).

2.5.1.A.5 Access arrangements and support required from the Authority during the start-up and mobilization period.

2.5.1.A.6 A service continuity plan that describes Contractor's plan for the orderly transfer of responsibilities required for the performance of the Authority equipment maintenance service from the Current Contractor without any disruption or discontinuation of scheduled trains or maintenance activities, including the Contractor's plan for jointly assessing the condition of all radios, test equipment, maintenance equipment, special tools and materials provided by the Authority under the previous Equipment Maintenance Services agreement that are to be transferred to the Contractor.

2.5.1.A.7 An Information Technology plan including transition of all systems, data, and information from the existing system to the Contractors's system. The Contractor shall coordinate with all relevant parties, including the Current Contractor and the Authority, to develop, maintain, and administer a project schedule for the assumption of all services and responsibilities identified in the Scope of Services as well as the respective scopes of work for any applicable third party project.

2.5.1.A.8 Inventory maintenance plan that includes a comprehensive list of all inventory, including spares, required to perform the services prior to commencement date.

2.5.1.A.9 A procurement plan and schedule identifying subcontractors, their scope of work, materials, and equipment to be procured by the Contractor prior to the commencement date.

2.5.1.A.10 An asset transition plan that includes procedure, with applicable forms, for asset transition and asset condition assessment prior to turnover of all assets from the Current Contractor.

2.5.1.A.11 The Contractor and the Authority shall conduct review meetings on a weekly basis through the first month of mobilization and twice per month from the

second month until completion of transition or as directed by the Authority.

2.5.2. Mobilization Staffing Plan

2.5.2.A. The **Mobilization Personnel and Staffing Plan** (CDRL 2.5-02) shall describe how the Contractor will staff the Authority service during all phases of work including the mobilization, transition, start-up and commencement of service. The plan shall be submitted to the Authority no later than 10 days prior to issuance of NTP and shall be updated with all material points agreed upon by the Parties during review meetings. At a minimum this shall include:

2.5.2.A.1 An organizational chart that defines and describes roles and responsibilities, reporting structure, all key positions, personnel and their respective duties and responsibilities. Organizational charts shall be presented for all phases of the work including the mobilization, transition, start-up and commencement of service.

2.5.2.A.2 Information for all subcontractor personnel, roles and responsibilities in the organization and staffing plan.

2.5.2.A.3 Contractor's plan for obtaining all management and non- management personnel required for performance of the Scope of Services. The plan shall specifically include Contractor's plans for compliance with labor protection requirements and for the hiring, training and certification of any new employees required.

2.5.2.A.4 Contractor's training and qualifying programs for all employees, new hires and subcontractors.

2.6. TRAIN MOVEMENT

The Contractor shall be responsible for the movement of trains and rolling stock within the Service Property and Support Property as required for performance of the Services. The Contractor shall be responsible for providing the personnel, direction and control of train and rolling stock movements within yard limits.

The Contractor shall be responsible to train and qualify personnel to perform train movement duties consistent with GCOR and CFR requirements relevant to the Authority's equipment maintenance operation and this Agreement.

2.7. NOTICES, SCHEDULES, AND PASSENGER INFORMATION

When required by the Authority, the Contractor shall distribute notices, schedules and other information on trains as part of daily maintenance cycles. The Contractor shall assist the Authority in the investigation of passenger complaints and in the preparation of responses to such complaints, and implement action plans approved by the Authority to resolve the problems.

2.8. FLEET AVAILABILITY, PERFORMANCE, AND CLEANLINESS REQUIREMENTS

2.8.1. Fleet Availability

2.8.1.A. Overview The Vehicle Fleets shall be maintained to achieve the availability levels required by this Agreement throughout the design, construction, maintenance and normal service life of the fleet. The availability standards shall apply to all Revenue Service and Non-Revenue Service Vehicle Fleets. The Vehicle Fleets shall be maintained in compliance with all applicable FRA, the Authority, and OEM requirements.

The Contractor shall apply maintenance consistent with the requirements of this Agreement and the Authority approved Life Cycle Maintenance (LCM) Program to the Authority Revenue Service and Non-Revenue Service Vehicle Fleets. The Contractor shall not be permitted to defer maintenance or repair work on any vehicle in the fleets without the prior written permission of the Authority.

The vehicle availability requirement for the revenue service Vehicle Fleets is to achieve a minimum of 95% fleet availability at all times and by having the required vehicles at the designated locations released for service at the designated time. Vehicles that are undergoing long term maintenance and vehicles that are undergoing damage repair shall not be included when calculating the Vehicle Fleet availability. Beginning on the Agreement Service Commencement Date (ASCD), the Contractor shall collect and analyze vehicle availability information described in 2.8.1.B, 2.8.1.C, 2.8.1.D, and 2.8.1.E. The vehicle availability shall be reported as part of the monthly Fleets Availability, Performance, and Cleanliness Report per 2.8.4. Ninety (90) days after ASCD the Contractor shall submit, as part of the Fleets Availability, Performance, and Cleanliness Report, the

results of the analysis of the previous three months with supporting data that will be used to establish the baseline for Vehicle Fleets Availability for assessment of improvements. The report shall identify potential areas for availability improvements and describe proposed corrective actions and schedule for the implementation of preventive actions and anticipated results of each.

Each month, the Vehicle Fleets availability information shall be provided per vehicle type, per trainset, by location and by period. The information shall include vehicles required, vehicles available and used, vehicles available and not used, vehicles not available for use, per vehicle utilization and revenue service miles for the month.

2.8.1.B. Equipment Availability Requirements In order to be considered available for revenue service, locomotives, cab cars and trailer cars must have the characteristics set forth in Section 2.8.1.B and be at the designated location to support train distribution and train trip schedule requirements. The vehicle availability requirements for the revenue service Vehicle Fleet shall include vehicles designated for daily service, operating spares and stored serviceable vehicles, but shall not include vehicles undergoing damage repair or long term maintenance. Authority will vary the quantities of vehicles required in response to changes in service, an example of the vehicle availability requirements for the revenue service Vehicle Fleet is provided in Appendix E.

The Contractor shall be responsible to ensure non-revenue service vehicles are available for use on an as needed basis. In order to be considered available for non-revenue services, non-revenue service vehicles must have the characteristics set forth in Section 2.8.1.B.2.

2.8.1.B.1 Equipment "available for revenue service" shall mean equipment from the revenue service vehicle fleet, that has the following attributes:

- a. Daily Maintenance Interval (MI) work has been performed. For operating spares and stored serviceable vehicles, the MI work for operating spares shall be completed only when such equipment is needed in revenue service;

- b. Passed all required tests and inspections;
- c. Compliant with the Authority inspection criteria and condemning limits;
- d. Posted as being available for service.

For operating spares and stored serviceable to be designated available, the only outstanding work shall be as defined in 2.8.1.B.1.a.

2.8.1.B.2 Equipment “available for non-revenue service” shall mean equipment from the Non-Revenue Service Vehicle Fleet, except vehicles undergoing damage repair or long term maintenance, that has the following attributes:

- a. Required inspections have been performed;
- b. Passed all required tests;
- c. Compliant with the Authority, FRA and AAR inspection criteria and condemning limits;
- d. Posted as being available for MOW service.

2.8.1.C. Trainset Requirements The Contractor shall make revenue trains available in order to support the train cycle and train-consist requirements. As a reference, see Appendix J – Train Cycle and Train Consist Schedule Example. The Contractor shall make trainsets available in accordance with the dispatch time for each train from its initial terminal in revenue service. As a reference, see Appendix K – Train Initial Terminal Dispatch Schedule Example.

2.8.1.C.1 The Contractor shall develop and assign trainsets to cover the train cycle. Each trainset placed in service must meets the following characteristics:

- a. The trainset meets the minimum equipment availability requirements for the scheduled trip, as specified in Section 2.8.1.B.

- b. The toilet rooms are operational and fully stocked in each car of the trainset equipped with toilets. The Contractor shall be granted relief of non-operating condition, if storage site has non-functional water supply.
- c. Each car on the trainset has all passenger entry doors operational.
- d. The trainset has the required, ADA wheelchair ramp(s) on each car.
- e. All vehicles in the trainset comply with the applicable CFR requirements.

2.8.1.C.2 The Contractor may substitute equipment provided that the requirements of Section 2.8.1.C.1 are satisfied and the Contractor has notified the Authority of any substitutions prior to placing the trainset into service.

2.8.1.C.3 Vehicle Fleets Availability shall be measured as the available fleet count by equipment type (locomotives, cab cars, trailer cars) at the start of each of the two daily weekday peak periods from 5:00 am to 10:00 am and from 4:00 pm to 9:00 pm. During these two peak periods of the service day, the required fleet shall be available for revenue service.

2.8.1.C.4 The required fleet shall be defined as sufficient equipment available during the peak and off-peak periods to cover all scheduled service. Because the Authority's scheduled service requires peak and off-peak train cycles to overlap, availability is measured as daily trainset requirements.

2.8.1.D. Fleet Availability Exceptions If a vehicle is not in service due to the following reasons, it will be exempt from the fleet availability (Peak Period Availability) calculations:

- a. Damage due to vandalism, accidents or force majeure;
- b. Any Authority directed removal from service of Service Equipment.

2.8.1.E. Out of Service Vehicles The Contractor shall not permit the fleet to be in a state of Long-Term Out-of-Service for extended periods, without justification and written approval of the Authority.

2.8.1.E.1 Any vehicle in the vehicle fleet that is not available for intended use for greater than seven (7) days during a fifteen (15) continuous, calendar day period shall be considered a Long-Term Out-of-Service. Additionally, any vehicle in the revenue service vehicle fleet that is out of revenue service twelve (12) days during a continuous twenty (20) days shall be considered a Long Term Out-of-Service.

2.8.2. Vehicle Fleets Performance

2.8.2.A. Overview Beginning on the Agreement Service Commencement Date, the Contractor shall collect and analyze vehicle fleet performance information described in 2.8.2.B, 2.8.2.C and 2.8.2.D. The vehicle performance goal for the revenue service vehicle fleet is to achieve a minimum of 20,000 Mean Distance Between Failures (MDBF) for each locomotive type, and 120,000 MDBF for the trailer cars and cab cars for each fleet. The vehicle performance shall be reported as part of the monthly Fleet Availability, Performance, and Cleanliness Report per Section 2.8.4. Ninety (90) days after ASCD the Contractor shall submit, as part of the Fleets Availability, Performance, and Cleanliness Report, the results of the analysis of the previous three months with supporting data that will be used to establish the baseline for Vehicle Fleets Performance for assessment of improvements. The report shall identify potential areas for performance enhancements and describe proposed corrective actions and schedule for the implementation of preventive actions and anticipated results of each.

The Vehicle Fleets Performance information shall include, as a minimum, individual vehicle performance, vehicle type performance (locomotive, cab car, trailer car), vehicle fleet performance (F40PH, F59PH, F59PF Tier II, F59PHI MP36PH, Guardian Cab car, Guardian trailer car, etc.) in terms of revenue service miles for the month. The report shall identify causes for reported train delays. The report shall identify and explain reasons for any variances, and provide plan and schedule for implementing appropriate corrective and preventive actions.

2.8.2.B. Mean Distance Between Failure ("MDBF") shall be calculated by the Contractor and reported to the Authority

on a monthly basis as part of the Fleets Availability, Performance, and Cleanliness Report.

A failure for revenue service MDBF calculations is defined as a vehicle failure that causes the train to be delayed six minutes or more upon arrival at the end station along its route.

A failure for nonrevenue service MDBF calculations is defined as a vehicle failure that causes the train to fail completion of the prescribed work-plan for the timeframe in which is it called for duty.

The MDBF for the Vehicle Fleets shall be calculated in the following manner:

- a. For locomotives, locomotive mileage in service during the reporting period divided by number of locomotive-related failures in reporting period.
- b. For cab cars, cab car mileage in service during the reporting period divided by number of cab car related failures in reporting period.
- c. For trailer cars, trailer car miles in service in the reporting period divided by number of trailer car related failures in reporting period.
- d. Calculation shall be carried out as follows:
(Miles in Month X for vehicle-type) divided by
(Number of Failures of Vehicle-type in Month X) =
MDBF for Vehicle type in Month X
- e. For example:
In May the locomotive fleet ran 342,833 miles;
experienced 20 locomotive failures in May;
therefore, MDBF for locomotive fleet in May =
 $342,833/20 = 17,141$ miles

The Contractor shall also monitor and report revenue service locomotive, cab car, trailer car and non-revenue service vehicle MDBF on an individual vehicle basis and by vehicle systems and by vehicle system component to ascertain whether there are any problematic vehicles that require immediate action. In other words, MDBF shall also be calculated for each individual coach and each

individual locomotive as a means of tracking vehicle-specific performance.

2.8.2.C. Mean Distance Between Service Failure ("MDBSF") is defined as in-service failures of vehicle systems that do not affect the On Time Performance of the train or MDBF calculations, but affect the passengers. These failures include, but are not limited to:

- a. HVAC System Failure – Failure to maintain temperatures within the design values;
- b. Door Failure - Failure of a door to operate as designed;
- c. Lighting System Failure – Failure of 10% or greater of the lights in the interior of the vehicle to remain illuminated for the duration of the trip;
- d. Toilet System Failure – Failure of the toilet system to function as designed including passenger and crew odor complaints that are resulting from Contractor's improper cleaning or maintenance of the toilets;
- e. Communication System Failure – Failure of the Public Address System, Intercom, Signage or Vehicle Radio enroute; and
- f. Ride Quality Failure – Failure of the truck and suspension system to provide the designed ride quality.

The MDBSF for each type of vehicle shall be calculated in the same manner as described in Section 2.8.2.B for MDBF.

MDBSF shall be calculated by the Contractor and reported to the Authority on a monthly basis as part of the Fleets Availability, Performance, and Cleanliness Report. The Contractor shall monitor and report vehicle-specific MDBSF to the Authority on a monthly basis to ascertain whether there are any problematic locomotives and/or cars that require immediate action and to determine the Contractor's compliance with its obligations under this Agreement.

- 2.8.2.D. Mean Distance Between Service Event ("MDBSE") is defined as an event that requires a positive action on the part of a crew member to adjust, cut-out or reset any on-board equipment or requires notification to the Mechanical Department of an underlying condition that requires action by a Qualified Maintenance Person (QMP) or Qualified Person (QP) after the vehicle has been released for service whether or not the event results in a failure or service failure.

MDBSE for each vehicle type shall be calculated in the same manner as described in Section 2.8.2.B for MDBF. Mean distance between service events shall be calculated by the Contractor and reported to the Authority on a monthly basis as part of the Fleet Availability, Performance, and Cleanliness Report.

MDBSE shall also be calculated on a vehicle-basis and shall be utilized as a means of tracking and evaluating vehicle specific performance and effectiveness of inspection, testing and maintenance activities.

2.8.3. Fleet Cleanliness

- 2.8.3.A. Overview Each train consist and fleet-type shall be cleaned in accordance with the cleaning intervals provided in this Section 2.8.3. (Fleet Cleanliness). For each cleaning interval, the Contractor shall develop and implement, detailed cleaning procedures and criteria that include, at a minimum, the cleaning steps identified below. The Contractor shall submit these **Cleaning Interval Procedures** (CDRL 2.8-01) to the Authority for review and approval no later than 30 days prior to ASCD. Each cleaning interval performed (Coach Class A, Coach Class B, Locomotive Class A, Locomotive Class B) shall be recorded in the Maintenance Management System by task ID (Coach Class A, Coach Class B, Locomotive Class A, Locomotive Class B), vehicle ID number and date performed.

- 2.8.3.B. Minor graffiti shall be addressed as part of each of the classes of cleaning listed below. If there is a significant graffiti incident, and the graffiti is not deemed offensive (if there is a question as to what is offensive, the Contractor shall ask the Authority for a determination), the Contractor shall keep the equipment in revenue service until its next regularly scheduled time for service and

inspection in a service and inspection facility and address the car at that time (such time not to exceed 24 hours from notice or discovery of the graffiti). If the graffiti is deemed offensive, the vehicle shall be removed from revenue service at the point of discovery and moved to an appropriate facility for graffiti removal as soon as practicable.

The Contractor shall perform a walk-through of each train consist between the morning and afternoon Peak Commuter Periods to remove debris and trash from the train. This walk-through trash pick-up may be performed at each turn Station and at midday layover facilities (wherever there is sufficient lay-up time). The Authority reserves the right to perform random walk-throughs of train consists that have been released by the Contractor for service in order to perform cleanliness audits. For an example of a cleanliness audit form, see Appendix O – Vehicle Cleanliness Audit Form Sample.

As used in this Section 2.8.3. (Fleet Cleanliness), “wipe down” shall be defined as cleaning a surface using a damp cloth with cleaning solution while not leaving a film, residue or streak when completed. The final list of cleaning chemicals and processes shall be developed and delivered to the Authority for review and approval no later than 90 days after NTP (**Cleaning Chemicals and Processes List**) (CDRL 2.8-02).

2.8.3.C. Coach Class A Cleaning The Coach Class A Cleaning shall take place no less than once every 180 calendar days for each coach not approved by the Authority as Long Term Out of Service. The Coach Class A Cleaning shall involve the following work:

2.8.3.C.1 Interior

- a. Remove all trash and replace plastic bags;
- b. Wipe down interior panels;
- c. Clean door tracks including side doors and restroom door;
- d. Vacuum and shampoo carpet and seat cushions;
- e. Steam clean seat backs and bottoms;

- f. Steam clean seat frames;
- g. Wash and squeegee windows;
- h. Sweep stairs and tiled areas, including Toilet Room;
- i. Wash floor and heater guards;
- j. Wipe down all Toilet Room surfaces, including toilet bowl, seat, and cover, with an approved anti-bacterial cleaner, clean and sanitize toilet system equipment locker;
- k. Stock restroom;
- l. Wipe down drinking fountain and replenish paper cups;
- m. Wipe down all stanchions and partitions;
- n. Wipe down all cab surfaces;
- o. Wipe down all trash receptacles;
- p. Wipe down all light lenses (covers);
- q. Replenish supply of time tables and other Authority authorized publications
- r. Inspect all decals and repair/replace as required; and
- s. Remove all graffiti and unauthorized materials (e.g. stickers and gum) from interior surfaces.

2.8.3.C.2 Exterior

- a. Wash coach exterior with an approved cleaner;
- b. Hand wash and squeegee windshield and windows;
- c. Remove all debris from the exterior of the vehicle; and,

- d. Remove all graffiti and unauthorized materials (e.g. stickers and gum) from exterior surfaces.

2.8.3.D. Coach Class B Cleaning The Coach Class B Cleaning shall take place no less than once every calendar day for each coach not approved by the Authority as Long Term Out of Service. The Coach Class B Cleaning shall involve the following work:

2.8.3.D.1 Interior

- a. Remove all trash and replace plastic bags;
- b. Wipe down all seating surfaces;
- c. Clean all spills on floors;
- d. Clean all windows;
- e. Sweep stairs and tiled areas, including Toilet Room;
- f. Wash floor and heater guards;
- g. Wipe down all handles and passenger grab handles, stanchions and hand-holds;
- h. Wipe down all Toilet Room surfaces, including toilet bowl, seat, and cover, with an approved anti-bacterial cleaner;
- i. Stock restroom;
- j. Wipe down drinking fountain and replenish paper cups; and
- k. Remove all graffiti and unauthorized materials (e.g. stickers and gum) from interior surfaces.

2.8.3.D.2 Exterior

- a. Wash exterior with an approved cleaner, through car wash at EMF or CMF; and
- b. Hand wash and squeegee windshields on Cab Cars operating through CMF, EMF and where applicable.

2.8.3.E. Locomotive Class A Cleaning The Locomotive Class A Cleaning shall take place no less than once every 92 days for each locomotive not approved by the Authority

as Long Term Out of Service. The Locomotive Class A Cleaning shall involve the following work:

2.8.3.E.1 Interior

- a. Remove all trash and replace plastic bags;
- b. Wipe down locomotive control stand, consoles and floor;
- c. Wash and squeegee windshield and windows;
- d. Remove all graffiti and unauthorized materials (e.g. stickers and gum) from interior surfaces.

2.8.3.E.2 Exterior

- a. Wash locomotive exterior with an approved cleaner;
- b. Power wash trucks, fuel tank, engine room;
- c. Hand wash and squeegee windshields and windows;
- d. Remove all debris from the exterior of the vehicle;
- e. Inspect all decals and reflective materials and repair/replace as required; and
- f. Remove all graffiti and unauthorized materials (e.g. stickers and gum) from exterior surfaces.

2.8.3.F. Locomotive Class B Cleaning The Locomotive Class B Cleaning shall take place no less than once every calendar day for each locomotive not approved by the Authority as Long Term Out of Service. The Locomotive Class B cleaning shall involve the following work:

2.8.3.F.1 Interior

- a. Remove all trash and replace plastic bags;
- b. Wipe down all seating surfaces; and
- c. Wash and squeegee windshield and windows.

2.8.3.F.2 Exterior

- a. Wash exterior with an approved cleaner, through car wash at EMF or CMF; and-
- b. Hand wash and squeegee windshields on equipment operating through CMF, EMF and where applicable.

c. Wash exterior with an approved cleaner.

2.8.3.G. Fleet Odor Control The Contractor shall be responsible for continuous reduction in foul toilet odors that generate customer complaints in the customer surveys taken by the Authority Customer Communications Department. The Contractor shall be responsible for the design, implementation and maintenance of a program that will ensure continuous reduction of foul odor customer complaints. The complaints will be investigated by both the Authority and the Contractor to determine liability since the complaints can be subjective. The customer complaints must reduce by one percentage point per month until foul toilet room odors are no longer a reported customer survey problem. Should the Contractor not reduce complaints, liquidated damages may be assessed as a Toilet System Failure

2.8.4. Tracking and Reporting. The Vehicle Fleets Availability, Vehicle Fleets Performance, and Vehicle Fleets Cleanliness from the preceding month shall be included in an integrated report submitted to the Authority. The report shall provide information for the current month and the previous twelve month period. Along with the monthly information, the report shall provide a three (3) month moving average calculation for Vehicle Fleet Availability and Vehicle Fleet Performance to display any trends and effects of enhancements of inspection, testing, maintenance, troubleshooting and repair practices. The report shall provide availability, performance and cleanliness metrics per individual vehicle and per vehicle fleet, series and model and shall demonstrate the Contractor's effort to improve fleet maintainability and reliability through enhancement of the LCM Program.

The Contractor shall capture the fleet availability, performance and cleanliness information as part of its daily operation and shall provide an integrated Fleet Availability, Performance, and Cleanliness Report once per month that analyzes the reported information. On an ongoing basis, the report data shall be analyzed and utilized by the Contractor to adjust the Life Cycle Maintenance program to monitor and improve vehicle level and fleet level availability, performance and cleanliness. The report shall include and identify failures reported during service operation, and maintenance intervals and any unscheduled repairs performed during the report period. The Fleet Availability, Performance, and Cleanliness Report shall be used to assess applicable incentives and damages.

Based on its analysis of reported results and following the Pareto Principle, the Contractor shall initiate corrective action and

preventive action programs that shall be presented to the Authority for review and approval prior to implementation of the program. The Contractor shall provide the status of the individual programs in the monthly report. The Contractor shall modify and keep current the inspection, testing and maintenance documentation, including, but not limited to procedures, drawings and manuals affected by these programs.

The report shall include pertinent information on an individual vehicle to determine available/used status, available/not used status, and not available/not used status. In addition to the information collected and analyzed in Sections 2.8.1 through 2.8.3, the Contractor shall collect, on a daily basis, the following information to be used to track vehicle availability, performance, and cleanliness:

- a. Individual Vehicle Mileage (daily mileage and cumulative mileage);
- b. Cumulative Days in Service for each vehicle;
- c. Peak Period Availability (the number of units available for service at the start of each peak period);
- d. Off-Peak availability;
- e. System and Subsystem Failures for all Line Replaceable Units;
- f. Resource Consumption (Materials and Labor); and
- g. Out-of-Service Time for all vehicles (any rolling stock not available for revenue train service).

The Contractor shall develop a **Fleets Availability, Performance, and Cleanliness Report Draft** and present it to the Authority for review and approval within 30 days after NTP (CDRL 2.8-03). The report shall integrate an executive summary and the scorecard/dashboard display summary of reported indicators along with reported information and analyses.

Using the Authority approved report format, the Contractor shall prepare and submit this report to the Authority for approval on a monthly basis. The **Fleets Availability, Performance, and Cleanliness Report** (CDRL 2.8-04) shall be provided within seven calendar days of the close of the previous month, and shall be the focal point for the Contractor performance review meeting for each month's Reporting Period. The review meeting will include

evaluation of the Contractor's performance of the Agreement requirements and negotiation and assessment of any liquidated damages that are applicable.

Within ten (10) days from the Authority's request (and at no additional cost to the Authority), the Contractor shall also provide to the Authority Fleet Availability, Performance, and Cleanliness Reports covering specific time periods and information that the Authority designates (each, a "**Supplemental Fleets Availability, Performance, and Cleanliness Report**") (CDRL 2.8-05). By way of example, and not limitation, a Supplemental Fleet Availability, Performance, and Cleanliness Report may consist of daily mileage for a six (6) month period.

2.9. ROLLING STOCK MAINTENANCE REQUIREMENTS

2.9.1. Overview

- 2.9.1.A. Locomotive The Authority rolling stock fleet meets all FRA requirements per Code of Federal Regulations 49 Parts 200 to 299 and is compatible with other passenger rail equipment and suitable for use on any standard gauge railroad in the United States that meets "H" clearance diagram and the PUC clearance envelope. The locomotives have separate propulsion and Head End Power (HEP) engines. The Authority currently owns 52 locomotives; 37 manufactured by Electro Motive Diesels and 15 by Motive Power, Inc., and is in the process of introducing 40 by Progress Rail into the fleet during the term of this Contract as shown in Appendix E-1 – Revenue Fleet Locomotives and Cars.
- 2.9.1.B. Rail Car The Authority owns a total of 274 passenger rail cars of which 137 (57 cab cars and 80 coaches) were manufactured by Rotem and 137 by Bombardier. All Authority passenger rail cars are fully ADA accessible. Currently 21 First Generation Bombardier coaches have been modified for increased bicycle capacity. Three cars have been converted for increased bicycle storage as well as for luggage storage. The Authority envisions modifying additional vehicles to accommodate bicycles. In addition, three (3) Rotem cab cars have been modified with increased ADA capacity. The rail car fleet is shown in Appendix E-1 – Revenue Fleet Locomotives and Cars.
- 2.9.1.C. Non-Revenue Service Vehicle Fleets Authority owns 4 flat cars, 5 ballast, 2 dump cars, and 1 caboose. The

non-revenue service vehicles owned by the Authority are shown in Appendix E-2 – Non-Revenue Service Vehicle Fleet .

2.9.1.D. Special Tools Appendix F – Authority Special Tools and Test Equipment is a list of tools and test equipment that the Authority has procured for equipment maintenance to be transferred to the Contractor on ASCD. The Contractor shall be responsible for the repair and replacement of Special Tools and Test Equipment damaged by the Contractor. The Authority will procure any other special tools and test equipment required for new and overhauled rolling stock incorporated into the Vehicle Fleets after ASCD not identified in Appendix F.

2.9.2. Vehicle Fleets Maintenance Program. The Contractor shall develop and implement a comprehensive preventive maintenance, inspection and cleaning program which shall incorporate component-level, system level and vehicle level Life Cycle Maintenance (“LCM”) concepts; FRA inspection requirements; Authority inspection, tests and maintenance requirements; and OEM maintenance requirements and cleaning standards. The core program shall include tools for continuous improvement strategies and shall take into account the interrelationship between maintenance and operation. The program shall develop preventative and predictive maintenance tasks and procedures to produce ongoing, consistent and reliable equipment performance and availability. The VFMP shall incorporate a comprehensive condition based maintenance plan and schedule for monitoring, replacing, repairing and restoring wearing vehicle systems and parts before functional failure occurs without adversely affecting availability and performance of the vehicle. The program shall coordinate all inspection, maintenance and test activities so as not to detrimentally impact the required fleet availability. The program shall include revenue service vehicles and non-revenue service vehicles.

The Vehicle Fleets Maintenance Program (“VFMP”) shall include a vehicle fleet database that shall be used to monitor and analyze vehicle, system and component performance to develop maintenance, troubleshooting and repair strategies to improve vehicle fleet maintainability and reliability. The VFMP shall contain condition based maintenance (CBM) tools and techniques, including but not limited to routine measurements of wearing parts, routine measurements of operating parameters, vibration sampling, thermo-graphic inspection, oil usage and analysis and emission testing, to ascertain condition data on critical equipment and

components. As a minimum, the data acquisition for the CBM Program shall consist of those activities in Appendix Q. The Authority shall supply diagnostic equipment and consumable items required to support CBM data collection. The Contractor shall provide the data interface system software required to organize the data collected to be presented to the Authority for review in the monthly summary report. The CBM tools and techniques shall supplement the existing maintenance practices and procedures to develop the proper types of inspections and test methods that cause failure modes to be detected and remedial actions taken before functional failure occurs. On a continuous basis, the Contractor shall utilize the condition based information to plan and schedule predictive maintenance tasks with the goal of optimizing the life cycle cost (LCC) and improving the reliability, availability and performance of the Vehicle Fleets.

On a monthly basis, or more frequently if requested by the Authority, the Contractor shall supply the Authority with a summary report of the condition based results for each vehicle analyzed during the period. The summary report shall be sufficiently detailed to include comparison of previously reported results for similar and same vehicle types, and include recommendations to Authority on procedures, practices, and actions to improve fleet availability and reliability.

The Contractor shall implement systematic problem solving techniques including root cause analyses as part of its efforts to increase the reliability of vehicle systems and components and its investigation into defects and failures encountered in the inspection, testing and maintenance of the Vehicle Fleets. The Contractor shall identify the top 10 major components and top 10 failure modes by value of criticality. The Contractor shall then implement the appropriate corrective actions at the time of the analysis and incorporate suitable preventive actions to eliminate or reduce future occurrences. The Contractor shall utilize the information developed through the program to supplement and continually improve Vehicle Fleet reliability, availability and performance.

The Contractor shall put into practice, as an integral component of the VFMP, an emissions monitoring and analysis program to maintain the locomotive fleets at applicable EPA standards. The Authority shall supply diagnostic equipment, engine emissions analyzer and data interface system software to allow collected data to be reviewed.

The Contractor shall include Engine Risk Assessments (ERA)

based on the existing fleet within the VFMP. A risk based approach shall be used to target high failure risk components and root out potential problems that threaten locomotive performance and reliability. The objective of the program will be to identify points in the systems that are indicating a potential failure, by age and wear characteristics or reliability trends of the same components in the industry.

Database tools and software procured and used by the Contractor as part of the VFMP shall become the property of the Authority at the completion of the Agreement.

Within 120 days after NTP, the Contractor shall provide the plan and schedule for the VFMP implementation. The plan and schedule shall identify the key milestones, events and activities and shall describe in detail interim measures that shall be put in place until all the components of the VFMP are fully operational. (**Vehicle Fleets Maintenance Program Plan and Schedule**) (CDRL 2.9-01. No later than 180 days after ACSD the VFMP shall have all of its components integrated and fully operational. (**Vehicle Fleets Maintenance Program Operational**) (CDRL 2.9-02)

2.9.2.A. Maintenance Management System

The Authority currently employs AssetWorks RailFocus, an asset and maintenance management software system for tracking and documentation of daily defects, periodic maintenance, repairs, modifications and capital program work. Daily defects are recorded as Service Requests/ Defects (SR/Ds) to track defects on equipment found or reported while in service. Consist Management, a module within the RailFocus software, tracks train set configuration and equipment assignments per specific train trip in order to monitor individual equipment mileage.

After consultation between the Authority and the Contractor, the Contractor shall utilize the Authority provided Maintenance Management System (MMS). The Authority will provide the Contractor with access to the pertinent modules of AssetWorks RailFocus intended for rail vehicle MMS. The Contractor shall ensure that the specified features, functions, and performance of the VFMP, with its MMS and LCM program, including work orders, information tracking, lists, databases and resultant reports are directly transferable to the

Authority's Trapeze MMS at the end of the Agreement. The MMS system must comply with the following and be approved by the Authority:

- a. At a minimum, the MMS shall be capable of tracking resources applied to maintenance (labor, materials, shop space, warranty, etc.).
- b. If necessary, the Contractor shall transfer all data stored in the Authority's or the incumbent contractor's existing MMS into the new MMS.
- c. The Authority shall have full 24/7 user access to the MMS. This access shall include the ability to perform all of the data download, report generation and other functions as would the highest level user of the MMS.
- d. The MMS shall be available for Authority personnel to monitor and download information on a real-time basis.
- e. All data reported in this system must have the ability to be sorted by equipment ID, task ID, work order status, service requests/defects, parts used, date, location, employee performing and supervisor. The work order must define the work scope, action taken (example: replace, repair), time to accomplish task and amount of material consumed to perform task (if applicable). Free form text cannot be accepted to close a work order. The system shall be maintained such that sufficient detail is attached to each record to document the description of a failure and the corrective action taken.
- f. The MMS must comply in full with the requirements of 49 CFR Parts 200 to 299 for reporting and recordkeeping.
- g. The Contractor shall be responsible for all costs associated with system maintenance, support, data back-up (offsite data storage is permissible provided the Contractor furnishes the back-up data to the Authority on a monthly basis and upon request) and licensing (including maintaining an Authority user license with administrator rights).

- h. The MMS shall be a relational database capable of creating flat file records for tracking work orders, material consumption and other resources associated with work performed on each vehicle. The MMS shall support all elements of the LCM Program.
- i. The MMS shall also be capable of tracking vehicle reliability, availability and other measures of vehicle performance.
- j. The system shall account for vehicle availability by tracking vehicle status on a real-time basis.
- k. The system shall track the calibration status (electronic and hard copy reporting) of the test equipment and special tools. The system shall be able to recall items for calibration based on the established schedule.

2.9.2.A.1 Maintenance Management System Work Orders

The MMS shall be capable of generating reports that utilize the data stored in the above records.

The MMS shall retain all inspection reports required by the Authority.

The MMS shall be capable of tracking inspection, testing and maintenance dates and generating a schedule for these tasks for the Vehicle Fleets.

The MMS Work Orders shall, at a minimum, capture the following information:

- a. Vehicle Number;
- b. Date Out-of-Service;
- c. Date and Time Work Started;
- d. Employee(s) and Employee(s) Identification Number Assigned to Perform Work;
- e. Work Location;

- f. Trouble Code for Reason Vehicle is Shopped;
- g. Description of Failure;
- h. Work Code for Work Task(s) performed (if multiple tasks are performed, they must be listed individually for tracking purposes);
- i. Description of Corrective Action;
- j. Labor Hours (by person) for the Work Task(s) Performed (if multiple tasks are performed, the hours must be listed individually for tracking purposes);
- k. Material with quantities Removed from the Vehicle (code for type, part number and serial number);
- l. Material with quantities Applied to the Vehicle (code for type, part number and serial number);
- m. Warranty Information;
- n. Supervisor and Supervisors identification number Sign-off; and
- o. Date and Time Returned to Available Revenue Service Fleet.

2.9.2.A.2 Maintenance Management System Information Tracking

The Contractor shall input data required to accurately track vehicle availability, performance, and cleanliness as required in Section 2.8 (Fleet Availability, Performance, and Cleanliness Requirements). The MMS shall be the tool for collecting, tracking and analyzing vehicle availability, performance and cleanliness data as described in 2.8.4.

The Contractor shall track availability, performance and cleanliness on a vehicle-specific basis and system-specific basis using the MMS as the source of information. All data reported in this system must have the ability to be sorted by task, part number, date, employee performing work, hours, location, repeat failures as defined by part number, task, equipment ID and supervisor. The task must define the work scope,

action taken (example: replace, repair), time to accomplish task and amount of material consumed to perform task (if applicable). Free form text cannot be accepted to close a work order.

The Contractor shall submit a **Maintenance Management System Plan** (CDRL 2.9-03) for review and approval by the Authority no later than 60 days after NTP.

2.9.2.B. Life Cycle Maintenance Program

2.9.2.B.1 Overview. The maintenance philosophy for the Authority Vehicle Fleets shall be one in which the Life Cycle Maintenance (LCM) concept is the foundation for all maintenance related tasks. The LCM concept shall incorporate FRA, OEM, and Authority inspection, testing and maintenance standards to form a comprehensive preventive maintenance and inspection program. The Contractor shall approach the development of the LCM Program from a Value Engineering perspective and present an LCM Program that balances maintenance to mission critical vehicle systems with cost containment. The Contractor shall take into consideration individual vehicle requirements, the age of particular fleets and any Authority plans for enhancements and fleet replacement when assembling the LCM Program. The LCM program shall be updated on a regular basis to improve component and system performance by incorporating lessons learned, and corrective actions and preventive actions developed in conjunction with defects and failures analyses.

The **LCM Programs Implementation Plan and Schedule** (CDRL 2.9-04) for each vehicle fleet type shall be developed and delivered for Authority review and approval no later than 60 days after NTP. The plan shall provide details of the processes and procedures that shall be used until the baseline LCM Program is stabled. The **Baseline LCM Programs** including **Maintenance Assemblies and Components Lists and Maintenance Requirements Database** (CDRL 2.9-05) shall be populated with true lifecycle data, functional and integrated into the MMS no later than 150 days after Agreement Services Commencement Date (ASCD). The LCM Programs shall be formally reviewed with the

Authority and resubmitted quarterly (each, an **LCM Programs Update**) (CDRL 2.9-06).

Using the LCM concept the Contractor shall maximize the availability and functionality of rolling stock through a regular interval program of planned maintenance events occurring over the useful life of each vehicle. The Contractor shall identify each repairable item on the vehicle and develop a series of pre-defined inspection, test and maintenance activities for each. These activities shall be scheduled to occur prior to (or to coincide with) the anticipated service life requirements of each repairable component. The Contractor shall perform the appropriate maintenance activity for components including, for example, but without limitation, on main engines, main generators and HEP units , excluding overhauls, on a cycle which minimizes the probability of component failure and keeps the vehicle in overall good working condition.

The LCM Programs shall establish a set of service intervals extending over the life of the vehicle for each maintainable assembly and component (part) and a defined set of inspection, test and maintenance activities for each interval. These activities are coordinated sequentially among the maintenance intervals, such that the longer intervals typically include all work conducted at preceding intervals. For example, 92-day work would include tasks unique to the 92-day interval, plus all work done during daily intervals. Similarly, annual work includes all 92-day work plus tasks unique to the annual maintenance interval.

The Authority will be responsible for overhauls of entire locomotives and coaches, which shall be completed offsite and through a separate procurement process.

The goal of the LCM Programs is to prevent in-service failures through an extensive campaign of identifying milestones in a component's life where inspection, servicing and/or replacement are critical to maintain 100% reliability of the component and its system.

2.9.2.B.2 LCM Program Development The Contractor and the Authority shall develop the LCM Program using industry standards and maintenance practices appropriate for application to the Authority's Vehicle

Fleets and in accordance with OEM requirements. The code protocol established for the LCM Program shall be compatible with the MMS program and use a consistent logical code that is easily recognizable to those performing, verifying and validating the tasks.

2.9.2.B.3 Maintenance Assemblies and Components Lists The Contractor shall conduct a thorough analysis of the Vehicle Fleets and identify a list of maintainable assemblies and components for each vehicle system. This Maintenance Assemblies and Components List shall be submitted to the Authority and shall be organized by system. For each fleettype (separately for locomotives, cab cars, trailer cars, non-revenue service vehicles), at least the following systems must be addressed in the list:

- a. Propulsion
- b. Cab Controls
- c. Friction Brake
- d. Auxiliary Power Supply
- e. Car Body and Structure
- f. Car Body Exterior and Interior (for locomotives inclusive of Fuel Storage Tank and Ecology Tank)
- g. Lavatory Room and Systems
- h. Door System
- i. Truck and Suspension
- j. Coupler and Draft Gear
- k. HVAC System
- l. Communications
- m. Main Engine, Air Intake and Exhaust and Cooling System (locomotive only)
- n. HEP System
- o. Event Recorder
- p. Diagnostics (where applicable)

q. Positive Train Control

r. Lighting System

All systems shall be maintained to an operable level as defined by the OEM, carbuilder or locomotive builder. In the absence of such guidance, the Contractor shall notify the Authority and apply the appropriate Authority standards. The schedule for developing and implementing the interim and final Maintenance Assemblies and Components Lists shall be integrated into the **LCM Programs Implementation Plan and Schedule** (CDRL 2.9-04) for each vehicle fleet type shall be developed and submitted for the Authority review and approval.

2.9.2.B.4 Maintenance Requirements Database The assemblies and components lists shall be the basis for the development of a Maintenance Requirements Database ("MRD") for each vehicle system for each fleet-type. The MRD shall define the task and procedures and associated information required to properly maintain each vehicle. Each MRD shall provide a list of items from the components list for the subject systems. At a minimum, the MRD shall contain the following data relating to each components list item:

- a. OEM Part Number; or Authority designation if no OEM part number exists. Any substitute parts must be identified by a new and unique part number. No reuse of old part numbers shall be permitted.
- b. Part Name;
- c. Part Description;
- d. Quantity per vehicle;
- e. Maintenance task(s) required (inspect, calibrate, service, replace, overhaul);
- f. Service/Maintenance Interval/frequency (expressed in days in service – miles based intervals must be converted);

- g. Useful Life (days of life of the component provided that all of the prescribed maintenance is performed);
- h. LCM Interval (actual interval when integrated with the overall LCM Program);
- i. Failure Threshold (Risk of failure due to high wear rates)
- j. Maintenance Location (flat floor, pit track, crane track, etc.);
- k. Required procedures;
- l. Special tools;
- m. Task ID number; (xiii) Training required;
- n. Estimated Labor hours (by craft) and time to complete.

The schedule for developing and implementing the preliminary and final Maintenance Requirements Databases shall be integrated into the **LCM Programs Implementation Plan and Schedule** (CDRL 2.9-04) for each fleet-type shall be submitted to the Authority for review and approval.

2.9.2.B.5 LCM Implementation The LCM Program will form a major component for the work plan for the Contractor's maintenance operations. The LCM Program shall be applied to the Vehicle Fleets. The Contractor shall prepare a maintenance schedule for each fleet-type over the Term and shall incorporate this schedule within the Weekly Maintenance Production Plan. The LCM Program schedule shall associate each LCM maintenance interval ("MI") with an actual planned maintenance date (Day, Month, Year) for each vehicle in each fleet-type in a manner such that scheduled work is spread out to maximize availability of the fleet and minimize congestion in maintenance facilities.

The LCM Program schedule shall take into consideration all requirements relating to fleet availability for revenue service and shall ensure that these requirements are not compromised. This schedule shall form the basis for the annual maintenance program for the Vehicle Fleets.

The Contractor shall conduct the necessary steps to ensure that all requisite resources (including, but not limited to, shop personnel, shop space, materials, tools and test equipment) are positioned, allocated and in ample supply to implement and sustain the LCM Program.

2.9.2.B.6 Maintenance Intervals The work performed during Maintenance Intervals shall be documented and compliant with Authority inspection, testing and maintenance plans. For each Maintenance Interval, identified below, the Contractor shall develop and implement unique, detailed inspection procedures and criteria, test procedures, and preventative maintenance integrated with the MMS. The Maintenance Interval Procedures shall incorporate the Contractor's core preventative maintenance practices and procedures knowledge, while improving upon the current component repair and overhaul procedures. The Contractor shall submit these **Maintenance Interval Procedures** (CDRL 2.9-07) to the Authority for review and approval no later than 120 days after NTP. The following Maintenance Intervals are required (the Contractor is responsible for identifying any necessary additional MIs):

a. Locomotives:

1. Daily MI;
2. 30-day Air Filter MI;
3. 45-day MI;
4. 92-day MI;
5. 360-day MI;
6. 1440-day MI;

b. Coaches – Cab Cars and Trailer Cars:

1. Daily MI;
2. 30-day Air Filter MI;
3. 90-day MI
4. 180-day MI;
5. 360-day MI;
6. 1440-day MI;

c. Non-Revenue Service Vehicle Fleet:

Non-revenue service vehicles shall be maintained per AAR Standards and Recommended Practices for interchange service and CFR requirements.

2.9.2.B.7 Weekly Maintenance Production Plan and Report. The Contractor shall develop and implement a Weekly Maintenance Production Plan. The Weekly Maintenance Production Plan shall provide an overview of planned maintenance activities for the 7 day work week, including all work shifts. The Weekly Maintenance Production Plan shall include a work breakdown detailing the following:

- a. Planned Date/Time/Shift for maintenance activity;
- b. Vehicle number for each work activity;
- c. Scheduled Work – Narrative description of work to be performed;
- d. Planned work location;
- e. Supervisor responsible for work;
- f. Assigned resource(s) (Type and labor hours required);
- g. Material requirements;
- h. References to all relevant OEM service manuals, drawings, electrical schematics;
- i. Planned out of service time (hours) by vehicle; and
- j. Planned labor hours to complete scheduled work, including provision for set-up and tear down.

The Weekly Maintenance Production Plan and supporting Maintenance Management Systems data shall be submitted to the Authority in a proposed draft form (**Weekly Maintenance Production Plan Draft**) (CDRL 2.9-08) no later than 60 days after NTP.

Once the draft is approved by the Authority, the Contractor shall submit the **Weekly Maintenance Production Plan** (CDRL 2.9-09) to the Authority no later than 3:00 pm on Friday of each week detailing the

planned work for the upcoming week (Saturday through Friday).

The Contractor shall provide a Weekly Maintenance Production Report supported by the Maintenance Management System. The Weekly Maintenance Production Report shall contain the actual work performed for the previous week (seven day period) as presented in the Weekly Maintenance Production Plan for the corresponding seven day period. The report shall detail the status of the work prescribed in the Weekly Maintenance Production Plan for the reporting period and shall contain the following information:

- a. Number of days, worked per week per department;
- b. Number of vacation days per week per department;
- c. Locomotive PM inspection completed versus planned;
- d. Car PM inspection completed versus planned;
- e. Number of service requirement deficiencies and work order open and close, and;
- f. Variance Discussion (if needed) that identifies all tasks not completed and the detail identifying when the incomplete task will be accomplished.

As part of the Weekly Maintenance Production report, the Contractor shall monitor the productivity of each shift at the individual Service and Support Facilities on a daily basis. The Contractor shall summarize productivity achieved at each location for each shift by providing a comparison of the total labor hours available, planned labor hours to complete scheduled work, total labor hours expended, and man-hours required for tasks not completed. The report shall identify any variances from the Weekly Maintenance Production Plan, discuss the causes for any variances and provide plan for implementing corrective actions. The Weekly Maintenance Production Report and supporting Maintenance Management Systems data shall be submitted to the Authority in a proposed draft form

(Weekly Maintenance Production Report Draft) (CDRL 2.9-010) no later than 60 days after NTP. To supplement the Weekly Maintenance Production Report, the Contractor shall submit, to the Authority at the beginning of the shift (no later than 7:00 am each day), the **Daily Shop and MOC Reports** (CDRL 2.9-11). These reports consist of the Daily Shop Work Sheet, Metrolink Operations Center (MOC) Mechanical Help Desk Report, Head End Power Workbook, Daily Consist Status Report, and the end of each daily shift MOC Mechanical help Desk Report with Qualified Maintenance Person (QMP) inputs and Unit History Report with QMP inputs.

Once the draft is approved by the Authority, the Contractor shall submit the **Weekly Maintenance Production Report** (CDRL 2.9-12) to the Authority no later than 10:00 am on Monday of each week.

2.9.3. Corrective Maintenance

2.9.3.A. Overview

The Contractor shall be responsible for performing all corrective maintenance.

The Authority shall acquire and maintain the necessary tools and fixtures or have access to any required special tools, fixtures or expertise required to perform all levels of corrective maintenance. Necessary tools are at a minimum those required by the OEM to properly maintain the equipment.

2.9.3.A.1 Corrective maintenance shall be performed as required in a timely manner to ensure vehicle fleet availability and shall not be deferred.

2.9.3.A.2 The Contractor shall maintain sufficient resources to address corrective maintenance to maximize vehicle fleet availability and performance.

2.9.3.B. Component Failure Due to Wear. All maintenance resulting from a component failure that is caused by normal wear-and-tear shall be the responsibility of the Contractor. The Contractor's continuous equipment performance monitoring and implementation of the LCM Program shall be designed to minimize corrective maintenance due to component failure.

The Contractor shall implement a maintenance approach that will assure that components are replaced in advance of the point of failure due to normal wear-and-tear to the greatest extent possible.

- 2.9.3.C. Component Failure Due to Vendor Defect. Corrective maintenance activities resulting from defective components supplied by a vendor are the responsibility of the Authority..

The Contractor shall inform the Authority in writing, immediately, of cases where vendor defective components have caused failures and when available, document the findings of an investigative inspection and the corrective actions necessary. This shall be supported by the Contractor's Quality Assurance Program.

- 2.9.3.D. Damaged Components. Any work to repair or replace damaged components that result from vandalism, right of way accidents or incidents, or debris strikes caused by unauthorized third parties or trespassers shall be reimbursed to the Contractor. This work shall be covered through issuance of a negotiated Task Order.

The Contractor shall present the Authority with a **Corrective Maintenance Incident Report** (CDRL 2.9-13) providing a description of the circumstances that caused the damage, the extent of the damage, estimated schedule to complete the work and the cost estimate to complete these repairs within one (1) Business Day of the event causing the damage or discovery of damage. Exceptions for one Business turnaround for estimates may be granted on a case-by-case basis. The Corrective Maintenance Incident Report shall be submitted to the Authority in a draft form for review and approval no later than 30 days after NTP (**Corrective Maintenance Incident Report Draft**) (CDRL 2.9-14).

The Contractor shall provide supporting evidence that the damage is due to vandalism, right of way accidents or incidents, or debris strikes caused by unauthorized third parties or trespassers.

The Contractor shall maintain control in and around the Authority maintenance and layover facilities as a deterrent to vandalism and unauthorized entry. The incident report claiming vandalism against the Authority rolling stock shall include a demonstration that security

measures implemented by the Authority and the Contractor were in place at the time of the incident and, to the extent possible, provide a description of how the security measures implemented by the Authority and the Contractor were evaded or compromised to allow for the act of vandalism.

Work to repair or replace components that are damaged due to vandalism, right of way accidents or incidents, and debris strikes shall not commence until the Authority supplies written authorization for the Contractor to proceed. The Authority will review and provide disposition of work to be performed within three (3) Business Days of receipt of Corrective Maintenance Incident Report.

The Contractor shall not perform and shall not be compensated for work to repair or replace components that are damaged due to vandalism, right of way accidents or incidents, and debris strikes which are not authorized in writing by the Authority. Email shall not be considered a formal request or approval. A formal document, signed by an authorized representative of the Contractor and an authorized Authority official shall constitute the appropriate notification of a request and authorization of approval with the conditions of approval or disapproval of the request.

2.9.3.E. Disputes Regarding Responsibility for Corrective Maintenance. In the event that the Contractor and the Authority are unable to resolve differences in terms of responsibility for corrective maintenance, the dispute shall be resolved pursuant to Section 22 (Dispute Resolution) of this Agreement.

The Authority reserves the right to direct the Contractor to commence work that is the subject of a dispute pending resolution of the process set forth in Section 22 (Dispute Resolution).

2.10. MATERIAL MANAGEMENT REQUIREMENTS

2.10.1. Inventory Management

2.10.1.A. Overview and Ownership

2.10.1.A.1 The Contractor shall assign a Materials Expeditor to work with Authority's designated materials personnel to establish plans and procedures necessary to ensure all materials required to perform the Agreement services are available to

the Contractor. The Materials Expeditor shall be considered as Key Personnel. The Materials Expeditor and the Authority's designated materials personnel shall meet at least once every week to review and evaluate material needs.

2.10.1.A.2 The Authority will manage the purchase, storage, security, disbursement, control, maintenance and disposal of all Inventory and Support Equipment necessary to perform the Agreement Services. The Contractor shall ensure that all Inventory disbursed to the Contractor in order to perform the Agreement Services shall be used solely for the purpose of providing the Agreement Services. The Contractor shall not sell, loan, give away or use for purposes other than the Agreement Services, Inventory purchased or obtained for the Agreement Services, without the express written consent of the Authority. This applies to material designated as scrap as well as usable material.

2.10.1.B. Storage and Handling

2.10.1.B.1 The Authority shall store Inventory on the Authority property at the Central Maintenance Facility (CMF) and the Eastern Maintenance Facility (EMF) prior to disbursement to the Contractor. The Authority will disburse materials to the Contractor at CMF, EMF and layover facilities in accordance with the Inventory Maintenance Plan. The Contractor shall be responsible to manage and distribute the issued materials, as required, at the work facilities to support inspection, testing, maintenance, troubleshooting and repair requirements.

2.10.1.B.2 All material, except for low value consumables (e.g. hardware, certain cleaning materials) and common use hardware issued by the Authority shall be kept in secure storage areas in order to minimize the incidence of undocumented consumption, hoarding, pilferage and other modes of undocumented inventory depletion.

2.10.1.B.3 The Contractor shall ensure that Inventory Materials and Support Equipment issued by the Authority is properly handled and protected to prevent damage. Issued Inventory and Support

Equipment must be protected from the effects of precipitation, heat, sun, cold, damp, and other effects of time and weather.

2.10.1.C. Inventory Control

2.10.1.C.1 The Authority and the Contractor shall develop jointly an **Inventory Maintenance Plan** (CDRL 2.10-01). The Plan shall detail the amount of Inventory required to support inspection, testing, maintenance, troubleshooting and repair requirements in accordance with the VFMP. The plan shall include a process and schedule for monthly review and metrics for measuring the effectiveness of the plan. The plan shall be jointly reviewed and updated annually (each, an **Inventory Maintenance Plan Update**) (CDRL 2.10-02), by July 1st, or more frequently if required.

2.10.1.C.2 The Contractor and the Authority, working together to ensure no material shortages occur, shall determine the minimum and maximum levels and reorder point of each item to be maintained in Inventory by the Authority as part of the Inventory Maintenance Plan.

2.10.1.C.3 Based on the VFMP, the Contractor shall designate each item of critical or unique material (the "critical material") and shall collaborate with the Authority to determine necessary stocking levels in order to ensure continuous availability during seasonal demands and to support fluctuations in lead times that typically occur. Critical material must be available in sufficient quantities to support the operation of Agreement Services.

2.10.1.C.4 For the Inventory Maintenance Plan, the Contractor shall determine minimum levels of necessary common use material to be stocked at all secure outlying points to support troubleshooting and running repair of locomotives and coaches in order to avoid train delays or inoperative or unusable locomotives or coaches.

2.10.1.C.5 The Contractor shall develop for the Inventory Maintenance Plan a three year forecast for

all material needs with special attention given to long lead time items as well as material from overseas suppliers.

- a. The Contractor and the Authority shall develop and implement a process for generating and maintaining a **None on Hand Material List** (CDRL 2.10-03) for tracking of stock outs as well as a process for reconciling the None-on-Hand items including expedited delivery, alternate sourcing, inventory adjustments, etc. There can only be one officially sanctioned None On Hand Material List, which is jointly reviewed monthly.
- b. There shall be a procedure for populating the list and all additions and deletions must follow this process. Included with each entry must be the item number, item description, vendor data, min/max level, economic order quantity, lead time, buyer's contact information, delivery due dates, and any other pertinent information (e.g. work-arounds, units held out of service awaiting material, delays in fleet maintenance and repairs)
- c. The list shall be prioritized by criticality, length of time of stock out, and the extent to which it is unique (i.e. there is lack of alternate vendors for the material).
- d. A joint meeting shall be convened monthly to review and act upon the status of each item on the list and other material inventory issues. An updated None on Hand Material List shall be generated following each of these meetings detailing actions to be taken and responsible party.

2.10.1.D. New and Overhaul Vehicle Fleet Support

2.10.1.D.1 Throughout the Agreement, the Contractor shall integrate new and overhauled vehicles into the LFMP and LCM Programs. The Contractor working with the Authority shall integrate material requirements for the new and overhauled Vehicle Fleets into the **Inventory Maintenance Plan** (CDRL 2.10-01). The Plan shall detail the amount of

Inventory required to perform Agreement services for the new and overhauled Vehicle Fleets.

2.10.1.D.2 The Contractor shall develop Maintenance Assemblies and Components Lists and Maintenance Requirements Database for new and overhaul vehicles in compliance with guidelines established for the LCM Program. These lists shall be submitted for the Authority review and approval no later than 90 days prior to New and Overhauled Vehicles being introduced into service. (**New and Overhaul Vehicles Parts List**) (CDRL 2.10-04).

2.10.1.D.3 The Contractor shall develop lists of unique and critical parts for new and overhaul vehicles and collaborate with the Authority to ensure sufficient safety stock is on hand for unanticipated increases in consumption. This shall be done under the guidelines established for the LCM Program. These lists shall be submitted to The Authority no later than 90 days prior to New and Overhauled Vehicles being introduced into service (**New and Overhaul Vehicles Critical Material List**) (CDRL 2.10-05).

2.10.1.E. Capital Funded Materials

2.10.1.E.1 The Contractor shall cooperate with and support the Authority for all capital funded materials in compliance with FTA and Authority procurement guidelines.

2.10.1.E.2 The Authority will be responsible to store Capital Spares parts in a secure storage area.

2.10.1.E.3 The Contractor shall not use capital spares under any circumstances without written authorization from the Authority.

2.10.1.E.4 The Contractor may not, under any circumstances, "borrow" or scavenge parts from capital spares.

2.10.1.E.5 The Contractor shall provide written justification proposing the use of a specific number of capital spares based on need. This **Capital Spare Component Usage Justification Report** (CDRL

2.10-06) shall include potential impacts on safety, service, vehicle or system availability, vehicle or system reliability, and reasons for reduction in the prior number of spare components. This report shall be submitted to the Authority for review and approval at least 15 days before the components can, if approved, be withdrawn from capital inventory and made part of the spare component pool.

2.10.2. Locomotive Fuel Management

2.10.2.A. Fuel Purchasing

2.10.2.A.1 The Authority will select a locomotive fuel vendor(s) and procure bulk locomotive fuel that is delivered to the fuel storage tanks located at CMF and EMF and used in Commuter Rail Services.

2.10.2.A.2 The Authority will also pay for the delivery of the locomotive fuel to be transported from the bulk tanks to tanks at outlying points. The Contractor shall be responsible to provide trained and qualified drivers for the Authority owned/leased fuel delivery trucks.

2.10.2.B. Fuel Accounting

2.10.2.B.1 No later than 120 days after NTP, the Contractor shall submit in draft form a **Fuel Accounting Report** (CDRL 2.10-07), which accounts for all fuel dispensing. The report shall account for every gallon of fuel that is dispensed and provide a dispensing ticket that identifies the unit number to which it was applied, date and location.

2.10.2.B.2 Daily, weekly, monthly and annual **Fuel Accounting Reports** (CDRLs 2.10-08 thru 2.10-11) that include all fuel dispensing and cumulative information shall be submitted to The Authority for review.

2.10.2.C. Fuel Usage

2.10.2.C.1 The Contractor shall provide to the Authority monthly reports showing fuel dispensed by locomotive by date, time of day, fueling location, and amount (**Fuel Dispensed By Locomotive**) (CDRL 2.10-12).

2.10.2.C.2 No later than 120 days after NTP, the Contractor must develop and implement a **Locomotive Idle Time Minimization Plan** (CDRL 2.10-13) to ensure that locomotive idling time is minimized. This plan shall comply with idling requirements set forth in the Metrolink Fuel Conservation Program. The Fuel Dispensed by Locomotive Report, cited above, shall include hours running and hours idling by locomotive number based on baseline equipment manipulation cycle requirements. The plan shall show compliance with Section 2.14 (Environmental Compliance) of this Agreement.

2.10.2.D. Fueler Training

2.10.2.D.1 Fueler training shall include specific instructions on the use and care of fuel receiving and dispensing apparatus; monitoring fuel deliveries; filling out dispensing tickets, etc.

2.11. TRAINING REQUIREMENTS

2.11.1. Overview. The Contractor shall develop and integrated training program that identifies the specific training requirements for training described in Section 2.11.2. The training program shall be structured to include needs analysis, proposed curricula, and required outcome/qualification for the particular training element. The Contractor shall develop the required training materials, manuals and qualification requirements.

The Contractor shall maintain a database and system to track and report training needs and achievements for Contractor, the Authority and regulatory reporting through the term of the Agreement. The Contractor shall provide, administer and maintain training and requalification programs consistent with the requirements of the Agreement. All training and requalification programs shall include the appropriate classroom instructions, testing and successful demonstration of applicable skills.

Training materials, database and record system shall become property of the Authority at completion of the Agreement.

All training programs or portions thereof (including the annual training schedule of all Contractor Personnel) provided in connection with the Agreement shall be submitted in the **Training Program Plan** (CDRL 2.11-01) for review and approval by the Authority by July 1st of each Agreement Year, and shall be designed, developed and implemented in accordance with established professional standards for performance based instruction. The initial submittal of this plan shall be submitted for Authority review and approval no later than 90 days after NTP (**Training Program Plan Draft**) (CDRL 2.11-02).

The Contractor shall provide the Authority with copies of course descriptions for training programs outlined in the Training Program Plan.

In addition to those rights to all training plans, programs and other training materials, the Authority shall have the right to inspect and copy all training programs and other training materials used for Contractor Personnel who are performing Agreement Services or that are otherwise used by the Contractor.

The Contractor shall arrange for an annual meeting with the Authority to review the Training Program Plan no later than 45 days after submission of the plan. The plan shall include a schedule for quarterly joint Authority/Contractor review of training program progress and a process to facilitate changes in the plan when necessary (**Training Program Plan Review Meeting**) (CDRL 2.11-03).

2.11.2. Training Programs. The applicable training programs shall comply in all respects with the applicable laws and requirements of all Federal, State and Local Laws and Regulations, and requirements of the Agreement. The Contractor shall utilize OEM manuals relevant APTA Standards and Recommended Practices, and appropriate AAR Standards and Recommended Practices when developing training programs for revenue service vehicles and non-revenue service vehicles. The cost of changes to the training requirements shall be incorporated into the Section 5 Annual Budget process.

2.11.2.A. Training, Qualification, and Designation Program (TQDP) The Contractor shall establish and implement a Training, Qualification, and Designation Program (TQDP) for inspection, testing, maintenance, troubleshooting and repair of the Vehicle Fleets compatible with the Authority Inspection, Testing and Maintenance Plan. The TQDP shall also address

training of all employees performing inspection, testing, maintenance, troubleshooting and repair tasks and of Qualified Maintenance Person (QMP) and Qualified Person (QP). QMP and QP training and qualification shall be required of all Contractor Personnel involved in the performance and oversight of Service Equipment inspection and maintenance. QMP and QP training and qualification shall also be required for managers charged with Service Equipment inspection and oversight. The TQDP shall be developed to provide comprehensive ongoing training programs for all Contractor Personnel. At all times, the Contractor shall provide sufficient staffing such that training programs do not interfere with the performance of the Services.

The TQDP shall be arranged to address the inspection, testing, maintenance, troubleshooting and repair tasks for the particular revenue service vehicles and non-revenue service vehicles that the Authority operates. The TQDP training curriculum shall include classroom and hands-on lessons designed to ensure employees have the skills and knowledge necessary to perform the requisite tasks.

The Contractor shall require all employees to successfully complete the training courses that are applicable for the equipment and tasks for which the employee is responsible.

The Contractor shall require all employees to successfully pass tests that are applicable for the tasks on the equipment and tasks for which the employee is responsible.

The Contractor shall require all employees to individually demonstrate hands-on capability to successfully perform the tasks on the equipment and tasks for which the employee is responsible.

The Contractor shall require all supervisors to successfully complete the training program that covers the employees, whom they supervise, including refresher courses.

The Contractor shall require supervisors to exercise oversight to ensure all identified tasks are performed

in accordance with the Authority approved written procedures.

The Contractor shall maintain written records that designate each employee has the knowledge and skills required to perform the safety related tasks that are a part of their job.

The Contractor shall require periodic refresher training that includes classroom and hands-on training and requisite testing.

The TQDP shall be sufficiently detailed to distinguish the qualifications of an employee as a Qualified Person (QP) or as a Qualified Maintenance Person (QMP).

The Contractor shall submit the **Training, Qualification, and Designation Program (TQDP) Plan and Schedule** (CDRL 2.11-04) for Authority approval no later than 30 days after NTP. The Contractor shall submit the complete **Training, Qualification, and Designation Program (TQDP)** (CDRL 2.11-05) for Authority review and approval no later than 10 days prior to ASCD. The Contractor shall ensure the TQDP is maintained and current and the TQDP shall be included in the annual Training Program Plan (see CDRL 2.11-01)

- 2.11.2.B. HVAC and Refrigerant Handling Training. The Contractor shall arrange for on-site EPA-approved refrigerant handling certification training suitable to address the skills and recordkeeping required for the use, re-use, recovery, replenishment, storage and disposal of refrigerants. The Contractor shall develop and implement a Refrigerant Handling Training Program. The Contractor shall submit the **Refrigerant Handling Training Program** (CDRL 2.11-06) to the Authority for approval no later than 30 days after ASCD.

This training shall be required for all Contractor Personnel whose duties require them to work on climate control systems and handle refrigerants. Specific jobs that require personnel to handle refrigerants shall have such training and the

completion and passing of such tests as a job qualification.

All Contractor Personnel engaged in such training shall be required to pass standardized examinations in order to be certified to handle refrigerants.

Contractor Personnel who undergo training and do not pass such tests shall be reassigned to other duties that do not require them to handle refrigerants.

The Contractor shall develop and implement an **HVAC System Troubleshooting and Repair Training Program** (CDRL 2.11-07) for those employees whose duties require them to perform work on onboard HVAC systems for both locomotives and coaches. This program shall be submitted for Authority review and approval no later than 45 days after ASCD and updated whenever new Service Equipment goes into service.

- 2.11.2.C. New Employee Training. The Contractor shall develop and implement new employee competency evaluation and orientation training, regardless of craft. This training shall also apply to management candidates.

The purpose of this training is to evaluate the suitability of craft candidates to safely and effectively discharge their duties. It also serves to ensure that management candidates are suited to and familiar with the oversight of the craftspeople for whom they are responsible.

The Contractor shall submit the **New Employee Competency Evaluation and Orientation Training Program** (CDRL 2.11-08) for Authority approval no later than 90 days after NTP.

- 2.11.2.D. New and Overhaul Vehicle Training. The Authority may procure new rolling stock or overhaul existing rolling stock during the term of the Agreement for the Contractor to deploy in the performance of Commuter Rail Services. Training for designated rolling stock shall become part of the ongoing training obligation following the initial course taught by instructors

provided by the OEMs. The Contractor shall designate its own training personnel who shall undergo the OEM "train-the-trainer" instruction to ensure that this occurs. OEM training will be taught to a limited number of employees pursuant to the terms of the relevant procurement. Following the initial courses taught by instructors provided by the OEMs, the training shall become a part of the ongoing TQDP training obligation.

Contractor staff, including supervision and management personnel, shall receive Authority-approved training on new systems operation, inspection, testing, maintenance, repair, diagnostics and troubleshooting.

The Contractor shall arrange for the continuation of new fleet training in all disciplines. No work may be performed on designated vehicles by Contractor Personnel who have not passed the TQDP training for New and Overhauled Vehicles.

- 2.11.2.E. OEM Training. The Authority will procure on-site OEM, or equivalent, technical assistance for OEM Training for new and overhaul locomotives and rail vehicles incorporated into the Vehicle Fleets during the warranty period. The training shall be arranged to provide the qualifications necessary to support inspection, testing, maintenance, troubleshooting and repair requirements for the new and overhauled Vehicle Fleets. By completion of the base warranty period, the Contractor shall develop and implement continuation training programs for the new and overhaul locomotives and rail vehicles in compliance with the approved Training Program Plan and TQDP. As appropriate, evidence of the revised training programs and plans shall be presented to the Authority for review within 180 days after OEM Training has been conducted (**New and Overhaul Vehicle Training Program and Plan**) (CDRL 2.11-09).

The Contractor in cooperation with the Authority shall arrange for periodic on-site OEM, or Authority approved equivalent, technical assistance for training and qualification in the safe operation of major shop

equipment systems including, but not limited to wheel truing machines; rolling stock jacking systems; drop tables; overhead cranes; oil-water separators; large scale pumping and filtration systems; shop and yard air supply systems; wayside 480VAC ground power systems used to support inspection, testing, maintenance, troubleshooting and repair requirements for the new and overhauled Vehicle Fleets. This training shall be integrated into the approved TQDP. As appropriate, evidence of the revised training program shall be presented to the Authority for review within 180 days after the OEM Training has been conducted (**Shop Equipment Training Program and Plan for New and Overhauled Vehicles**) (CDRL 2.11-10).

- 2.11.2.F. Non-Revenue Service Vehicle Fleet Training. The Contractor shall develop and implement training courses for inspection, testing, maintenance, troubleshooting and repair of the Authority Non-Revenue Service Vehicle Fleet in compliance with applicable FRA regulations and AAR Interchange Rules, Standards and Recommended Practices. This training shall ensure that Non-Revenue Service Vehicle Fleet is maintained in good working condition and is available in sufficient numbers to ensure that engineering maintenance and other necessary work is facilitated. All rolling stock subject to interchange with freight carriers shall be maintained in a suitable manner. The training shall address applicable QMP and QP requirements.

The Contractor shall submit this **Non-Revenue Service Vehicle Fleet Training Program** (CDRL 2.11-11) to the Authority for review and approval no later than 150 days after NTP and update the program whenever new or additional non-revenue rolling stock is added to the Authority Non-Revenue Service Vehicle Fleet roster (**Non-Revenue Service Vehicle Fleet Training Program Update**) (CDRL 2.11-12).

- 2.11.2.G. Additional Training. In addition to all other training required by Applicable Law and elsewhere in this Agreement, such training shall include specific training related to:

2.11.2.G.1 Contractor personnel, including, but not limited to welding; hazardous material; refrigerant handling certification; craft competency; Fueler skills and qualification; Supervisor skills and qualification; Locomotive Technician skills and qualification; Coach Technician skills and qualification; wheel truing machine skills and qualification; drop table and floor jack skills and qualifications; overhead crane skills and qualifications; system safety plan; safety-related; emergency response and incident management; accident investigation; GCOR book of Rules (ops and non-ops classes); OSHA training; management training; derailment investigation training; and applicable FDA training.

2.11.2.G.2 As an integral component of the TQDP, the Contractor shall identify in a Training Program Plan, all legally required training and discretionary training for each functional area.

2.11.2.G.3 The Training Program Plan shall include a schedule for each class; instructor name; number of seats in each class; course syllabus; competency test questions; requirements for passing the course; and associated teaching materials.

2.11.2.G.4 Contractor Personnel must attend a refresher class regarding applicable terms (i.e. craft or job specific) of this Agreement at intervals as required by law, regulations and rules but in no case greater than 3 years apart.

2.11.2.G.5 The Contractor shall provide its training programs on the Authority property, unless it receives prior written approval from the Authority to hold such training programs elsewhere.

2.11.2.G.6 The Contractor shall schedule training activities so as to not interfere with its performance of the work required by the Agreement.

2.11.2.G.7 The Contractor may provide training in excess of the training requirements for the performance of the work, and the Training Program Plan, but additional training shall not impact the performance of the work nor shall the Contractor be compensated for such additional training.

2.11.2.G.8 The Authority may address the new hires during such training. The Authority reserves the right to evaluate the effectiveness of the Contractor's training and retraining programs.

2.11.2.G.9 The Contractor shall forward to the Authority and post all training schedules on the 1st day of each month. The Contractor shall make 10 percent of the places in any Contractor-sponsored training program available for individuals employed by the Authority, Other Contractors, or Third Parties approved by the Authority to attend such sessions. Unused seats in training classes set aside for the Authority may be occupied by Contractor Personnel if not reserved by the Authority five days before class is scheduled to begin.

2.11.2.G.10 In addition to the training for the Contractor personnel, the Contractor shall conduct annual training for the Authority designated personnel covering the rolling stock maintenance program. The training shall address various aspects of reliability based maintenance, condition based maintenance and life cycle maintenance approaches that are incorporated into the Vehicle Fleets Maintenance program. The training shall discuss the paybacks for each approach and the integrated program in terms of reduced costs and enhanced reliability, availability and performance. The training shall take into account requirements of data collection and analysis for preventive maintenance, predictive maintenance with condition monitoring, corrective preventive maintenance and corrective predictive maintenance.

2.11.3. Failure to Complete Training. The failure of any Contractor Personnel to successfully complete legally required training included in the approved Training Program Plan shall be the basis for removing such Contractor Personnel from further performance of the work requiring such training until the employee successfully completes the required training.

2.11.4. Training Status The Contractor shall provide the Authority with a **Monthly Training Report** (CDRL 2.11-13), which shall list and describe each training session conducted during the month; the number of hours of training completed by each employee; and the names of each employee who participated in each such

training session as well as the employee's test results. Additionally, the report shall include a summary of planned versus actual training classes conducted and planned versus actual attendance in training classes, as well as, a recovery plan that outlines how the training schedule will be restored, if necessary. This report shall be cumulative beginning on January 1st of each year.

With respect to Third Party or Authority-sponsored training, the Authority will not pay for overtime or other means of back-filling vacancies created in rank-and-file for Contractor Personnel in training if such employees do not produce satisfactory test results.

2.11.5. Knowledge of Rules. As applicable, Mechanical Personnel, and other safety-sensitive personnel critical to safe commuter rail operations shall be qualified on the applicable sections of the CFR, GCOR, Employee Timetable, the Special Instructions, the Safety Rules, Bulletin Notices, Division Safety Notices, the physical characteristics of the applicable routes, and every other document required for the safe operation of the railroad.

2.11.6. Operation Lifesaver. The Contractor shall support and coordinate with the Authority Operation Lifesaver training to the public, including "train the trainer" programs, to public safety officials, teachers, community groups, and others.

2.11.7. First Responder Training. In conjunction with the requirements of Section 2.15.3 (Emergency Preparedness), the Contractor shall support and cooperate with the Authority provided emergency response training to police, fire, emergency services and other municipal first responding entities whose jurisdiction may bring them in contact with Commuter Rail Services when emergencies occur.

First responder training shall be offered throughout the year and cover each vehicle type and emergency access procedures and protocols and the Authority and the Contractor incident management protocols.

The Contractor shall provide updated vehicle data and information annually and prior to adding new rolling stock to the Authority by July 1st of each year in order to support First Responder Training

2.11.8. Third Party Training. The Contractor shall provide required safety training to Other Contractors or Third Parties who are

approved by the Authority to perform work on the Service Property.

- 2.11.9. Management Training.** The Contractor's managers shall be given all training necessary to qualify them to function effectively in their designated areas of responsibility.

2.12. PERSONNEL REQUIREMENTS

- 2.12.1. Overview.** The Contractor shall be solely responsible for the management of Contractor Personnel, subject to the terms of this Agreement. In the performance of its obligations under this Agreement, the Contractor is an independent contractor for, and not an agent of, the Authority.

- 2.12.2. Provision of Personnel.** The Contractor shall provide and furnish the qualified personnel necessary to maintain the Authority equipment in a safe and efficient manner. All such personnel shall be employees of the Contractor or of the Contractor's subcontractors, and all personnel requirements and provisions of the Agreement shall apply to subcontractor personnel, as well as Contractor personnel.

The Contractor shall faithfully comply with the terms and conditions of all applicable agreements with any labor organization representing the Contractors' employees concerning wages, benefits and terms and conditions of employment. The Contractor shall comply with all applicable laws, regulations, rules and procedures respecting employer's liability, worker's compensation, and unemployment insurance and other forms of social security or railroad retirement and also with respect to any other proper withholding from wages of employees.

The Contractor shall maintain personnel at a level required to successfully and safely deliver all of the provisions of the Agreement. The Contractor shall give the Authority written notice of any and all positions that become vacant, or are anticipated to become vacant, and shall obtain authorization from the Authority before the Contractor takes steps to fill any vacant positions. The Contractor shall place particular emphasis on the need to fill vacancies in existing management, supervisory and other critical skill positions. Unless otherwise mutually agreed, such positions are to be filled within 60 days of vacancy and approval by the Authority of filling the vacancy.

The Authority encourages the Contractor to efficiently and creatively manage its work in the manner it sees fit, provided that

the Authority is assured that the Contractor's work will be effectively, safely and skillfully managed. The Contractor shall submit qualifications and requirements for personnel to the Authority for approval, and there must be agreement before retaining individuals. The Authority reserves the right to approve candidates for positions.

The Contractor shall not, without the prior written approval of the Authority, enter into any agreements with labor organizations containing provisions that increase the number of permanent employees of the Contractor or that increase the overall costs attributable to employees engaged in Services provided on behalf of the Authority pursuant to the Agreement over the costs of other employees of the Contractor in the same crafts; provided, however, that the Authority shall not unreasonably withhold its approval. The Contractor shall provide the Authority with current versions of the collective bargaining agreements that the Contractor has with the crafts represented in the Authority service throughout the term of the Agreement.

In order to ensure that adequate personnel are available to perform the functions described in the Scope of Services, the Contractor shall develop and submit to the Authority for review and approval, a **Work Force Deployment Plan** (CDRL 2.12-01), no later than 60 days after NTP. The plan shall be updated annually and submitted with the annual operating budget submittal (**Work Force Deployment Plan Update**) (CDRL 2.12-02). The plan shall indicate personnel assignments by time of day and location to assure that forces are deployed effectively and efficiently to complete scheduled tasks.

Personnel on duty shall, at all times, devote themselves exclusively to the business of the Authority. Contractor employees are expected to be on the Authority property, or en-route between locations during the work shift. Except in the case of emergency or previous written agreement between the Contractor and the Authority, the Contractor is prohibited from performing work on behalf of others, without the express approval of the Authority, which shall not be unreasonably withheld. The Contractor shall not assign its Authority-designated employees to non- Authority operations that the Contractor may operate or manage without prior approval of the Authority. The General Manager shall be dedicated exclusively to the Authority. The Authority reserves the right to direct the removal of any individual, including Key Personnel, assigned to the Authority.

2.12.3. Key Management Personnel.

The Contractor shall submit to the Authority for review and approval, 90 days after NTP, a description of the organization structure, staffing and responsibilities for the Agreement Services. The submittal package shall provide names and resumes for those individuals who report directly to the Contractor General Manager, and line managers/supervisors including, if applicable, subcontractors (**Key Personnel**) (CDRL 2.12-03). The Contractor agrees that the Key Personnel are an essential element of the Agreement. As part of its review and evaluation of this submittal the Authority maintains its rights to accept or request replacement of any proposed Key Personnel.

The Contractor shall not reassign or reduce the commitment of any such Key Personnel during the term of the Agreement without the prior written approval of the Authority. In the event that replacement of a Key Person is required, the Contractor shall submit a qualified replacement for the Authority review and approval.

The Authority, at its discretion, reserves the right at any time to request removal and replacement of the incumbent General Manager or any Key Personnel, and the Contractor agrees to replace said person within 60 days of written notice of rejection. The Authority has the right to approve the hiring of all individuals who report directly to the General Manager, provided that such approval shall not be unreasonably withheld. The Contractor shall consult with the Authority concerning the hiring of all management employees who report directly to individuals who report directly to the General Manager. The Contractor will not remove or reassign a General Manager approved by the Authority without the prior written consent of the Authority, which approval shall not be unreasonably withheld. The General Manager will have the authority to discharge and replace the employees of the Contractor engaged in Agreement Services, and the Contractor will make best efforts to fill all vacancies within 60 days of a position becoming vacant. If not initiated at the request of the Authority, the Contractor shall bear the relocation and other costs associated with replacement of personnel during the term of the Agreement.

The Contractor shall provide appropriate management coverage at all times, including permanent regular duty managers for day, night and week-end coverage. There shall be no periods when managers are all assigned to non- Authority work (e.g., for corporate level meetings, responding to other non- Authority

problems, etc.).

The General Manager, or appropriate management representation, shall be designated, to participate in Monthly Service Meetings and all the Authority-required meetings.

2.13. QUALITY ASSURANCE AND QUALITY CONTROL

2.13.1. Overview. The Contractor shall establish and implement a Quality System and provide quality assurance and quality control procedures, processes and resources to fully support the Quality System. The Quality System shall establish and communicate the Contractor's quality policy. The Contractor shall be responsible to enforce the elements of the Quality System within all parts of the organization and with all subcontractors and suppliers performing the Agreement Services. The Contractor shall provide periodic reports to the Authority and conduct reviews of its quality system effectiveness. The Contractor shall provide adequately trained and qualified Personnel to perform the work and conduct verification activities.

2.13.2. Quality Assurance Program

2.13.2.A. The Contractor shall develop and implement a Quality Assurance Program that addresses each of the clauses in ANSI/ISO/ASQ9001, as it relates to the work being performed. The Quality Assurance Program ("QAP") shall include the following general requirements, at a minimum:

- a. Quality management system
- b. Control of documents
- c. Control of records
- d. Management responsibility
- e. Resource management
- f. Product realization – rolling stock maintenance, availability, performance and cleanliness
- g. Measurement, analysis and improvement
- h. Internal audits
- i. Control of non-conforming product

j. Corrective action

k. Preventive action

2.13.2.B. The QAP shall identify in detail the methods by which the Contractor will institute and maintain quality assurance through the Term of the Agreement.

2.13.2.C. The QAP shall identify the interfaces between different groups, both within and outside of its organization. Within the QAP structure, the Contractor shall establish and maintain procedures for controlling all documents, records and reports.

2.13.2.D. The Contractor shall identify training needs as necessary to successfully complete the work and shall provide the appropriate training to personnel performing activities that affect the quality of the work. The Contractor employees engaged in performing work which requires specialized training and/or certification shall have the records of that training and qualification maintained in a system that:

a. Indicates the date of initial qualification and any refresher training

b. Indicates the date of expiration of the certification

c. Provides for notification of the employee and his or her supervisor of the need for recertification no later than 30 days prior to expiration

d. Ensures records are available to QA personnel to verify the worker's qualification to do the work during audits and inspections

2.13.2.E. The Contractor shall designate a specific person as the Manager of Quality with the relevant experience and qualifications to manage and monitor the quality assurance and quality control requirements of the work. The Contractor shall designate Quality Assurance Representatives ("QAR") within its organization who shall report to the Manager of Quality. The QARs may have other duties as well as QA and QC, but will be the designated representative within their area of the Contractor's organization.

2.13.3. Quality Control Process Manual

- 2.13.3.A. The Contractor shall establish a Quality Control Process Manual ("QCPM") that includes guidelines for conducting quality control inspections, and documenting and reporting performance failures and incidents of non-compliance with the Agreement requirements. The QCPM shall be organized by the area of work. Necessary inspection equipment, measurement requirements, required personnel certifications, workmanship standards, methods of inspection, and required quality record documentation shall be identified in the Manual. The QCPM shall be electronic in form, available to users, including the Authority, through tablets, terminals or computers. The QCPM is considered a controlled document and shall contain a log of updates or new processes that are added, and will be maintained to be current.
- 2.13.3.B. The QCPM shall identify and define procedures that address the following quality functions:
- a. Control of inspection
 - b. Measuring and test equipment
 - c. Inspection and testing parts and materials issued by the Authority and procured by the Contractor
 - d. Inspection, testing, and maintenance status
 - e. Inspection, testing, and maintenance records
 - f. Controlling nonconforming work
 - g. Employee training and qualification records
- 2.13.3.C. The Contractor shall be responsible for the conduct of all inspections required to demonstrate full conformance of the performance of the requirements of this Agreement. The Contractor shall provide an inspection system capable of producing objective evidence that materials provided and finished work performed by the Contractor meet the quality requirements of this Agreement. The inspection system shall be considered acceptable when, as a minimum, it provides for the detection and removal of non-conforming work or material where it can be

corrected prior to placement into a more progressive state (e.g., for a locomotive – prior to being placed into revenue service; for a report or document – prior to being submitted to the Authority).

- 2.13.3.D. The Contractor shall be responsible to coordinate inspection, testing, maintenance, troubleshooting and repair requirements with the independent third party performing the analysis on the Vehicle Fleets.
- 2.13.3.E. The QCPM shall include work instructions, as needed, to assure that critical quality processes are executed and documented in a uniform and traceable manner.

2.13.4. Quality Audit

- 2.13.4.A. Auditing is a crucial activity for maintaining effectiveness of the quality system. The Contractor shall establish and maintain procedures and records for internal quality system auditing. The Contractor shall schedule audits of its operations such that compliance with the Quality Assurance Program is assessed throughout the organization on a planned periodic basis.
- 2.13.4.B. The Contractor shall prepare and implement an Audit Plan such that Audits are performed in accordance with established audit procedures. To the extent practical and feasible, the Contractor auditors shall be independent of the operation being audited. The audit procedure shall include follow-up sequence to verify and document that identified corrective actions and preventive actions have been implemented.
- 2.13.4.C. The Authority shall have the right to witness Contractor conducted audits and to independently audit and verify compliance of the work performed by the Contractor, Subcontractor, manufacturers and suppliers.
- 2.13.4.D. Copies of all audit reports and findings shall be transmitted to the Authority within 30 days of conclusion of the audit (**Quality System Audit Report**) (CDRL 2.13-01).

- 2.13.4.E. A **Quality System Audit Summary Report** (CDRL 2.13-02) shall be prepared and submitted to the Authority on a quarterly basis. The specific schedule for submission of these reports shall be included in the Audit Report.

2.13.5. Quality Assurance Program Plan

- 2.13.5.A. The Quality Assurance Program Plan ("QAPP") shall include the Contractor's Quality Assurance Program (QAP), Quality Control Processes Manual (QCPM), and the Contractor's Audit Plan for the quality system. The QAPP may refer to other Contractor documents and supporting procedures, if appropriate. The QAPP shall include the quality assurance and quality control documented procedures, policies, plans, and organization activities of the Contractor, and Subcontractors, which shall assure that all work, testing, and documentation conforms to the requirements of this Agreement.
- 2.13.5.B. The QAPP shall also include:
- a. The Contractor's Organization Chart showing the lines of authority.
 - b. Responsibility for quality assurance and quality control functions and the relationships with other functions;
 - c. Titles and names of key personnel; and
 - d. Titles and functions of all quality personnel.
- 2.13.5.C. The quality management system for each area of the Contractor's work shall be defined in the QAPP.
- 2.13.5.D. The **Proposed Quality Assurance Program Plan** (CDRL 2.13-03) shall be submitted for Authority review no later than 60 days after NTP. The final **Quality Assurance Program Plan** (CDRL 2.13-04) shall be submitted for Authority review and approval no later than 60 days prior to Agreement Services Commencement Date.

2.13.6. Test Equipment and Special Tools Calibration

- 2.13.6.A. The Contractor shall identify all special tools and test equipment used to perform inspection, testing, maintenance, troubleshooting and repair tasks that require special handling, calibration. The Contractor shall be responsible to establish the standards for the frequency of calibration and the calibration standards and handling procedures to ensure accuracy and functionality of test equipment and special tools. The Contractor shall be responsible to provide the Authority with the equipment and tools that require periodic calibration and adjustment in a timeframe that allows calibrations and adjustments to be completed and not impact any activities required to support inspection, testing, maintenance, troubleshooting and repair requirements for the Vehicle Fleets. Appendix F – The Authority Special Tools and Test Equipment provides the list of tools that will be provided by the Authority to the Contractor for use during the Agreement Services. The Contractor shall be responsible to maintain Special Tools and Test Equipment as fully functional and to replace damaged and lost items. The Authority shall be responsible to procure and maintain additional test equipment and special tools required to support the Agreement not included in Appendix F.
- 2.13.6.B. The Contractor shall utilize a Calibration Management System to store Calibration Standards, Processes, Procedures and Documentation for all tools and equipment that are used to measure and verify characteristics and processes. The Contractor shall prepare a list of all equipment that it believes is outdated and for which no documentation exists and submit the proposed list for Authority review. All tools and equipment shall be periodically calibrated and maintained in calibration, or identified as being out of calibration and otherwise secured to prevent accidental use. The Program shall include calibration standards traceable to the National Bureau of Standards; calibration history and frequency records shall be maintained and available; calibration dates and due dates shall be displayed on equipment.
- 2.13.6.C. As part of the MMS, the Contractor shall establish and maintain a system for tracking the calibration status (electronic and hard copy reporting) of the test equipment and special tools. The System shall be

able to recall items for recalibration based on a published schedule, as well as items discovered to have been processed with "out of calibration" equipment.

2.13.6.D. The system shall also provide for clear identification of calibration status and due dates on the calibrated items, retention of current calibration certificates, and storage of calibrated items under conditions that ensure their continued accuracy.

2.13.6.E. The Contractor shall submit the **Calibration Management System Plan** for Authority review and approval (CDRL 2.13-05) no later than 90 days after NTP. The system shall be functional no later than 30 days after Agreement Services Commencement Date (**Calibration Management System Operational**) (CDRL 2.13-06).

2.14. ENVIRONMENTAL COMPLIANCE

2.14.1. Overview. The Contractor shall operate and maintain a Material Management Program that shall include provisions for the disposing, recycling and storing of all chemicals, waste oils, used filters, fluorescent bulbs, cardboard and scrap metals and environmental systems located on the Authority's Service Property and Support Property. The Authority will be responsible to retain the services of a properly licensed Hazardous Materials Disposal contractor or other properly licensed contractor, as required, to perform specialized environmental services. The Contractor shall be responsible to collaborate and cooperate with the licensed contractor(s) who will provide and maintain, in the name of the Contractor and the Authority, whenever possible, the environmental plans, permits, certificates and licenses necessary to perform services.

The Authority, with the assistance of the licensed contractors, will furnish all labor, materials, tools, and equipment to operate, test, service, maintain, and repair the Authority environmental systems at Service Property and Support Property.

The Contractor shall properly dispose of any waste or hazardous material generated while performing the work by collaborating and cooperating with the licensed contractor engaged by the Authority. The licensed contractor will remove from the Authority's property and dispose waste and hazardous materials. Disposal and storage of waste and hazardous material shall be in accordance with all applicable Federal, State, and local

regulations. The Contractor shall keep storage of waste and hazardous waste material on the premises to a minimum. The Contractor shall return the work area to its original conditions after conducting work efforts included in this section.

The Contractor shall monitor and notify the designated Authority personnel, immediately by phone, of any incident with possible environmental impacts, regardless of who the responsible party is, such as diesel fuel spills, illegal disposal of hazardous material on the Authority property, and spills from rail cars. This notification will not relieve the Contractor from its obligation to initiate and supervise cleanup and disposal of spilled material caused by the Contractor.

2.14.2. Environmental Plans, Permitting and Reporting. The Contractor shall comply with all appropriate plans, permits, certificates, and licenses relating to the Service Property and systems and facilities used in performing the Services. The Authority will maintain current all appropriate plans, permits, certificates, and licenses relating to the Service Property and systems and facilities used in performing the Services, including, but not limited to, the following:

- a. Spill Prevention Control and Countermeasures Plans
- b. Aboveground Storage Tank Permits
- c. Hazardous Material Business Plan(s)
- d. Department of Toxic Substances Control (DTSC) notifications and reporting
- e. Volatile Organic Compounds (VOC) recordkeeping and reporting.

No later than 60 days after NTP, the Contractor shall submit for Authority review and approval a draft **Emergency Spill Response/Spill Prevention Control and Countermeasure Plan** (CDRL 2.14-01), including a chain of command for spills throughout the Service Property, regardless of source for all necessary facilities. The plan shall be updated on an annual basis and provided to the Authority by July 1 (**Emergency Spill Response/Spill Prevention Control and Countermeasure Plan Update**) (CDRL 2.14-02).

The Contractor shall complete periodic inspections, sampling, and reporting requirements necessary to maintain all

environmental permits, certificates, and licenses. Applications for permits, certificates, and licenses relating to the Service Property, Support Property and systems shall be prepared and forwarded to the Authority 90 days prior to expiration. The Contractor shall maintain the tracking of permits, certificates and licenses.

The Contractor shall cooperate with the Authority in the procurement of any permits that must be obtained by either the Authority or the Contractor, including without limitation, preparation of permit applications and preparing responses to questions and comments on the permit applications. In general, the Authority will retain responsibility for modifications or improvements to the physical infrastructure of the Service Property as related to permits, certificates and licenses. The Contractor shall provide any recommendations, as appropriate, to facilitate compliance with environmental regulations, or the requirements of the permits, certificates, or licenses.

In compliance with Occupational Safety and Health Administration (OSHA) requirements, the Contractor shall maintain a Material Safety Data Sheet (MSDS) center at each yard with MSDS information for all chemicals used in the operation. The MSDS center shall be at a mutually agreed upon location and available to all employees. The Authority will be responsible for providing MSDS for Authority provided materials and the Contractor shall be responsible for providing MSDS for Contractor provided materials.

For materials provided by the Contractor, **Material Safety Data Sheets** (CDRL 2.14-03) for each yard shall be submitted to the Authority for review and approval no later than 90 after NTP.

- 2.14.3. Air Emissions.** The Contractor shall be responsible for all testing, and monitoring activities of the rolling stock, to support the Authority for permitting and reporting related to requirements of the California Air Resources Board (CARB), Southern California Air Quality Management District (SCAQMD) and other regulatory agencies.

To help meet evolving air emission regulations, particularly in connection with fuel consumption and potential greenhouse gas or particulate emission issues, the Contractor shall monitor emissions as specified in 2.9.2 (Vehicle Fleets Maintenance Program) and maintain fuel usage logs as specified in 2.10.2 (Locomotive Fuel Management).

- 2.14.4. Regulated and Hazardous Waste and Material.** Any regulated waste or spent hazardous materials located at the equipment maintenance facilities and layover facilities shall be disposed of in

accordance with all applicable environmental regulations. The Contractor shall submit for Authority review and approval 60 days after NTP an **Environmental Hazard Procedures Manual** (CDRL 2.14-04) that addresses all uses of hazardous waste and materials at the equipment maintenance facilities and layover facilities. These procedures shall include, but not be limited to hazardous materials and medical waste handling, and hazardous materials or waste generators (not limited in size). The procedures shall be developed in compliance with SCRRAA policy and all applicable local, State and Federal environmental laws and regulations.

The Contractor shall take immediate actions to comply with all applicable laws and regulations and permit conditions concerning the release of any contaminant at the equipment maintenance facilities and layover facilities without regard to source. The Contractor and subcontractors shall comply with all written policies maintained by the Authority or applicable regulatory agencies pertaining to environmental compliance and response policies and procedures, including coordination with the Authority and its designated subcontractors or representatives. Extreme care must be used when fueling or changing fluids. The Contractor shall immediately inform the Authority of any hazardous material spills. The Contractor shall be fully responsible for the containment and cleanup of any contaminants spilled caused by the Contractor onto the Authority or others' property. Any and all hazardous material spills on the Authority property, including, without limitation, diesel fuel, effluent from the Contractor or the Authority facilities, solvents or cleaning solutions, etc., must be reported immediately to the Authority Director of Safety and Security.

Storage of hazardous materials shall be limited to areas as indicated by the Authority and in compliance with codes and regulations. Where facilities for storage may not exist, the Contractor shall provide the needed facilities or store off site. The Contractor shall minimize storage of waste, regulated and hazardous materials on the Service Property.

Disposal of any regulated materials such as petroleum based products, antifreeze, oils, lubricants, paint, fluorescent light bulbs, railroad ties, drip pans, and batteries shall be through the services of a properly-certified and licensed hazardous materials disposal contractor. Battery disposal and storage sites shall be in accordance with OSHA regulations. All Contractor-designated/utilized hazardous material disposal sites or disposal subcontractors shall be subject to the approval of the Authority.

The Contractor shall ensure that containers used for storage and transportation of waste materials meet applicable Federal, State, and local requirements for labeling, storage, disposal, and transportation of waste materials. The Contractor shall conduct any and all testing of waste materials to be transported and disposed off-site, if required, to determine proper and legal methods for transport and disposal. The Contractor shall produce hazardous waste manifest forms as required for the transportation and disposal of hazardous waste under these specifications. The Contractor shall provide the appropriate copies of the completed hazardous waste manifest to the facility supervisor and to the Authority. Copies of all waste management documentation, including material handling, manifests, bills-of-lading, weight slips, and receiving facility receipts shall be kept on site and a copy provided to the Authority.

Should the Contractor encounter previously unknown materials which the Contractor reasonably believes to be hazardous, the Contractor shall cease work in the affected areas and report conditions to the Authority.

2.15. SAFETY MANAGEMENT

2.15.1. Overview

- 2.15.1.A. The Contractor shall at all times conduct its operations in a safe manner, so as to ensure the safety of all Contractor Personnel, the Customers, the Authority staff, the general public, and all other individuals.
- 2.15.1.B. The Contractor shall adhere to the Authority's most current System Safety Program Plan (SSPP) and Efficiency Testing Program in all respects and shall manage and coordinate safety through the assignment of a full-time Safety Manager. The Authority may amend the SSPP from time to time and will provide updated copies to the Contractor. The amended SSPP shall be incorporated into this Agreement at time of its release. Refer to Appendix D.
- 2.15.1.C. Monthly meetings will be held with the Maintenance Contractor, Authority Equipment department and Authority Chief Operating Officer to review monthly occurrences, safety record, efficiency testing program and improvement planning.

2.15.2. Contractor Safety Management Plan

- 2.15.2.A. The Contractor shall establish and implement a Safety Management Plan (the "SMP") structured around Job Safety Analysis (JSA). The SMP shall be compatible with the Authority's System Safety Program Plan, Emergency Preparedness Program, Drug and Alcohol Plan, Noise Exposure Plan, and all other system safety program, plans, initiatives, rules, policies and directives. In the SMP, the Contractor shall provide a description of the individual roles, responsibilities, processes, methods of documentation, accountabilities of all management, employees and other parties involved in the Contractor's system safety program.
- 2.15.2.B. The SMP shall meet all applicable federal and other legal requirements and regulations and the Authority System Safety Program Plan and shall comply with all other regulatory requirements.
- 2.15.2.C. To implement the SMP, the Contractor shall establish appropriate policies and procedures, lines of authority, levels of responsibility and accountability, and methods of documentation. The SMP shall be submitted no later than 60 days after NTP to the Authority for review and approval. (**Safety Management Plan**) (CDRL 2.15-01)
- 2.15.2.D. The Contractor shall update and submit the SMP to ensure compliance with the Authority's annual revision of its SSPP within 30 days of receiving the Existing System Safety Program Plan and all other regulatory requirements (each, **Safety Management Plan Update**) (CDRL 2.15-02).
- 2.15.2.E. The Contractor shall submit to audits conducted by the Authority, APTA, any federal or state regulatory agency, or any Authority contractor, and shall implement recommended corrective actions as directed by the Authority. Corrective actions shall also be audited for implementation by the Authority.
- 2.15.2.F. The Contractor shall carry out and track regular internal audits, assessments, and reviews to ensure compliance with all aspects of the SMP, the Authority SSPP as well as all other regulatory requirements.

The results of the Contractor Safety Audits shall also be used as input for the annual revision of the SMP. The Contractor Safety Audits, and their results, shall be made available to the Authority upon request (each, **Contractor Safety Audits**) (CDRL 2.15-03).

- 2.15.2.G. The Contractor's Safety Manager shall attend monthly safety meetings, and other meetings as directed by the Authority, with the Authority Director of Safety and Security, and the Director of Equipment to discuss safety-related incidents, hazards, non-compliances, defects, violations, complaints, corrective action, trending, and other concerns, and the Contractor's compliance with the SMP.
- 2.15.2.H. The Contractor shall participate with the Authority on monthly safety walks and System Safety Action Team meetings.
- 2.15.2.I. The Contractor shall provide a report detailing safety performance, all pending safety issues as well as prior incidents and mitigation/resolution measures taken at least seven working days in advance of each monthly meeting for Authority review and use during each meeting (each, **Safety Performance Report**) (CDRL 2.15-04).

2.15.3. Emergency Preparedness

- 2.15.3.A. The Contractor shall comply with the Authority's Emergency Preparedness Program pursuant to FRA regulations. The Contractor shall cooperate and fully participate in the Authority full scale Emergency Drills (tabletop and field exercises). The Contractor shall provide all personnel required to fully simulate daily operations including passengers with physical disabilities. All drills and exercises shall meet the requirements of the Homeland Security Exercise Education Program guidance and must be coordinated through and approved by the Authority.
- 2.15.3.B. Emergency preparedness drills and tabletop exercises, when required, shall be planned and conducted to ensure compliance with requirements of 49 CFR 239. For each vehicle fleet, the Contractor shall up-date existing and develop, as required, new training program(s) for emergency response

agencies, (e.g., fire and police), subject to responding to incidents along the Right-of-Way or other Service Property. Training shall be structured to address changes and modifications to the Vehicle Fleets and provide initial and continuing education modules.

- 2.15.3.C. The Contractor shall provide an emergency preparedness plan that is compatible with and supplements the Authority's Emergency Preparedness Program. The Contractor's plan shall address inspection, testing, maintenance, training and recordkeeping requirements. The Contractor Emergency Preparedness Plan shall be submitted no later than 60 days after NTP to the Authority for review and approval. (**Contractor Emergency Preparedness Plan**) (CDRL 2.15-05)

2.15.4. Drug and Alcohol-Free Workplace

- 2.15.4.A. The Authority is a drug-free workplace. All Contractor Personnel and Subcontractors shall be free of the effects of illegal drugs, alcohol, controlled substances or other prohibited substances when they are on the Authority Property or performing Agreement Services. The Contractor shall maintain a drug-free workplace and have an ongoing drug-free awareness program.

The requirements of this section apply to all "covered work" and "covered service" under 49 CFR 219. The Contractor is solely responsible for determining whether it is performing "covered work" or "covered service" under 49 CFR 219, taking into account all amendments to the law.

Subject to all state and federal laws and regulations, the Contractor shall provide the Authority with full access to all drug and alcohol tests conducted on Contractor Personnel working on the Property or providing Agreement Services.

No later than 60 days after NTP, the Contractor shall develop and provide to the Authority for approval a Drug and Alcohol Program that includes a written drug-free workplace policy, compliant with 49 CFR 32 and 41 USC Sections 701, notifies employees of the substance abuse policy, maintains an ongoing drug-free workplace, and establishes an employee

education program. **(Drug and Alcohol Program)**
(CDRL 2.15-06).

- 2.15.4.B. The Contractor shall establish and implement a drug and alcohol program that complies with 49 CFR 32 and 49 CFR 219. The Contractor shall produce any documentation necessary to establish its compliance with 49 CFR 32 and 49 CFR 219, and permit any authorized representative of the U. S. Department of Transportation, Federal Railroad Administration, the State Oversight Agency of the State of California, or the Authority to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR 219 and review the testing process.

The Contractor shall be responsible for ensuring that its employees, subcontractors, consultants, and agents comply with the requirements of the Drug and Alcohol Program throughout the term of the Agreement. The Contractor Drug and Alcohol Program shall be compatible with the Authority program (see Appendix M – SCRRRA Drug and Alcohol Program).

All Contractor Personnel and Subcontractors are prohibited from using, possessing, selling and distributing drugs, alcohol, controlled substances or other prohibited substances when they are on the Authority property or performing Contract required services. Any employees of a Subcontractor to the Contractor shall be subject to the same drug and alcohol policy of the Contractor that is approved by the Authority. The Contractor shall advise Contractor Personnel and Subcontractors of the requirements of its Drug and Alcohol Program and ensure that affected personnel meet the fitness for duty standard.

The Contractor shall remove violators immediately from the Authority Property and shall immediately assign the disciplined employee's job responsibilities to another qualified employee. The Contractor shall inform the Authority within 24 hours of the suspected drug and alcohol abuse in the workplace. The Contractor shall submit in draft form the proposed **Report of Drug/Alcohol Abuse** (CDRL 2.15-07) no later than 60 days after NTP.

The Contractor shall furnish the Authority with a written report of any policy violations, within five days of the violation. The Contractor shall submit in draft form the proposed **Drug Free Workplace Policy Violation Report** (CDRL 2.15-08) no later than 60 days after NTP.

The Contractor shall have a return to work program for Contractor Personnel that test positive for drug and alcohol use. For Contractor Personnel who are returning to work following the completion of a return to work program, the Contractor shall medically certify that the Contractor Personnel is fit for duty. The Contractor shall inform the Authority of such certifications and return to work of such Contractor Personnel and shall maintain and make available such certifications for review by the Authority. The Contractor shall submit in draft form the proposed **Violator Return to Work Certification Draft** (CDRL 2.15-09) no later than 60 days after NTP.

The Contractor shall update its Drug and Alcohol Program annually, and submit the plan to the Authority for approval, no later than July 1st of each Agreement Year (each, a **Drug and Alcohol Program Update**) (CDRL 2.15-10). The Contractor shall be responsible to produce any documentation necessary to establish its compliance with 49 CFR 219, including but not limited to an annual report of violations and drug and alcohol testing program.

- 2.15.4.C. The Contractor shall establish and implement a drug and alcohol testing program for all Contractor Personnel and shall submit the program to the Authority for review and approval no later than 90 days after NTP. (**Drug & Alcohol Test Guidelines**) (CDRL 2.15-11). The program shall be in full compliance with applicable requirements of 49 CFR 219 (Control of Alcohol and Drug Use), 49 CFR 655 (Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operation), 49 CFR 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) governing the control of drug use and alcohol abuse in railroad operations.

The program shall provide for random testing of Contractor Personnel. The Authority shall be notified of all failures and the disposition thereof. The Contractor shall update the Drug & Alcohol Testing Program and Guidelines annually, and submit the update no later than July 1st of each Agreement Year (each, **Drug and Alcohol Testing and Guidelines Update**) (CDRL 2.15-12).

The Contractor shall monitor the program and ensure that employees in safety sensitive positions who are returning to work from the program have been medically certified to do so. The Contractor shall submit to the Authority 90 days after NTP an inventory of positions that the Contractor defines as safety sensitive positions (**Inventory of Safety Sensitive Positions**) (CDRL 2.15-13). The Contractor shall include in the inventory of safety sensitive positions any such positions that are performed by Subcontractor employees.

2.15.5. Occupational Noise Exposure

2.15.5.A. Overview. An excessively loud environment reduces efficiency, causes stress, and can cause irreparable damage to hearing. Generally, the louder the noise and the longer the ear is exposed to it, the greater the loss will be. Because of a number of factors like individual susceptibility, the frequency at which sounds are generated, whether the noise is continuous or intermittent, as well as the amount of exposure, noise may or may not induce hearing loss in all individuals exposed to noise.

The Contractor shall establish and implement a **Hearing Conservation Program** (CDRL 2.15-14) that complies with 29 CFR 1910.95 and 49 CFR 227, produce any documentation necessary to establish its compliance with Part 227, and permit any authorized representative of the U. S. Department of Transportation, Federal Railroad Administration, the State Oversight Agency of the State of California, or the Authority to inspect the facilities and records associated with the implementation of the occupational noise exposure program as required under 49 CFR 227 and review the testing process. Contractor is solely responsible for ensuring that its

employees, subcontractors, consultants, and agents comply with 49 CFR 227 throughout the term of the Agreement. The Contractor shall submit the program to the Authority for review and approval no later than 90 days after NTP.

The Contractor Hearing Conservation Program shall include the following elements:

- a. Monitoring.
- b. Audiometric testing and evaluation.
- c. Hearing Protection.
- d. Training
- e. Recordkeeping.

The Contractor shall update its Hearing Conservation Program annually, and submit the plan to the Authority for approval, no later than July 1st of each Agreement Year (each, **Hearing Conservation Program Update**) (CDRL 2.15-15). The updated document shall include discussions of all revisions resulting from changes to program elements.

- 2.15.5.B. Monitoring The Contractor shall conduct periodic surveillance of work areas to determine background sound levels as well as personal exposure levels to identify duties, tasks, or operations. A summary schedule for the Contractor's noise exposure monitoring program is provided to the Authority.

The Contractor shall periodically survey work areas to determine background sound levels as well as personal exposure levels to identify areas where the hearing conservation program must be implemented.

Monitoring shall be repeated whenever a change in operations, process, equipment, or controls increases noise exposures to the extent that:

- a. Additional employees may be exposed at or above the action level
- b. The attenuation provided by hearing protectors being used may be inadequate

2.15.5.C. Testing and Evaluation Audiometric tests shall be offered on an annual basis by a licensed or certified audiologist, otolaryngologist, or other physician or technician who is certified by the American Council of Accreditation in Occupational Hearing Conservation. Testing will comply with 29 CFR 1910.95, 49 CFR 227.111.

a. Employees regulated by 29 CFR 1910 shall obtain audiometric testing annually.

b. Audiometric testing shall be offered to each employee regulated by 49 CFR 227 at least once each calendar year.

2.15.5.D. Hearing Protection Engineering or administrative controls shall be utilized, where feasible, to reduce sound levels to acceptable levels wherever employees are exposed to sound levels which exceed the permissible noise exposure limits. Where such controls are not feasible, hearing protection devices shall be provided and shall be required to be worn by employees to reduce sound levels to acceptable levels.

To effectively protect employees' hearing from hazards arising out of certain job tasks, various types of personal protective equipment shall be used. An employee's ability to understand and respond to voice radio communications and audible warnings shall be considered when selecting hearing protectors.

2.15.5.E. Training. The preferred method of hearing protection is to eliminate or reduce the potential hazard. Whenever it is not feasible to reduce the noise levels or duration of exposures to those specified by OSHA and FRA, Contractor employees shall wear hearing protectors.

Training shall be offered annually for those employees with noise exposures that equal or exceed 85 dBA. All hearing conservation training materials and a record of all employees trained shall be maintained for three years.

Employees shall be trained in the use of and care of all hearing protectors provided to employees.

All employees that participate in the training shall be informed on:

- a. The effects of noise on hearing.
- b. The role of engineering and administrative controls.
- c. The use, care, wearing and effectiveness of hearing protectors including instructions on selection and fitting.
- d. The purpose of audiometric testing, and an explanation of the test procedure.
- e. Changes in PPE and work methods.
- f. Availability of noise exposure regulations and procedures.
- g. General information regarding the expected range of workplace noise exposure levels associated with various tasks and equipment.
- h. The purpose of noise monitoring and a general description of monitoring procedures

2.15.5.F. Recordkeeping. The Contractor shall maintain and retain such that:

- a. All records shall be available for inspection and copying to representatives of OSHA or FRA.
- b. An employee's records shall remain available for inspection and copying to that employee, former employee, or such person's representative upon written authorization by such employee.
- c. If the Contractor is acquired by another organization, it shall transfer all records to the successor employer.
- d. A record of all employee exposure measurements shall be maintained for the duration of the employee's employment plus 30 years.
- e. All hearing conservation training materials and a record of all employees trained shall be maintained for 30 years.

2.15.6. Accident and Incident Management

2.15.6.A. Internal Control Plan

2.15.6.A.1 The Contractor shall adopt and comply with a written **Internal Control Plan** (CDRL 2.15-16) that complies with 49 CFR 225. The Internal Control Plan shall be submitted for the Authority for review and approval no later than 60 days after NTP.

2.15.6.A.2 The Contractor shall be able to produce any documentation necessary to establish its compliance with 49 CFR 225.

2.15.6.B. Accident and Incident Reporting

2.15.6.B.1 For all accidents, incidents, and near misses described in 49 CFR 225.9, the Contractor shall immediately report the incident via telephone to the appropriate Authority personnel at the Authority's Operating Center. The report shall state the:

- a. Name of the railroad;
- b. Name, title, and telephone number of the individual making the report;
- c. Time, date, and location of the accident/incident;
- d. Circumstances of the accident/incident;
- e. Number of persons killed or injured; and
- f. Available estimates of railroad and non-railroad property damage.

2.15.6.B.2 The Contractor shall submit to the FRA a monthly report utilizing the FRA forms of all Contractor-related accident and incidents as described in 49 CFR Part 225.11.

2.15.6.C. Accident and Incident Investigation

2.15.6.C.1 The Contractor shall immediately investigate all accidents, incidents, injuries to employees, or damage to the Vehicle Fleets, Service and Support Property or Service and Support Equipment for which the Contractor is responsible. The Contractor's responding managers shall be trained in and respond in accordance with incident reporting protocols.

2.15.6.C.2 Investigations shall be documented on appropriate forms as prescribed in the Contractor-developed Internal Control Plan, which comply with the FRA Guide for Preparing Accident/Incident Reports. Completed investigative reports must include a brief narrative description of the accident/incident, a description of the immediate remedial actions taken by the Contractor, a Corrective Action Plan outlining steps the Contractor shall take to prevent the occurrence of the accident/incident in the future, and any applicable supporting documents.

2.15.6.C.3 Completed investigative reports shall be forwarded to the designated Authority personnel within 24 hours of the time the event took place. In cases where it is not feasible to forward a completed report within 24 hours, a preliminary report shall be forwarded. Follow-up reports shall be made to the Authority when corrective actions are completed or changed. The Contractor also shall provide all required information to allow the Authority to enter all investigative reports and pertinent information into the Industry Safe system.

2.15.6.C.4 Whenever necessary, the Contractor shall permit any authorized representative of the U. S. Department of Transportation, Federal Railroad Administration, the State Oversight Agency of the State of California, or the Authority to investigate any accident/incidents, and shall provide access to the facilities and records associated with the incident.

The Contractor shall develop a joint safety incident notification, tracking, investigation, reporting, and review plan. The **Safety Incident Reporting and Review Process Plan** (CDRL 2.15-17) shall be submitted to the Authority for approval no later than 60 days after NTP. This process shall comply with the Metrolink Accident/Incident Derailment Guidebook and include reporting of incidents, accidents and near misses that are related to facilities, structures, systems elements, and/or rolling stock. This detailed reporting shall be addressed to the Authority Director of Safety and Security, as well as, agencies or authorities in accordance with state and federal regulations.

2.16. INFORMATION TECHNOLOGY REQUIREMENTS

2.16.1. Overview. The Contractor shall provide all equipment including servers, workstations, tablets, laptops, routers, switches, telephones, cell phones and wireless LAN (Local Area Network) to support the Contractor's Systems used to provide Services in the Agreement, except for the hardware and software provided by the Authority for specified applications. All hardware shall have a minimum of four years warranty. After warranties expire, equipment shall be replaced and upgraded with most current available model and meet the software vendor's recommended configuration. The Authority's internal telephone network will be available at no cost to the Contractor.

The Contractor shall be responsible for the cost of all computer hardware, software and communications upgrades not specifically required by the Authority. The Authority reserves the right to approve all computer equipment set up and installed by the Contractor, which shall comply with and adhere to Authority standards. Implemented hardware and software without prior approval by the Authority may be removed by the Authority. The Contractor shall provide detailed design configurations and diagrams for all hardware, software (including business application software), and network infrastructure implemented by the Contractor for the Services.

The Contractor shall provide internet service, analog and digital/data line and phone equipment. All servers and network equipment shall be protected by Uninterruptible Power Supply (UPS), adequate cooling, ventilation and airflow; and power surge suppressor on all desktops and copier/printers.

The Contractor shall maintain and support all of the technology infrastructure including telecommunications, data center operations, power, cooling and UPS; network operations, backup/recovery services, data storage management services, system administration services; end user support of desktop computers, laptops and handheld devices to maintain a reliable end user computing and networking environment.

An Information Technology (IT) Plan (CDRL 2.16-01) shall be developed by the Contractor for Authority review and approval no later than 30 days after NTP. The plan shall include a list and description of the systems, computer hardware, software and communications equipment to be provided by the Contractor and procedures and methodologies that demonstrate how the Contractor will meet the requirements of the Scope of Service

described herein. The plan shall include provision such that after five (5) years a technology refresh is performed consisting of replacing/upgrading hardware, software and firmware with the latest proven operating platform to support the LCM program. The Contractor shall be responsible to identify changes in technology and demonstrate compatibility with the most current version of the LCM program.

- 2.16.2. IT Equipment Utilization Policy.** For Authority supplied equipment, the Contractor shall operate and maintain all IT Equipment (hardware and software) in accordance with Authority policies. Current Authority policies prohibit removing updates and upgrades without expressed approval and prohibit removal of equipment from other than approved locations. The Contractor shall be required to upgrade hardware, update software security patches and upgrade to a version that is supported by the hardware and software manufacturer.

Additionally, the Authority policies prohibit the use of the Authority-owned computer equipment for activities that are illegal, for personal profit, or for purposes other than in direct support of the Authority business requirements.

- 2.16.3. Data Security and Ownership.** The Contractor shall comply with all Authority policies, which shall be provided to the Contractor, regarding data security, as well as access to physical work facilities. The Contractor shall take all reasonable precautions including management of firewalls and prevention of unauthorized access to sensitive systems and data to ensure the safety, security and integrity of any Contractor data produced, collected or maintained relative to the Agreement. This shall include, but is not limited to, safeguards and protections against unauthorized access, tampering, theft and damage from malicious computer code commonly referred as viruses, trojan horses and worms; and also prevent and remove adware, spyware and other forms of malware.

The Authority owns all operational data and reserves the right to request any operational data related to safety, security, or the operations and management of the train not stored in the Authority network. At the end of the Agreement, the Contractor shall provide all operational data to the Authority in an agreed-upon electronic format. Authorized Authority staff shall be provided real-time, local access to management information systems, databases and reports for all available Authority information.

- 2.16.4. Information Systems Software.** The Authority shall provide all information systems software required to maintain and operate

the Authority system except for those specifically identified below. The Contractor shall provide the Authority a list of systems that will be used to perform these duties as part of its IT Plan. The Authority shall load all operational data into their information systems for initial and ongoing operations.

- 2.16.5. Software Provided by the Authority.** As discussed in Section 2.9 (Rolling Stock Maintenance Requirements), the Contractor will inherit the existing electronic maintenance system currently employed by the Authority.

The Authority reserves the right to provide additional software requirements throughout the term of the Agreement (e.g., safety software).

- 2.16.6. Asset Accounting, Inventory and Disposition.** All current Authority-owned assets, including computer hardware and software, paid for by The Authority and future procurements shall be clearly marked with asset labels identifying the Authority as the equipment owner and identifying each asset with a unique ID number.

An Authority master list of all supplied equipment shall be signed by the Contractor upon delivery. A copy of the signed inventory list shall be kept by both parties. Periodic inventories of supplied equipment shall be performed by the Contractor, in conjunction with the annual inventory and audit of the Support Property and Support Inventory, which will certify that all equipment is accounted for and in working condition.

All IT equipment provided or owned by the Authority shall be returned to the Authority upon Agreement termination in useable condition, normal wear and tear excepted. All equipment purchased using Authority funds shall become the property of the Authority, and all surplus equipment shall be returned to the Authority for disposition.

- 2.16.7. Data Backup.** The Contractor shall perform on its systems all data backup at server level at CMF location on daily, weekly and monthly frequencies. Backup involves integrated recovery capabilities for operating systems, databases, applications and telephone recordings. The Authority reserves the right to review and monitor these backups to ensure they are completed as scheduled. Daily backup shall remain in-house for quick data recovery. Weekly and monthly data shall be sent offsite for storage and data retention. All data shall be stored and retained throughout the term of the Agreement.

2.17. CHANGES IN SERVICE OR SERVICE LEVELS

2.17.1. Overview

- 2.17.1.A. The Authority reserves the right to make service changes during the life of this Agreement. The Contractor shall support and cooperate with the Authority on service changes, special trains and/or charter trains that may impact revenue and non-revenue train service consist requirements, or manpower scheduling. Changes could also include additions or replacement of equipment and modifications in standards for maintenance of equipment and maintenance of Service Property. A requested change may permanently or temporarily add to, augment or modify or reduce the requested Scope of Services to be provided by the Contractor under this Agreement.

2.17.2. Service Change Notice

- 2.17.2.A. The Authority will notify the Contractor in writing of a Service Change (each, a "Service Change Notice") and shall describe the service change in reasonable detail, including the date on which the Service Change shall commence (the "Implementation Date") and the duration of the change (the "Cancellation Date") if those services are temporary. This notice will include any appropriate changes anticipated to fleet and maintenance requirements.
- 2.17.2.B. Unless the Authority determines that safety or budgetary constraints require a shorter notice, the Authority will provide the Contractor with a Service Change notice at least 60 days prior to the applicable Implementation Date.
- 2.17.2.C. The Contractor shall provide the Authority with the following information within 15 days of its receipt of a Service Change Notice:
- 2.17.2.C.1 A written statement as to the anticipated impact of the Service Change on the performance of the Scope of Services, including a detailed description of any changes to the Agreement, that the Contractor reasonably considers necessary to implement the Service Change.

2.17.2.C.2 An auditable, itemized listing of those cost items that must be adjusted (both increases and decreases) to reflect the implementation of the Service Change.

2.17.2.D. Notwithstanding the pendency of any negotiations or dispute resolution procedures, the Contractor shall implement the Service Change and perform (or cease to perform) the activities set out in the Service Change pursuant to the schedule established by the Authority in the Service Change Notice, and the Contractor shall be compensated in accordance with the provisions of Section 17 Revisions in Scope of Service.

2.17.3. Special Trains.

2.17.3.A. If temporary Service Changes are requested in the form of Special Trains or Excursion Trains, a "Service Change Notice" will be submitted to the Contractor in accordance with 2.17.2.A and will include the "Implementation Date" and the "Cancellation Date." The Contractor shall respond as outlined in 2.17.2.C. If circumstances cause the Authority to provide shorter notice of the intended special service, Contractor shall respond to the Authority's notification as soon as possible, and use its best efforts to supply the staff necessary to support the operation of special train service.

2.17.3.B. Notwithstanding the pendency of any negotiations or dispute resolution procedures, the Contractor shall implement the Service Change and perform (or cease to perform) the activities set out in the Service Change pursuant to the schedule established by the Authority in the Service Change Notice, and the Contractor shall be compensated in accordance with the provisions of Section 17 Revisions in Scope of Service.

2.18. PLANS, RECORDS, AND REPORTS

2.18.1. Overview. The Contractor shall keep, store, and maintain full and accurate Records relating to all aspects of the Agreement Services.

The Contractor shall furnish to the Authority at the times specified in this Agreement, without limitation, all Records identified in or required to be maintained by the Contractor under the provisions of this Agreement.

The Contractor shall maintain and furnish to the Authority the Records, in writing and in electronic format, in accordance with the delivery schedules established herein. The Contractor's monthly invoice shall not be considered complete if any Records required to be submitted with the monthly invoice are not included. The costs of preparing, producing, furnishing and maintaining the Records shall be included in the Agreement Services.

The Contractor shall provide to the Authority, not less than 30 days prior to the Termination Date, written notice of the location at which the Records shall be maintained after the Termination Date. At the request of the Authority, the Contractor shall provide copies of any such Records to the Authority prior to the Termination Date. The Authority will pay to the Contractor the reasonable costs of making such copies.

2.18.2. Required Report

- 2.18.2.A. Daily Reports, as designated in Table 2.18.2, shall be received by the Authority no later than 9:00 am on the next Business Day immediately following the day to which the Report relates.
- 2.18.2.B. Weekly Reports, as designated in Table 2.18.3, shall be received by the Authority no later than the close of business on the Monday of the following week.
- 2.18.2.C. Monthly Reports, as designated in Table 2.18.4, shall be received by the Authority no later than the close of business on the fifth business day of the following month.
- 2.18.2.D. Quarterly Reports, as designated in Table 2.18.5, shall be received by the Authority no later than the date of the submission by the Contractor of its

monthly invoice for the first month of the following quarter.

- 2.18.2.E. Annual Reports, as designated in Table 2.18.6, shall be received by the Authority no later than the date of the Contractor's submission to the Authority of the Contractor's invoice for the first month of the subsequent Authority fiscal year, unless otherwise specified.
- 2.18.2.F. "On Request" and "As Occurs" Reports, as designated in Table 2.18.7., shall be received by the Authority no later than one business day after the occurrence triggering a report unless otherwise required.
- 2.18.2.G. One Time and Initial Submittals, as designated in Table 2.18.1, shall be received by the Authority no later than 4:00 pm on the date specified.

2.18.3. Annual Program Plan and Deliverables

- 2.18.3.A. The Contractor shall deliver to the Authority for approval all Annual Program Plans including those designated in Table 2.18.6. Due dates for reports have been selected based on fiscal year, seasonal considerations, and to balance the Contractor's work flow. The Authority shall review each such plan, and shall either approve such plan or, within 30 days of its receipt (unless otherwise required), direct the Contractor to revise such plan.
- 2.18.3.B. The Contractor shall provide the Authority with a plan revised accordingly within 30 days of receipt (unless otherwise required) of such revisions from the Authority. Initial program plans shall be delivered during the Mobilization Period on the schedule identified in Section 2.5 (Mobilization, Transition, and Start-Up) of this Agreement.

2.18.4. National Transit Database Reporting Requirements

- 2.18.4.A. The Contractor shall adhere to all reporting requirements as described in the National Transit Database ("NTD") Reporting Manuals found at the NTD website.
- 2.18.4.B. All information required for NTD reporting shall be delivered by the Contractor electronically to the Authority in the format and with all information required for review by the Authority and suitable for forwarding to the NTD.
- 2.18.4.C. Notwithstanding anything to the contrary, the Contractor shall be responsible for providing all reports, records and other submittals required pursuant to this Agreement (within the designated timeframes) regardless of whether such reports, records and other submittals are included in Section 2.20 (Plans, Records, and Reports).
- 2.18.4.D. All Reports shall be filed and maintained in the Commuter Rail IT Environment unless, in Authority's sole discretion, the Authority approves of or provides a separate system.

2.18.5. Contractor Reporting Delivery Requirements

- 2.18.5.A. The Contractor shall deliver all records, reports and other submittals that it is obligated to provide to the Authority pursuant to this Agreement including, but not limited to, those identified in this Section 2.18 (Plans, Reports, and Submittals), to the Director of Equipment, with copies going contemporaneously to those individuals that the Director of Equipment designates from time to time (collectively, the "RRO Report Recipients"). Notwithstanding anything to the contrary, in the event that a provision of this Agreement directs the Contractor to deliver a record, report or other submittal to someone other than the RRO Report Recipients, the Contractor shall also contemporaneously deliver a copy of the applicable record, report or other submittal to the RRO Report Recipients.
- 2.18.5.B. In addition to delivering to the RRO Report Recipients, all records, reports and other submittals

that it is obligated to provide to the Authority, the Contractor shall also contemporaneously deliver copies of such records, reports and other submittals to those additional recipients identified in this Agreement to receive the applicable record, report or other submittals.

- 2.18.5.C. The Contractor shall work with the Director of Equipment during the Mobilization Period to establish protocols to ensure timely distribution of all records, reports and other submittals to the RRO Reporting Recipients including, but not limited to, (i) identifying specific Director of Equipment designees for receiving records, reports and other submissions, and (ii) mechanisms to ensure delivery and confirmation of receipt of all records, reports and other submittals. Notwithstanding anything to the contrary, the Contractor acknowledges and agrees that, as between the Parties, the Contractor shall be responsible for ensuring the delivery of all records, reports and other submittals required by this Agreement within the applicable timeframes.

Table 2.18.1 – One Time, Non-Recurring Submittals

CDRL #	Description	Due Date
2.5-01	Mobilization Action Plan	at NTP
2.5-02	Mobilization Personnel and Staffing Plan	at NTP
2.8-01	Cleaning Interval Procedures	150 days after NTP
2.8-02	Cleaning Chemicals and Processes List	90 days after NTP
2.8-03	Fleet Availability, Performance, and Cleanliness Report Draft	30 days after NTP
2.9-01	Vehicle Fleet Maintenance Program Plan and Schedule	120 days after NTP
2.9-02	Vehicle Fleets Maintenance Program Operational	180 days after ASCD
2.9-03	Maintenance Management System Plan	60 days after NTP
2.9-04	LCM Programs Implementation Plan and Schedule	60 days after NTP
2.9-05	Baseline LCM Programs	150 days after ASCD
2.9-07	Maintenance Interval Procedures	120 days after NTP
2.9-08	Weekly Maintenance Production Plan Draft	60 days after NTP
2.9-10	Weekly Maintenance Production Report Draft	60 days after NTP
2.9-14	Corrective Maintenance Incident Report Draft	30 days after NTP
2.10-01	Inventory Maintenance Plan	60 days after NTP
2.10-07	Fuel Accounting Report Draft	120 days after NTP
2.10-13	Locomotive Idle Time Minimization Plan	120 days after NTP
2.11-02	Training Program Plan Draft	90 days after NTP
2.11-04	Training, Qualification, and Designation Program (TQDP) Plan and Schedule	30 days after NTP
2.11-05	Training, Qualification, and Designation Program (TQDP)	10 days prior to ASCD
2.11-06	Refrigerant Handling Training Program	30 days after ASCD
2.11-07	HVAC System Troubleshooting and Repair Training Program	45 days after ASCD
2.11-08	New Employee Competency Evaluation and Orientation Training Program	90 days after NTP
2.11-11	Non-Revenue Service Vehicle Fleet Training Program	150 days after NTP
2.12-01	Work Force Deployment Plan	60 days after NTP
2.12-03	Key Personnel	90 days prior to July 1, 2017
2.13-03	Proposed Quality Assurance Program Plan	60 days after NTP
2.13-04	Quality Assurance Program Plan	120 days after NTP
2.13-05	Calibration Management System Plan	90 days after NTP
2.13-06	Calibration Management System Operational	30 days after ASCD
2.14-01	Emergency Spill Response/Spill Prevention Control and Countermeasure Plan	60 days after NTP

CDRL #	Description	Due Date
2.14-03	Material Safety Data Sheets	90 days after NTP
2.14-04	Environmental Hazard Procedures Manual	60 days after NTP
2.15-01	Safety Management Plan	60 days after NTP
2.15-05	Contractor Emergency Preparedness Plan	60 days after NTP
2.15-06	Drug and Alcohol Program	60 days after NTP
2.15-07	Report of Drug/Alcohol Abuse Draft	60 days after NTP
2.15-08	Drug Free Workplace Policy Violation Report Draft	60 days after NTP
2.15-09	Violator Return to Work Certification Draft	60 days after NTP
2.15-11	Drug & Alcohol Test Guidelines	90 days after NTP
2.15-13	Inventory of Safety Sensitive Positions	90 days after NTP
2.15-14	Hearing Conservation Program	90 days after NTP
2.15-16	Internal Control Plan	60 days after NTP
2.15-17	Safety Incident Reporting and Review Process Plan	60 days after NTP
2.16-01	Information Technology Plan	30 days after NTP

Table 2.18.2 – Daily Submittals

CDRL #	Description	Due Date
2.9-11	QMP MOC Mechanical Help Desk Report <ul style="list-style-type: none"> - Daily shop work sheet - Daily consist status Report - Unit History Report with QMP input 	Daily
2.10-08	Fuel Accounting Report	Daily

Table 2.18.3 – Weekly Submittals

CDRL #	Description	Due Date
2.9-09	Weekly Maintenance Production Plan	No later than 3:00PM on Friday
2.9-12	Weekly Maintenance Production Report	No later than 10:00AM on Monday
2.10-09	Fuel Accounting Report	Weekly

Table 2.18.4 – Monthly Submittals

CDRL #	Description	Due Date
2.8-04	Fleet Availability, Performance, and Cleanliness Report	Monthly
2.10-03	None on Hand Material List	Monthly
2.10-10	Fuel Accounting Report	Monthly
2.10-12	Fuel Dispensed Usage by Locomotive Report	Monthly
2.11-13	Monthly Training Report	Monthly
2.15-04	Safety Performance Report	7 days prior to the Monthly Safety Meeting

Table 2.18.5 – Quarterly Submittals

CDRL #	Description	Due Date
2.9-06	LCM Programs Update	Quarterly
2.13-02	Quality System Audit Summary Report	Quarterly

Table 2.18.6 – Annual Submittals

CDRL #	Description	Due Date
2.10-02	Inventory Maintenance Plan Update	Annually, by July 1 st
2.10-11	Fuel Accounting Report	Annually, by July 1 st
2.11-01	Training Program Plan	Annually, by July 1 st
2.11-03	Training Program Plan Review Meeting	45 days after Plan submitted
2.12-02	Work Force Deployment Plan Update	Annually, with Operating Budget
2.14-02	Emergency Spill Response/Spill Prevention Control and Countermeasure Plan Update	Annually, by July 1 st
2.15-02	Safety Management Plan Update	Within 30 days of the Authority Update
2.15-10	Drug and Alcohol Program Update	Annually, by July 1 st
2.15-12	Drug and Alcohol Testing and Guidelines Update	Annually, by July 1 st
2.15-15	Hearing Conservation Program Update	Annually, by July 1 st

Table 2.18.7 – On Request, As Occurs Submittals

CDRL #	Description	Due Date
2.8-05	Supplemental Fleet Availability, Performance, and Cleanliness Report	Within 10 days of the Authority's Request
2.9-13	Corrective Maintenance Incident Report	Within 1 day of the event
2.10-04	New and Overhaul Vehicles Parts List	90 days prior to New and Overhaul Vehicles being introduced into Service
2.10-05	New and Overhaul Vehicles Critical Material List	90 days prior to New and Overhaul Vehicles being introduced into Service
2.10-06	Capital Spare Component Usage Justification Report	At least 15 days prior to use
2.11-09	New and Overhaul Vehicle Training Program and Plan	As Required
2.11-10	Shop Equipment Training Program and Plan for New and Overhauled Vehicles	As Required
2.11-12	Non-Revenue Service Vehicle Training Program Update	As Required
2.13-01	Quality System Audit Report	Within 30 days of Audit
2.15-03	Contractor Safety Audits	On Request

3. EQUIPMENT MAINTENANCE GENERAL MANAGEMENT

- a) Contractor agrees that it shall provide equipment maintenance general management services under the terms and conditions described in this Agreement. Contractor shall make available to Authority a staff of Qualified management personnel who shall manage the provision of the Services using good business practices that are consistent with both parties' objectives of providing highest quality and efficient service to the public, consistent with the policies, and in the best interests of the Authority Commuter Rail Operations and Authority.
- b) The Contractor's management team assigned to the Services shall have demonstrable experience and knowledge in the field of railroad passenger equipment inspection, maintenance, troubleshooting and repair, The contractors management team directly managing employees must be skilled in process improvement, planning, interpersonal communication, managing people and productivity performance The contractors managers shall have authority to make decisions concerning the daily operations and management of the Services consistent with this Agreement. Contractor shall administer and manage all functions involved in providing the Services as set forth and described more fully in this Agreement in a manner which will provide safe and well-maintained maintenance facilities and rolling stock, ensure on-time train operations, and be in compliance with all applicable federal, state and local requirements. Absent specific AUTHORITY policies, procedures and practices, Contractor shall adhere to its corporate policies, procedures and practices in the day-to-day performance of the Services to the extent that these are beneficial to Authority. Corporate policies applicable to the performance of the Services, including but not limited to, those on Equal Employment Opportunity/Affirmative Action and sexual harassment, must be acceptable to Authority.
- c) All personnel provided by Contractor and Contractor's Subcontractors involved in any aspect of providing the Services shall be employees or contractors of Contractor or its Subcontractors, and not of Authority, shall be fully trained and Qualified to perform the Services prior to starting work on the Authority Services and shall be subject to the direction, supervision and control of Contractor and not of Authority. All personnel, who work on providing the Services, except as provided specifically in this Agreement or by mutual agreement of the parties, shall be assigned exclusively to the Services. Contractor shall provide an organization chart showing all positions for provision of the Services and clearly indicating reporting relationships to the General Manager, which is subject to the approval of Authority.

4. OBLIGATIONS OF AUTHORITY

4.1. ACCESS TO EQUIPMENT AND PROPERTY

Authority shall provide Contractor access to the Service Property as necessary for Contractor's performance of the Services. Authority shall make Authority property available for use by Contractor for (1) parking and assembly areas for maintenance forces and (2) storage space for vehicles, equipment, tools, and supplies. Authority shall pay for all utilities in all facilities and storage space provided pursuant to this Agreement. Since Authority requires Contractor's proximity to the Service Property, Authority shall provide space to Contractor on the Service Property for Contractor to place portable office units. Contractor shall be responsible for the cost of the lease of any portable office units. If Contractor desires to locate its offices at a different site, Authority approval of leased office space will be contingent upon Authority's approval of Contractor's proximity to work assignments and logistics relating to the transportation of Contractor's personnel to work sites. Any lease or utility payments for such leased office or storage space shall be included in the FBC and not billed as a Direct Cost.

4.2. IDENTIFICATION OF VEHICLES

Authority shall mark and identify all Authority vehicles and other equipment provided for Contractor's use in providing the Services with Authority's "METROLINK"® colors, logo and other identification marks as determined by Authority.

4.3. AUTHORITY ACCESS

Authority and/or its designees shall have access at all times to the Service Property.

4.4. CHANGES IN ENGINEERING INSTRUCTIONS AND STANDARDS AND AUTHORITY EQUIPMENT

Authority may make specific improvements or additions to, or may change entirely the Engineering Instructions and Standards or related practices, or assigned equipment. Contractor shall make every reasonable effort to fulfill its obligations under this Agreement using such equipment and in accordance with such revised Standards as soon as possible.

4.5. AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORITY CONTRACT MANAGER FOR MAINTENANCE AND MANAGEMENT SUPERVISION

In addition to the rights and obligations set forth elsewhere in this Agreement, Authority shall have, with respect to Contractor's performance, the right to:

- 4.5.1.** Monitor any records, facilities, or equipment developed or used, and monitor the personnel and Subcontractors used, by Contractor in performance of its obligations pursuant to this

Agreement. Contractor shall provide Authority with a summary of monthly reports documenting any audits of employee performance, including efficiency tests and any disciplinary action related to safety performed by Contractor.

- 4.5.2.** Inspect any equipment utilized on the Service Property at any time, and remove from service any equipment, which, in Authority's opinion, is in an unacceptable condition.
- 4.5.3.** Finally determine all matters relating to or affecting the Services. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights or privileges that have been lawfully delegated by Authority to the Contracting Officer. Nothing in this Agreement may be construed to bind Authority for the acts of its officers, employees or agents that exceed the authority of such persons as specified herein.
- 4.5.4.** The Contracting Officer has delegated to Authority's Director of Equipment certain powers and duties in connection with this Agreement. The Director of Equipment is the authorized representative of the Contracting Officer for matters related to this Agreement. The Director of Equipment or his or her designee the Assistant Director of Equipment and Maintenance are empowered to:
 - 4.5.4.A.** Have general oversight of the Services and this Agreement, including the power to monitor and enforce Contractor's compliance with this Agreement.
 - 4.5.4.B.** Remove any portion of the Services from Contractor's scope of work if Contractor fails to perform such Services to Authority's satisfaction.
 - 4.5.4.C.** Subject to further review and acceptance by Authority, negotiate with Contractor all adjustments pertaining to Special Trains.
 - 4.5.4.D.** Accept and/or prepare payment applications for Services performed by Contractor.
 - 4.5.4.E.** Inspect and closely monitor Contractor's performance and test Contractor's work.
 - 4.5.4.F.** Enforce the requirements of Authority's SSPP, Engineering Instructions and Standards, Authority's practices, GCOR and monitor safety requirements as set forth in this Agreement or required by law.

4.5.4.G. Monitor Contractor's Safety Programs, Policies, Practices and Training to ensure Contractor is enforcing Contractor's requirements.

4.5.5. Neither the Director of Equipment – nor Assistant Director of Equipment and Maintenance shall have control or charge of or be responsible for (1) Contractor's means, methods, sequences or procedures; (2) Contractor's training and safety precautions and programs in connection with Contractor's performance of the Services; or (3) any act or omission of Contractor, any Subcontractor or any other person performing any of the Services.

4.5.6. In addition to the foregoing, the Director of Equipment shall have such rights and powers as are expressly set forth elsewhere in this Agreement.

4.6. RAILROAD RADIO EQUIPMENT

4.6.1. Contractor shall purchase, upon approval by Authority, portable (handheld) radios equipped for use on Authority's assigned AAR channels and shall maintain and adjust such radios using personnel from Authority's other maintenance contracts. Authority will maintain an inventory listing the names of any individuals to whom Contractor assigns such radios. Contractor must notify Authority of and will be responsible for the cost of any loss, damage and exchange of any such radios. Contractor shall cooperate with radio maintenance requirements including making personnel and equipment available to support maintenance of radios and shall take reasonable precautions to protect radios against loss or damage. Contractor shall utilize such radios in compliance with the GCOR. Upon expiration of this Agreement, Contractor shall return all Authority radios in original operating condition, less reasonable wear and tear. Radios purchased by Contractor shall be reimbursed by Authority as a Direct Cost. The Authority will be responsible for obtaining appropriate FCC licenses.

4.7. TOOLS AND PERSONAL PROTECTIVE EQUIPMENT

4.7.1. Authority shall furnish tools and equipment, which may be new or used, for the use of Contractor upon the initiation of Services. Contractor shall maintain Authority's tools in good condition during the term of this Agreement and shall return such tools to Authority upon the termination of this Agreement. Representatives of Authority and Contractor shall conduct inventories upon the initial delivery of tools to Contractor and

upon the return of tools to Authority. The maintenance of Authority's tools, including replacement for loss, breakage or consumption, is the responsibility of Contractor and the cost for such maintenance is to be included in the FBC rates charged for the Services.

- 4.7.2.** Furnishing personal protective equipment is the sole responsibility of Contractor and is included in the FBC. All Contractor and Subcontractor employees shall be required to wear personal protective equipment conforming to the requirements of FRA Section 214 including (1) head protection, Section 214.113; (2) foot protection, Section 214.115; (3) eye and face protection, Section 214.117; and (4) high visibility green vests with reflective striping and Contractor's name on the vest.

4.8. AUTHORITY EQUIPMENT

The Authority shall furnish equipment listed below for use by Contractor in providing the Services. These tools and equipment shall be maintained and replaced if needed, by the Authority:

1. All Utility carts
2. Forklifts for locomotive and car shop
3. Locomotive shop platform oil pumping system, new and waste oil tank maintenance only
4. Welding equipment
5. Tools and consumables to support CBM tasks

The Contractor shall be responsible for notifying Authority when repairs are needed and for training and qualifying Operators. The Authority will not be responsible for the certification of the lifting hooks and slings. The Contractor shall pay for and be responsible for the certification and replacement of lifting hooks and slings, or, additional required hooks or slings.

5. ANNUAL BUDGET

5.1. PREPARATION OF PROPOSED SERVICE PLAN

During the term of this Agreement and prior to October 1, of each year, Authority shall prepare and submit to Contractor a Service Plan covering the next Fiscal Year. This Service Plan shall include a detailed description of the Services Authority expects Contractor to provide during the next Fiscal Year. These Services will form the basis for the Approved Budget and the Service Plan.

5.2. PREPARATION OF PROPOSED BUDGET

5.2.1. During the term of this Agreement and no later than October 20 of each year, or twenty (20) days after delivery of the Service Plan by Authority, Contractor shall prepare and submit to Authority a proposed budget, in a format to be determined by Authority, for provision of Services described in the Service Plan for the next Fiscal Year. The proposed budget shall be based on the FBC as included in Appendix L, with an adjustment factor of plus or minus of 3.5 to 5 percent and will reflect actual operations and levels of Services being provided during the then-current Fiscal Year, except as modified for the coming Fiscal Year. Should the total amount of Services required by the Authority in the Service Plan increase by or decrease by more than five percent (5%), then the Parties agree to revisit and agree on an equitable adjustment to the FBC to take into consideration the increase or decrease in Services performed via the mechanism provided in Section 5.7. The proposed budget shall:

- a. Be consistent with the Service Plan and requirements set forth at Appendix L
- b. Be based upon the FBC rates proposed for years one through eight, and appropriately inflated rates at for subsequent nine through twelve
- c. Be based upon mutually agreed-upon quantities of Services and subcontracted services
- d. List all positions whose time will be chargeable under Task Orders during the coming Fiscal Year
- e. Include Contractor's safety plan and associated costs
- f. Include the annual training plan and associated costs
- g. Include a billing schedule for the applicable Fiscal Year
- h. Include Contractor's assumptions used

5.2.2. The proposed budget shall include the costs Contractor may incur in performing Equipment Maintenance. Contractor shall maintain the resources and capacity to perform Special Trains, which is estimated at one percent of the Equipment Maintenance budget. Authority shall develop and include estimates for Special Trains in the Approved Budget. Expenditures for Special Trains shall be previously authorized By the Authority.

5.3. AUTHORITY REVIEW OF PROPOSED BUDGET

No later than November 20 or thirty (30) calendar days after Contractor submits its budget for each year, whichever is later, Authority shall present to Contractor its comments on the proposed budget, the Service Plan, and all other proposals

Contractor has provided, which will specify the item(s), if any, to which Authority objects, and the basis for each objection. Authority and Contractor shall promptly enter into negotiations to resolve any objectionable items. The parties will complete the negotiations and resolve any outstanding issues by no later than April 1 of each year.

5.4. APPROVED BUDGET

The final Approved Budget shall include the agreed-upon Equipment Maintenance budget and contract authority for Special Trains and support for rehabilitation and New Capital.

5.5. ADJUSTMENT OF FBC

For the option years beyond the initial 8-year Agreement period, the FBC for the Direct Cost Labor incorporated into this Agreement as set forth on Appendix L, and provided under Task Orders shall be adjusted annually by 3.5 percent as agreed upon by the Parties. Adjustments will be made to the Direct Labor rate portion of the FBC rates only.

5.6. BUDGET PLAN FOR FIRST YEAR OF AGREEMENT

For the portion of the Fiscal Year remaining after the Effective Date of this Agreement, Contractor's budget plan will be based on the rates established with the FY2016-17 Annual Service Plan as approved by the Board in June 2016 and incorporated at Appendix L. Beginning with Fiscal Year starting July 1, 2017, Contractor and Authority shall establish the budget amount for the next full Fiscal Year using the procedure described in Sections 5.1. through 5.5, above.

5.7. BUDGET AMENDMENT FOR UNFORESEEN EVENTS

Upon the occurrence of events that were not reasonably foreseeable at the time of approval of the Approved Budget, and which will cause a material change in the assumptions used in developing the Approved Budget, the parties shall agree upon amendments to the Approved Budget for that Fiscal Year to reflect those changes.

5.8. BUDGET REVISIONS FOR COST OVERRUNS

If Service costs are projected to exceed the Approved Budget in effect at the time Contractor performs such Services, such overruns must be justified and addressed appropriately prior to incurring any costs in excess of the Approved Budget. Contractor's failure to obtain Authority's approval of any costs in excess of the Approved Budget may result in Authority's rejection of such costs.

6. PAYMENT AND INVOICING

6.1. COMPENSATION

- 6.1.1.** Authority's maximum annual payment obligation under this Agreement shall be the amount stated in the annual Approved Budget based on the rates established in Contractor's pricing schedules for Fully Burdened Cost (FBC) as set forth in detail at Appendix L, attached hereto. For the six month period starting with January 1, 2017, the contract not-to-exceed funding authorization will be \$11,515,861 which includes \$10,875,861, for the base Services and \$640,000 for special trains and third party services.
- 6.1.2.** Contract authorization will be established by Authority as part of the Fiscal Year annual budget approval process. Funding for succeeding Fiscal Years will be established in accordance with Section 5 of this Agreement.
- 6.1.3.** The mobilization price, as provided in Contractor's latest proposal, will be paid over six (6) equal monthly installments starting on July 1, 2017, with each payment representing 1/6 of the mobilization price.

6.2. INVOICING

Contractor shall invoice Authority using the rates established in Contractor's pricing schedules, attached at Appendix L and incorporated in the Approved Budget. Contractor will prepare all invoices in accordance with the billing schedule provided with the Approved Budget, shall consistently provide for a monthly or a four or five-week billing cycle and shall submit all invoices no later than 25 (twenty-five) working days after the end of the billing cycle. On or before the end of April of each year, Contractor shall submit an estimate of the forecasted total Fiscal Year costs through the end of the current Fiscal Year. The estimate shall be prepared in invoice format with appropriate cost breakdown in accordance with the requirements set forth at Appendix G. The last invoice submitted for the Fiscal Year will be billed up to and including June 30 of that Fiscal Year. Contractor shall furnish information as may be requested by Authority to substantiate the validity of an invoice. Payment shall be based on monthly invoices that document expenses for each charge using the cost breakdown as required in Appendix G , as follows:

6.2.1. Equipment Maintenance

- 6.2.1.A.** Services. Authority shall compensate Contractor for Services performed under this Agreement using the FBC set forth at Appendix L. The FBC is inclusive of the costs for Subcontracting Services, G&A, Overhead, Profit, Employee Benefits and training costs.

- 6.2.1.B. Direct Costs. Contractor shall bill as Direct Costs all items under Task Orders as required in Attachment A, Scope of Services that are previously approved by the Authority. The Contractor shall itemize such items on each invoice and must also include documentation for material purchases (quotes and/or sole source justifications must be included as part of the invoice). No markups will be allowed on any Direct Costs.
- 6.2.1.C. Monthly Invoice. The Contractor shall provide the Authority with a monthly invoice reflecting 1/12 of the Approved Budget for the base scope of Service excluding compensation for Services authorized under an Authority approved Task Order. For services authorized under an Authority approved Task Order, the Contractor shall summarize the details of the services performed and costs for the services performed during the period covered by the invoice.

6.2.2. Special Train and Overhaul Services

For Special Trains and Overhaul Services not included in the Approved Budget, the Authority will compensate the Contractor at the FBC listed in Appendix L for services authorized under the particular Task Order approved previously by the Authority for the services.

6.2.3. Performance Incentive Payments for Contractor and Key Subcontractors

- 6.2.3.A. Beginning in the second year of this Agreement, Contractor's employees and managers shall have the right to earn incentives of three percent (3%) of Contractor's previous year's actual expenditures for Equipment Maintenance less G&A Overhead, Profit and the deductions set forth at Section 6.2.3.B. below.
- 6.2.3.B. The annual incentive payment available to employees shall be reduced proportionately to an amount of equal to one-half (1/2) of total Liquidated Damages that are assessed to the Contractor during the previous Fiscal Year pursuant to this Agreement.
- 6.2.3.C. Distribution of incentive payments will be made to Contractor's and key Subcontractor's Covered

Employees and Exempt Employees at the completion of the second full twelve-month period of performance of this Agreement and will be based on improvement as documented during that same twelve-month performance period; provided, however, that such incentive payments will be made only if the Authority has confirmed (which confirmation shall not unreasonably be withheld) that the quality of Services provided by Contractor justifies payment of such incentives. The incentive fund pool is to be distributed at an equal rate of distribution to each employee; provided however, that each Exempt Employee shall receive a share that is equal to 300% more than any one employee such Exempt Employee supervises.

6.2.3.D. Authority shall provide Contractor and Subcontractor with notice of intent to reduce the pool of funds available for making employee incentive payments pursuant to this Section no later than thirty (30) days after the end of the Fiscal Year in which the events on which the assessment is based occurred. In the event of a disagreement between Contractor and Authority as to the cause or responsibility of an action or inaction that results in Liquidated Damages or reduction in payment as specified by this Section, Authority Contract Manager shall make a final determination upon an objective investigation of any such matter. Such determination shall not be subject to the dispute resolution provisions of this Agreement or otherwise.

6.2.3.E. The incentive payment for Contractor's employees and managers shall be based on an IIP developed by Contractor's and Key Subcontractors' Managers and Exempt Employees in consultation with and subject to the approval of Authority. The agreed-upon IIP shall be issued approximately 5 months prior to Authority's approval of the Annual Budget beginning in the second Fiscal Year and occurring each successive year thereafter so that the incentive amount can be included in the upcoming year's annual budget. The IIP will be based on four measurable performance categories that encourage or promote sustainable best industry practice improvements. Such categories for each IIP will be determined between Authority and Contractor, and shall include but not be

limited to (1) safety; (2) inspection; (3) attendance; (4) training; (5) containment of overtime; (6) productivity; (7) life cycle extensions of track assets; (8) workmanship and quality; (9) reductions in train delays caused by track; (10) incorporation of new technologies and processes; (11) outside and third party contractor support; (12) ride quality improvements; (13) reductions in FRA reportable defects and violations; (14) inventory management; (15) reductions in property damage; (16) adherence to rules or instructions (including noise and emissions at Maintenance Facilities); and (17) such other performance factors that may be expected to contribute to the successful delivery of the Services. A basis for measuring improvement under any IIP category will be mutually agreed upon by Authority and Contractor. A minimum score of eighty-five percent will be established to represent successful performance within any IIP category. Contractor and key Subcontractors will provide Authority with an annual report certifying the amount paid to each employee in connection with that Fiscal Year's IIP.

6.2.3.F. When the Authority has confirmed that the quality of Services provided justifies payment of incentives, Performance Incentive Payments will be paid to Contractor, a Subcontractor and their respective employees when Contractor or Subcontractor achieves a predetermined minimum improvement in each of the four categories determined in accordance with Section 6.2.3.E above. If Contractor or Subcontractor only achieves a five percent (5%) improvement to three out of the four categories, such Contractor or Subcontractor will receive seventy five percent (75%) as a performance incentive payment. Fifty percent (50%) of apportioned IIP funds will be paid if Contractor or Subcontractor achieves only two out of the four categories. Twenty-five percent (25%) of apportioned IIP funds will be paid if Contractor or Subcontractor achieves one out of the four categories. No Performance Incentive Payments will be made if Contractor or Subcontractor does not achieve any improvements.

6.2.4. Performance Incentives/Disincentive Payments for Fleet Monthly Availability

- 6.2.4.A. Beginning in the second year of this Agreement, Fleet Monthly Availability will be a key performance indicator used to establish monthly incentive/disincentive payments paid from the pool established under Section 6.2.3.A.
- 6.2.4.B. The incentive payment will be added to Contractor's disincentive amounts will be deducted from Contractor's. The amount of incentive or disincentive is determined by the monthly average availability percentage, see Appendix B.
- 6.2.4.C. Vehicle availability is determined by vehicle type (Locomotive, Cab Car or Coach Car). Availability will be calculated on a daily basis as the number of vehicles available for service divided by the number of vehicle in inventory. This will be calculated as a percentage based on the Daily Dispatch and Shop reports. The Daily availability will be averaged over the month for each vehicle type. The monthly availability will be weighted by the percentage of the entire fleet that each vehicle type composes. The weighted number will be the Total Fleet Monthly Availability Percentage that will be used to determine the amount of incentive/disincentive to be applied to Contractor's invoice.

6.3. COMPARISON STATEMENT AND COST BREAKDOWNS

In accordance with the agreed-upon billing schedule, Contractor shall provide Authority with a statement, included as a part of Contractor's monthly invoice, showing a comparison of Contractor's performance during that month to the Approved Budget amount for that month and for the Fiscal Year to date. Contractor shall break out such performance statement by territory project number and Service category in accordance with the standards set forth at Appendix G. Contractor must provide with its invoice a summary report broken down by job category, employee name and project number, indicating straight time, overtime and double time hours worked at the appropriate FBC rates for the billing period.

6.4. DELAYED INVOICES

If Contractor's complete invoice, including budget analysis and reports as specified in Appendix G, is not submitted within twenty-five (25) working days from the close of the invoice period, Authority shall have the right to take a one-time deduction of \$600.00 for such late invoice.

6.5. INVOICE SUBMITTAL

- 6.5.1** Contractor shall invoice Authority on a monthly basis no later than the 15th of each month in accordance with the billing schedules provided in Appendix L. Contractor shall submit invoices via email to Authority's Accounts Payable Office at accountspayable@scrra.net, with cc to Authority Contract Manager.
- 6.5.2** Authority is pursuing initiatives to reduce or eliminate paper and streamline the invoicing and payment process. To that end, Authority requires that Contractor be able to support the electronic exchange of invoicing information, which may include secure access to a database view(s) from which to import Accounts Payable invoice header and line item data, flat files in a Comma Separated Value format (*.CSV) containing Accounts Payable invoice detail, or X12 ANSI EDI transactions to be provided in addition to, and eventually in lieu of, printed or *.PDF formatted invoices. Once the electronic exchange of invoicing information becomes active, the Contractor will be required to provide electronic access to Accounts Payable invoice information, in lieu of submitting paper invoices to Authority.
- 6.5.3** Each invoice shall include the following information:
- 6.5.3.A** Agreement number
 - 6.5.3.B** Time period covered by invoice
 - 6.5.3.C** Amount of payment requested
 - 6.5.3.D** Information requested by Authority as set forth at Appendix G, identifying the type of project for preventative maintenance and project number for any Special Trains or Maintenance, supported by all relevant documentation to include cost quotes for material procured, if applicable.
 - 6.5.3.E** Monthly cost status reports for any special trains, maintenance or Task Order work including Labor. Contractor must provide a summary of hours for each Exempt Employee and Covered Employee in the current invoice period, reported by job category, employee name, and project number, indicating straight time, overtime and double-time hours worked at the approved FBC rates for the relevant Fiscal Year.
 - 6.5.3.F** Certified payrolls are required only for Task Order work.

6.5.3.G An electronic copy of the invoice in the format required by Authority.

6.5.4. Invoices are subject to review by Authority's Contract Manager for accuracy prior to submittal to Authority's Accounts Payable for payment. Authority may, at its option, deduct any disputed amounts from its payment of any invoice. Once Authority and Contractor resolve any such dispute as to the amounts due and payable, Contractor will submit a separate supplemental invoice to request payment for such amounts. After Authority Contract Manager reviews and accepts any invoice, the approved invoice will then be submitted to Authority's Accounts Payable for payment. Authority shall remit payment to Contractor within thirty (30) calendar days from the date of approval of an undisputed invoice by Authority Contract Manager.

6.6. RESPONSE TO REQUEST FOR ASSURANCES

Authority may at its sole discretion and at any time during the term of this Agreement request Contractor to provide Authority with the yearly audited financial records of Bombardier, Inc as evidence of Contractor's continuing financial ability to undertake and fulfill its obligations under this Agreement. Authority may submit such information to an independent outside certified public accountant for a determination as to Contractor's financial ability to undertake and fulfill its obligations in this Agreement. Areas to be examined may include, but are not limited to internal liquidity, operating efficiency, operating profitability and financial risk. A determination by such certified public accountant that Contractor does not have the requisite financial ability to perform its duties pursuant to this Agreement may, at the sole discretion of Authority, constitute a material breach of this Agreement, entitling Authority to terminate this Agreement as provided hereunder.

7. TERM OF AGREEMENT

The term of this Agreement shall be from January 1, 2017 to June 30, 2025 with a single four-year option as awarded by the Board on September 23, 2016. Mobilization will be during the period of January 1, 2017 to June 30, 2017.

Authority in its sole discretion may elect to extend the term of this Agreement, by providing notice to contractor no later than (i) June 30, 2024, or (ii) the end of the seventh year after the Start Date, whichever occurs later, of its intent to exercise its option to extend the term.

8. TERMINATION FOR CONVENIENCE

Authority may terminate this Agreement for Authority's convenience at any time by giving Contractor a minimum of thirty (30) calendar days' written notice of Authority's election to terminate. Upon receipt of such notice, Contractor shall immediately take action not to incur any additional obligation, cost or expense, except as may be reasonably necessary to terminate its activities. Authority shall pay Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by Contractor to effect such termination. Thereafter, Contractor shall not be entitled to make any claim against Authority in connection with this Agreement. All finished or unfinished documents and any materials procured for or produced pursuant to this Agreement shall become the property of Authority upon the effective date of such termination for convenience.

9. TERMINATION FOR BREACH OF AGREEMENT

- 9.1.** If Contractor fails to perform any of the provisions of this Agreement or fails to make progress so as to endanger timely performance of this Agreement, and does not cure such failure within thirty (30) days after receipt of written notification that such failure has occurred, Authority may give Contractor written notice that Contractor is in Default. If Contractor does not cure such Default or provide a plan to cure such Default which is acceptable to Authority within the time specified by Authority, then Authority may terminate this Agreement on the basis of Contractor's breach of this Agreement
- 9.2.** If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then Authority may immediately terminate this Agreement.
- 9.3.** If Contractor violates Section 31, Compliance with Lobbying Policies, then Authority may immediately terminate this Agreement.
- 9.4.** In the event Authority terminates this Agreement as provided in this Section, Authority may procure, upon such terms and in such manner as Authority may deem appropriate, Services similar in scope and level of effort to those so terminated, and Contractor shall be liable to Authority for all of Authority's costs and damages, including, but not limited to, any excess costs for such Services that are in excess of the amount Authority would have paid for such Services under this Agreement.
- 9.5.** All finished or unfinished documents and any materials procured for or produced pursuant to this Agreement shall become the property of Authority upon the effective date of such termination for default.
- 9.6.** If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that Contractor was not in Default under the provisions of this Section, or that the Default was excusable under the terms of this Agreement, the rights and obligations of the

parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.

- 9.7.** The rights and remedies of Authority provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10. NOTIFICATION

All notices hereunder concerning this Agreement and the Services to be performed shall be physically transmitted by courier, overnight, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To Authority:

Southern California Regional Rail Authority

One Gateway Plaza, 12th Floor

Los Angeles, CA. 90012

Attn: Manchi Yi, Principal Contract and Compliance Administrator

With a copy to Authority's Contract Manager

To Contractor:

Bombardier Mass Transit Corporation

71 Wall Street

Plattsburgh, NY 12901

Attn: Thomas J. Martin

11. AUTHORITY AND CONTRACTOR'S REPRESENTATIVES

11.1. AUTHORITY'S CONTRACT MANAGER

Authority's Contract Manager under this Agreement shall be the Assistant Director, Equipment.

11.2. CONTRACTOR'S KEY STAFF

The following are Contractor's Key Staff:

Name	Role
Sylvain Gervais	General Manager
Mark Brinksma	Shop Manager
Matthew Lugo	Operation Manager
Martin Ponce	Servicing Manager
Mario Moorer	HSE

11.2.1. Authority awarded this Agreement to Contractor based on Authority's confidence and reliance on the expertise of Contractor's Key Staff identified above. Contractor shall not reassign any Key Staff or assign other personnel to Key Staff roles until Authority approves a replacement in writing in accordance with Section 2.12 of this Agreement.

12. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by Contractor either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by Contractor, without the prior written consent of Authority, which consent Authority may grant or withhold in the exercise of its sole discretion. Consent by Authority shall not be deemed to relieve Contractor of its obligations to comply fully with all terms and conditions of this Agreement.

13. SUBCONTRACTING

Authority hereby consents to Contractor's subcontracting portions of the Services to the parties identified below for the functions described in Contractor's proposal. Contractor shall include in each subcontract agreement the stipulation that Contractor, not Authority, is solely responsible for payment to the Subcontractor for the amounts owing and that the Subcontractor shall have no claim, and shall take no action against Authority, Member Agencies or officers, directors, employees or sureties of either of them for nonpayment by Contractor. Any such subcontract agreement shall also include a provision that Subcontractor agrees to perform its work in accordance with the standards and obligations established by this Agreement. With respect to any Services provided by a Subcontractor, Contractor remains primarily liable to Authority for fulfillment of all obligations stated in this Agreement, including the obligations stated in Section 16, Indemnity, of this Agreement. Nothing contained herein nor any course of conduct shall be construed to create any contractual relationship between Authority and any Subcontractor. Contractor shall provide to Authority an executed copy of each subcontract agreement, including any amendments thereto.

Subcontractor Name and Address	Services to Be Performed
Hallcon Corporation 5775 Younge Street, Suite 1010 Toronto, On, M2M 4J1, Canada Attn: Dan Cox Tel. 416-885-6016	Specialty Cleaning and Support Services

14. INDEPENDENT CONTRACTOR

Contractor's relationship to Authority in the performance of this Agreement is that of an independent contractor. Contractor's personnel performing Services pursuant to the terms and conditions of this Agreement shall at all times be under Contractor's

exclusive direction and control and shall be employees of Contractor and not employees of Authority. Contractor shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

15. INSURANCE

Throughout the duration of this Agreement, Contractor shall maintain the following insurance, which shall be full-coverage insurance, including all deductibles, not subject to self-insurance provisions. Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the course of this Agreement.

15.1. Commercial General Liability to include Products/Completed Operations, independent contractor, Contractual Liability, and Personal Injury Liability; with at least the following limits of liability:

15.1.1. Bodily Injury Liability Limits of \$10,000,000 per occurrence, and Property Damage Liability Limits of \$10,000,000 per occurrence, or

15.1.2. Aggregate liability for both bodily injury and property damage liability of \$20,000,000.

15.2. Automobile Liability with the following limits:

15.2.1. Bodily Injury with limits of \$1,000,000 per occurrence and Property Damage with limits of \$1,000,000 per occurrence, or

15.2.2. Combined single limits of Liability for Bodily and Property Damage of \$2,000,000 per occurrence.

15.3. Workers' Compensation Insurance with the limits established and required by the State of California.

15.4. Employer's Liability with limits of \$1,000,000 per occurrence.

15.5. Environmental Pollution Liability with limits of \$4,000,000 per occurrence.

15.6. Inland marine coverage with limits of \$1,000,000 per occurrence.

15.7. Railroad Protective Liability Insurance

15.7.1. Contractor shall provide, with respect to the operations Contractor or any of its Subcontractors perform on any property of Authority in accordance with criteria shown in "Rules and Requirements for Construction on Railway Property," Railroad Protective Liability Insurance, AAR, AASHTO (ISO/RIMA) form, in the name of:

15.7.1.A. Insured:

Southern California Regional Rail Authority

15.7.1.B. Additionally Insured:

BNSF Railway Company
Los Angeles County Metropolitan Transportation
Authority
Orange County Transportation Authority
Riverside County Transportation Commission
San Bernardino Associated Government
Ventura County Transportation Commission
Others at the request of Authority

15.7.2. The policy shall have limits of liability of not less than \$5 million per occurrence, combined single limit, for coverage and for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of Property, including the loss of use thereof. A \$10 million annual aggregate shall apply.

15.8. Prior to commencement of any work hereunder, Contractor shall furnish to Authority's Contract Administrator an endorsement showing the required insurance coverages for Contractor and further providing that:

15.8.1. Authority, its officers, directors, employees, Member Agencies and agents are named as an additional insured via endorsement on Contractor's Commercial General Liability and Automobile Liability insurance with respect to Contractor's performance hereunder; and

15.8.2. The coverage shall be primary and noncontributory as to any other insurance with respect to liability hereunder; and or

15.8.3. Pursuant to Section 15, Contractor agrees both to name SCRRA as an additional insured on Contractor's Commercial General Liability Insurance (CGL), and to provide SCRRA with Railroad Protective Liability Insurance (RPL). To the extent RPL provided by Contractor provides SCRRA primary coverage, paying for defense and legal liability pursuant to its terms, Contractor's CGL shall be excess over the RPL. Contractor's CGL shall otherwise be primary and non-contributory as to any other liability insurance available to SCRRA.

15.8.4. Thirty (30) days' prior written notice of cancellation or of material change in coverage be given to Authority by endorsement.

15.9. "Occurrence," as used herein, means any event or related exposure to conditions which result in bodily injury or property damage.

15.10. Any deductibles or self-insured retentions must be declared to and approved by Authority. At the option of Authority, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Authority, its officials and employees; or (2) Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

15.10.1. With respect to the Railroad Protective Liability Insurance required under Section 15.7., any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officials and employees or the Contractor shall provide applicable collateral guaranteeing payment of losses and related investigation, claim administration and defense expenses.

15.11. Authority shall be responsible to provide all insurance pertaining to Authority-owned vehicles, including but not limited to auto liability and collision coverage naming Contractor as additional insured. Upon mutual agreement between Contractor and Authority, if Contractor's negligence caused an insurance claim, Contractor shall be responsible for a mutually agreed-to deductible amount not to exceed \$1,000.00 per occurrence. Authority's obligation to provide insurance with respect to Authority-owned vehicles does not waive any Contractor responsibilities for insurance coverage as required in this Section 15.

16. INDEMNITY

Except as otherwise provided in this paragraph, Contractor shall indemnify, defend and hold harmless Authority, and its Member Agencies, and their officers, directors, employees and agents ("Indemnified Parties") from and against any and all liability, expense (including but not limited to defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of Contractor) arising from or connected with any alleged act and/or omission of Contractor, its officers, directors, employees, agents, Subcontractors or suppliers.

16.1. Contractor shall be responsible for compliance with the provisions of all applicable regulations of FRA and CPUC, other entities with regulatory authority over the rail industry as well as all other applicable federal, state and municipal laws regarding the condition of the Service Property as such laws and regulations apply to the matters that are within the scope of this Agreement.

Unless Authority has withheld from Contractor the funding specifically requested by Contractor to remedy a violation or other authority to remedy it, Contractor shall also indemnify, protect, defend and save Authority and its officers, agents and employees harmless from all fines, penalties, and liabilities imposed under such laws and regulations regarding the condition of the Service Property.

- 16.2.** The Authority shall defend, indemnify, and hold harmless Contractor, its officers, employees, agents or SubContractors, from liability for any loss or damage to the environment that occurred or existed prior to the date that Contractor occupies or assumes responsibility of each such part of the Service Property, except where the loss or damage is attributable to an act or omission of Contractor, its employees, agents or SubContractors. Contractor shall defend, indemnify, and hold harmless the Authority, its Member Agencies, and their respective officers, employees and agents from any and all liability for any loss or damage to the environment attributable to an act or omission of Contractor, its officers, employees, agents or SubContractors.
- 16.3.** The Contractor shall bear no responsibility relating to design related issues of the Equipment. The Authority will exercise all of its rights relating to "parts availability" found in the contracts it executed with the manufacturers of its vehicles, if needed. Also, Contractor bears no responsibility relating to the potential obsolescence of vehicle parts, other than for the provision of a partial resource to help the Authority find a replacement part, when needed. Such resource will not be responsible for the procurement of such replacement part, nor will it have any responsibility with regards to material availability. The Contractor shall indemnify the Authority for the cost of parts ordered wrongfully as a result of the Contractor's error and shall also indemnify the Authority for any misuse of parts by the Contractor that result in breakage or repair of the equipment. In addition, Contractor shall indemnify the Authority for delays in repair of the equipment due to the Contractor's inability to order timely parts with known lead times.
- 16.4.** Contractor will be excused and not be held responsible for, and the Authority agrees to defend, indemnify and hold Contractor harmless, for any and all claims/damages/liabilities/costs/losses/expenses relating directly or indirectly to the PTC equipment and that are not directly arising from the faulty maintenance work (workmanship only) performed by Contractor. Without limiting the foregoing, it is agreed that any issue relating to the PTC equipment that is not directly arising from the faulty maintenance work performed by the Contractor will not be considered in the calculation/determination of Contractor's performance.

17. REVISIONS IN SCOPE OF SERVICE

By written notice or order, Authority may, from time to time, order Contractor to suspend work or make changes to this Agreement. Changes in the Services shall be mutually agreed to and incorporated into a written amendment to this Agreement executed by

Authority and Contractor. Upon execution of any amendment, Contractor shall perform the Services as amended.

18. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced pursuant to or in connection with this Agreement shall be delivered to, and become the property of, Authority. Contractor may make copies for its records, but shall not furnish any product generated pursuant to or in connection with this Agreement to others without written authorization from Authority.

19. RIGHTS IN PROPERTY

19.1. Authority shall provide access to the Service Property or such other property over which Authority exercises control as may be required by Contractor during the performance of the Services, as set forth in detail at Appendix A.

19.2. Authority and all its designees shall have access at all reasonable times to the premises in which any Authority property is located for the purpose of inspecting Authority property.

20. EQUIPMENT AND MATERIALS

Upon completing its performance pursuant to this Agreement or at such earlier dates as may be fixed by Authority: (1) Contractor shall prepare and submit a final list of all Authority-provided equipment, special tools, test equipment and materials, including the description, location and condition of such equipment and materials; and (2) Contractor shall prepare for assessment and return, all Authority equipment, special tools, test equipment and material as may be directed or authorized by Authority.

21. STANDARD OF PERFORMANCE

21.1. Contractor shall perform and exercise, and require its Subcontractors to perform and exercise, due professional care and competence in the performance of the Services in accordance with the requirements of this Agreement. Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Services, it being understood that Authority will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Services. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this Section 21 shall survive termination or expiration of this Agreement and/or final payment hereunder.

21.2. All Contractor's personnel shall have sufficient skill and experience to perform the Services assigned to them. Authority shall have the right, at its sole discretion, to require the removal of Contractor's personnel at any

level assigned to the performance of the Services at no additional fee or cost to Authority, if Authority considers such removal in its best interests, requests such removal in writing and such request is not done for illegal reasons. Further, an employee of Contractor who is removed from performing Services under this Agreement under this Section shall not be reassigned to perform Services without Authority's prior written authority.

21.3. Contractor warrants and represents that it has the professional capabilities, qualifications, licenses, skilled personnel, experience, expertise and financial resources, and will provide the necessary tools and materials not provided by Authority, to perform the Services in an efficient, professional and timely manner.

21.4. Each Party shall promptly notify the other Party of all errors, inconsistencies, omissions, and/or non-conformities that it discovers; and, in instances where such errors, inconsistencies, omissions and/or non-conformities are discovered, shall obtain specific instructions in writing from either Party before proceeding with any Services so affected. Any Services so affected which are performed prior to a resolution—shall be performed at Contractor's sole risk. Contractor shall not take advantage of any apparent error, inconsistency, omission, and/or non-conformity that may be found in this Agreement. Authority shall be entitled to make such corrections and interpretations as Authority may deem necessary for the fulfillment of the intent of this Agreement. Omissions or misdescriptions of any Services that are manifestly necessary to carry out the intent of this Agreement, or that are customarily performed, shall not relieve Contractor from performing such Services and Contractor shall perform such Services as if fully and correctly set forth in this Agreement.

22. DISPUTE RESOLUTION

22.1. SETTLEMENT OF DISPUTES

The parties hereto shall make every reasonable effort to settle any dispute arising out of or in connection with this Agreement through good faith discussion between the parties' respective designated representatives. Authority and Contractor shall make every reasonable effort to meet within thirty (30) calendar days of the inception of any dispute to discuss disputes arising under Section 6. If the parties so agree, they may involve a disinterested person experienced in maintenance of equipment services, and/or an accountant, as appropriate, to render his or her objective advice and opinions, which shall be advisory only and not binding unless the parties agree in writing to be bound by such advice or opinions in a particular instance.

22.2. CONTROVERSIES SUBJECT TO MEDIATION OR INDEPENDENT AUDIT

Any claim or controversy between Authority and Contractor which cannot be resolved by the parties concerning the interpretation, application, or implementation of this Agreement shall be submitted to a mediator or independent auditor pursuant to the provisions of this Section; provided, however, that no such claim or controversy shall be submitted to a mediator or independent auditor until it has first been submitted to Authority's Director of Engineering & Construction and Contractor's General Manager for resolution between them.

22.3. MEDIATOR/INDEPENDENT AUDITOR

22.3.1. Authority and Contractor shall jointly select a mediator or independent auditor within twenty-one (21) calendar days after the submittal of a dispute under this Section. The selected mediator or independent auditor shall be properly qualified in the required areas of public sector finance and/or the surface transportation industry, and shall have experience in the analysis of transportation operating and capital costs and revenues and transportation operational issues.

22.3.2. The mediator or independent auditor shall meet with the parties within twenty-one (21) calendar days after such auditor's selection to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) calendar days, the mediator or auditor shall, after consideration of the parties' positions and written submittals, if any, issue written recommendations for resolution of the dispute. Any such written submittals shall be postmarked by the tenth calendar day after the parties' last meeting with the mediator or auditor. The recommendations of the mediator or independent auditor shall be issued within thirty (30) calendar days after the later of the conclusion of mediation or the submittal of written positions, if any. All meetings and proceedings shall be held in Los Angeles County, California, at a time and location acceptable to both parties.

22.4. PENDING RESOLUTION

Except as provided specifically in other Sections of this Agreement, while such mediation is proceeding, the business, the operations to be conducted, physical plant to be used, and compensation for Services under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the mediator/independent auditor shall make a preliminary ruling to the contrary.

22.5. COST OF MEDIATION

Each party hereto shall bear the costs and expenses incurred by it in connection with such mediation. The cost of the mediator or independent auditor shall be shared equally between the parties.

22.6. ENFORCEMENT

If a dispute is not resolved through mediation, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction.

23. LIQUIDATED DAMAGES

Notwithstanding anything to the contrary, Contractor will only be held liable for the damages or liquidated damages when the Authority demonstrates that the underlying event (giving rise to such damages) directly results from Contractor's improper maintenance of the vehicles (workmanship) and/or the lack of timely notice by Contractor about the needed material to perform the Agreement.

Furthermore, it is specifically understood that, when considering/calculating the fleet availability, performance, reliability, cleanliness and on-time performance, Liquidated Damages will only be considered for issues that are directly resulting from Contractor's improper maintenance of the vehicles (workmanship) and/or the lack of timely notice by Contractor about the needed material to perform the Agreement.

Authority shall be damaged if Contractor fails to perform the Services adequately or in a timely manner. For certain performance failures, actual damages to Authority may be difficult or impractical to determine. Accordingly, Contractor agrees to pay Authority Liquidated Damages as set forth in this Section 23 and as otherwise provided in this Agreement. Such Liquidated Damages are intended to reasonably compensate Authority for harm or injury caused by Contractor and not susceptible to quantification, and shall not be deemed to be a penalty. Liquidated Damages for any month will be limited, for all causes, to a maximum of ten (10) percent of the Total Invoice Value for the month in which the damages occurred.

23.1. TRAIN PERFORMANCE

Contractor agrees to pay Authority Liquidated Damages as follows in connection with any failure by Contractor to prevent Contractor's performance of the Services from interfering with Authority Commuter Railroad Operations:

23.1.1. Contractor agrees to pay Authority Liquidated Damages as follows:

- 23.1.1.A. \$500 for each train that arrives at it's final destination or arrives at the terminal/turn station more than six (6) minutes later than the time stated in Metrolink's public timetable, if the primary cause of the delay is directly attributable to a vehicle related failure, a negligent act or omission of Contractor, a Contractor employee or Subcontractor.
- 23.1.1.B. \$5,000 for each train that arrives at it's final destination twenty one (21) minutes or more later than the time stated in Metrolink's public timetable, if the primary cause of the delay is directly attributable to a vehicle related failure, or a negligent act or omission of Contractor, a Contractor employee or Subcontractor.
- 23.1.1.C. \$5,000 for each trains annulled or terminated, if the primary cause of the delay is directly attributable to a vehicle related failure, or a negligent act or omission of Contractor, a Contractor employee or Subcontractor. Trains annulled or terminated will be considered 20 minutes late for the purpose of this Liquidated Damage calculation. This \$5,000 amount will increase by \$1,000 every three years for the life of this Agreement.
- 23.1.1.D. The cumulative maximum Liquidated Damages assessed for any single calendar day shall be limited to a maximum of \$10,000 and the maximum for any single calendar month shall be \$50,000. The \$10,000 amount set forth in this Subsection will increase by \$1,000 every three years and the \$50,000 amount set forth in this Subsection will increase by \$10,000 every three years for the life of this Agreement.

23.1.2. Liquidated Damages for Train Performance will be based upon the difference between actual and scheduled departure times of the train, minus any other delays to that trip identified by Authority's Director of Equipment or his or her designee, at the train's station. Liquidated Damages will apply to any train directly delayed by Contractor to any other train delayed by such train (cascade train delays). To the extent possible, delay times will be determined by replays of Authority's Wabtec dispatch system or by utilizing other train arrival monitoring system as Authority may adopt in the

future.

- 23.1.3.** Authority, at its sole discretion, may consider mitigating factors including whether other entities, such as Train Operations Contractor, Track Maintenance Contractor or the C&S Maintenance Contractor contributed in part to any delay.
- 23.1.4.** The Contractor agrees to pay Authority Liquidated Damages as follows for each Service Failures:

HVAC System Failures	\$2000
Door Failure	\$500
Lighting System Failure	\$500
Toilet System Failure	\$750
Communication System Failure	\$500
Ride Quality Failure	\$1000

Such amounts will increase by 20% every three years for the life of this Agreement.

- 23.1.5.** The Contractor agrees to pay Authority Liquidated Damages as follows for Equipment Availability Failures for incorrect Train Configuration not having Bike Car, Extended ADA Car and/or Guardian Car behind locomotive to meet service as per Train Initial Terminal Dispatch Schedule, see Appendix K. \$500 for each failure to configure trainset as per dispatch schedule.
- 23.1.6.** The Contractor agrees to pay Authority Liquidated Damages for each Cleanliness Failure of \$500. A failure shall exist for purposes of assessing a Cleanliness Failure payment if the Total Score reported on Metrolink Daily Coach Cleaning Scorecard is less than 88. Fleet Odor Control failures may result in payment of Liquidated Damages for Toilet System Failure.

23.2. QUALITY CONTROL REPORTING

- 23.2.1.** Contractor's monthly QAP report is a required deliverable under this Agreement. Each month, Contractor shall be assessed Liquidated Damages for late or incomplete reports because the failure to timely provide complete reports will be detrimental to Authority, and the injury to Authority will be difficult to quantify.
- 23.2.2.** The Liquidated Damages assessed shall be \$500 per occurrence.

23.3. STAFF VACANCIES

Contractor will be liable to Authority in the amount of \$600 per calendar day, starting at the sixty first day of vacancy of the Contractor General Manager or other Key Staff, computed for each day thereafter that the Contractor fails to fill the position of Contractor General Manager, or other Key Staff vacancy.

24. SUBMITTAL OF CLAIMS BY CONTRACTOR

Contractor shall file any and all claims with Authority's Contract Manager in writing within thirty (30) days of the event or occurrence giving rise to the claim. Contractor shall submit such claim and provide sufficient detail to enable Authority to ascertain the claim's basis and amount, and shall describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by Contractor. Contractor shall continue to perform in accordance with this Agreement notwithstanding any pending claims Contractor may have submitted to Authority.

25. EQUAL OPPORTUNITY

25.1. Contractor shall not discriminate, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Contractor shall take action to insure that applicants are employed, and that employees are treated during employment without regard to their status with respect to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, and selection for training, including apprenticeship.

25.2. Contractor shall provide to Authority, not later than the fifteenth (15th) day of each month, Contractor's Monthly Employment Utilization Report (MEUR) covering the preceding month's Service activity. This report shall contain information on all personnel performing Services pursuant to this Agreement. Subcontractors shall also provide the same reports, through Contractor, by the fifteenth (15th) day of the month subsequent to the reporting period.

25.3. Contractor shall include the following assurance clause regarding Non-Discrimination in every subcontract agreement:

"Contractor shall not discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, marital status, sex, age or sexual orientation in the performance of this Agreement. Contractor shall carry out applicable requirements of federal law. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Southern California Regional Rail Authority deems appropriate."

26. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Authority has adopted a Disadvantaged Business Enterprise (DBE) Program, in conformance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs". This DOT-assisted project is subject to these stipulated regulations, which are hereby incorporated in their entirety by this reference. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. See Appendix P.

27. NOTIFICATION OF EMPLOYMENT OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY BOARD MEMBERS/ALTERNATES AND EMPLOYEES

To ensure compliance with Authority's Ethics Policy, Contractor shall provide written notice to Authority disclosing the identity of any individual who Contractor desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of Authority, or (2) served as a Board Member/Alternate or an employee of Authority within the previous 12 months of the date of the proposed employment or retention by Contractor. Contractor's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

28. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Agreement, Contractor shall provide a written statement disclosing any political contribution(s) of \$250 or more made by Contractor or any Subcontractor within the preceding twelve (12) months of the date of the proposed amendment. Contributions for which disclosure is required include those made by any agent, person or entity on behalf of Contractor or Subcontractor.

29. COMPLIANCE WITH LAW

Contractor shall familiarize itself with and perform the Services required under this Agreement in conformity with the requirements and standards of Authority, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and services may be affected by Services under this Agreement. Contractor shall also comply with all applicable federal, California and local laws and ordinances.

30. COMPLIANCE WITH RULES AND REGULATIONS

- 30.1.** General. Contractor shall be responsible for compliance with the provisions, including any successor provisions, of all applicable regulations of FRA and other entities with regulatory authority over the rail industry as well as other applicable federal, state and local laws regarding the provisions of the Services as they apply to the matters that are within the scope of this Agreement. Unless Authority has withheld from Contractor the funding specifically requested by Contractor to remedy a violation or other authority to remedy it, Contractor shall also indemnify, protect and defend and save Authority and its officers, agents and employees harmless from all fines, and liabilities imposed under such laws and regulations regarding the Services.
- 30.2.** Changes in Law. If any changes are made to any law or regulation affecting the Services as described in this Agreement between the date of submission of Contractor's Cost Proposal and during the term, including any options, if exercised, and such changes have an impact on Contractor's cost to provide the Services, the budget shall be amended pursuant to Section 5.7 Budget Amendment for Unforeseen Events.

31. COMPLIANCE WITH LOBBYING POLICIES

- 31.1.** Contractor agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by Authority in its Ethics Policy, it shall comply or ensure that Authority's Lobbying Firm, Lobbyist or both of them, as the case may be, complies with Authority's Ethics Policy.
- 31.2.** If Contractor as Lobbyist Employer or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with Authority's Ethics Policy, such failure shall be considered a material breach of this Agreement and Authority shall have the right to immediately terminate or suspend this Agreement.

32. PUBLIC RECORDS ACT

- 32.1.** All records, documents, drawings, plans, specifications and other material relating to conduct of Authority's business, including materials submitted by Contractor in its proposal and during the course of performing the Services under this Agreement, shall become the exclusive property of Authority and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. Authority's use and disclosure of its records are governed by this Act.
- 32.2.** Authority will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of such terms as

"trade secret", "confidential" or "proprietary". Authority will accept materials clearly and prominently labeled "TRADE SECRET", "CONFIDENTIAL" or "PROPRIETARY" as Contractor may so determine. Authority will endeavor to notify Contractor of any request received by Authority to disclose such materials. Under no circumstances, however, will Authority be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of Authority or its officers, employees and/or Contractors.

- 32.3.** Contractor, and each of its Subcontractors, shall be solely responsible for all determinations made under the California Public Records Act, and for clearly and prominently marking each and every page or sheet of information with "TRADE SECRET", "CONFIDENTIAL", or "PROPRIETARY" as Contractor or any Subcontractor determines to be appropriate. Contractor shall contact its own legal counsel concerning the California Public Records Act and its applicability to Contractor's own circumstances.
- 32.4.** In the event of litigation concerning the disclosure of any material submitted by Contractor, Authority's sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. Contractor, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold Authority harmless from all costs and expenses, including attorneys' fees, in connection with such action.

33. CONFIDENTIALITY

Contractor agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by Contractor in the performance of this Agreement shall be considered and kept as the private and privileged records of Authority and will not be divulged to any person, firm, corporation, or other entity except on the prior written authorization of Authority. Further, upon expiration or termination of this Agreement for any reason, Contractor agrees that it will continue to treat as private and privileged any information, data, figures, records and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon prior written authority of Authority or as otherwise ordered by a court having jurisdiction of the matter.

34. CONTRACTOR'S INTERACTION WITH THE MEDIA, THE PUBLIC AND EXTERNAL REGULATORY AGENCIES

- 34.1.** Authority shall review and approve in writing all Authority-related copy proposed to be used by Contractor for advertising or public relations purposes prior to any publication of such material. Contractor shall not

allow Authority-related copy to be published in its advertisements and public relations programs prior to receiving such approval. Contractor shall ensure that all published information is factual and that it does not in any way imply that Authority endorses Contractor's firm, service, or product.

- 34.2.** Contractor shall cooperate with regulatory agencies including the FRA, the CPUC and other external regulatory agencies to Authority and shall refer all inquiries from regulatory agencies when and where possible to Authority for handling.
- 34.3.** Contractor shall refer all inquiries from any news media organization to Authority, and shall comply with the procedures of Authority's Public Affairs staff regarding statements to the media relating to this Agreement or the Services.
- 34.4.** If Contractor receives a complaint from any citizen or purported community representative, Contractor shall inform Authority as soon as possible and inform Authority of any action Contractor has taken with respect to such complaint.
- 34.5.** The provisions of this Section 34 shall survive the termination or expiration of this Agreement.

35. CLASSIFICATION OF CONTRACTOR'S LICENSE

Throughout the duration of this Agreement, Contractor and its Subcontractors, if any, shall possess the appropriate license(s) including those issued by the California State License Board to perform the Services specified herein.

36. LABOR AGREEMENTS

36.1. AGREEMENTS

- 36.1.1. General.** Contractor shall not enter into agreements in which it changes the number of crafts providing the Services. Nothing contained in this Agreement will require Contractor to perform any service or take any action that would violate any law or regulation. Authority does not accept, succeed to, or assume, and this Agreement shall not be construed to impose or allow any acceptance, succession to, or assumption of, any obligations of Contractor under any of its collective bargaining agreements with its employees or their representatives. Contractor shall use all applicable agreements in place with its employees or their representatives to obtain any all available cost and other efficiencies in the work force that can be derived from such practices to the benefit of Authority.

36.1.2. Rule Changes. Authority shall not be required to reimburse Contractor for any cost increases related to work rule changes, whether in the year the changes become effective or in any subsequent Fiscal Year, unless the changes are the result of a change in law.

36.1.3. Picketing. Notwithstanding Section 17, Contractor's agreement with any Covered Employees shall include a no-strike clause or, in the alternative, a clause that requires the employees covered by that agreement to complete all of the dispute resolution procedures in that agreement and required by applicable law before engaging in any self-help actions. If employees of Contractor picket facilities of Authority, or lawfully honor a picket line of another union at an Authority facility, in connection with a labor dispute of any kind, and if Contractor is unable to provide Rolling Stock for normally scheduled services, Contractor shall reimburse Authority for legal and related expenses, including but not limited to, attorney fees, incurred by Authority in its efforts to terminate such picketing. To the extent that such picketing disrupts service operation, Contractor shall reimburse Authority for any and all costs related to the service disruption, excluding alternative transportation for impacted Metrolink passengers. If picketing activities cause the Contractor to incur any additional costs in complying with the terms of this Agreement, there will be no reimbursement of such costs.

36.2. CONTRACTOR EMPLOYEE DISCIPLINE AND REMOVAL

36.2.1. Contractor Employee Conduct. All employees who are engaged in the provision of the Services shall be Qualified and experienced, as defined in this Agreement and the Appendices thereto, and shall perform their duties in a courteous, efficient and safe manner. Employees dealing with the public shall be clean and properly attired while on duty. Employees shall not engage in any conduct that compromises AUTHORITY's service quality, system performance, public image or system safety. Because the success of Authority's Commuter Rail Operations is dependent upon the courtesy and proper decorum of all employees who are involved in the provision of the Services, the parties consider that any conduct that is not consistent with the objectives stated in the first two sentences to be "conduct unbecoming an employee". Employees who engage in conduct unbecoming an employee will be considered to be not Qualified for Authority service.

36.2.2. SERIOUS INFRACTION

36.2.2.A. Serious Infraction

36.2.2.A.1 Upon notice from Authority to Contractor that an employee has engaged in conduct unbecoming an employee that Authority, in its sole discretion, considers to be a serious infraction, Authority may direct Contractor to remove the employee from Authority service at Authority's sole discretion.

36.2.2.A.2 The following is a non-comprehensive, illustrative list of examples of instances of serious infractions:

- a. Actions that are inconsistent with standard operating practices or procedures and/or which damage Rolling Stock, equipment or facilities used in the provision of the Services, or other services provided by Authority;
- b. Violations of the General Code of Operating Rules as they pertain to this Agreement and/or any applicable federal, state, or local laws or regulatory requirements that affect the safety and quality of the Metrolink Commuter Rail System;
- c. Misconduct towards a passenger, fellow employee, Authority contractor employee, Authority employee, public official or customer which may include, but shall not be limited to: any use of language that is obscene, risqué or religiously, ethnically or sexually demeaning; making light of a physical disability, or of religious beliefs, ethnic origins, or sexual orientation (regardless of whether it is directed at a customer); any instance of belligerent or malicious behavior; or willful failure to assist customers;
- d. Extreme negligence;
- e. Use or possession of alcohol or controlled substances while on duty or subject to duty;
- f. Dishonesty;
- g. Disorderly or immoral conduct;
- h. Fighting; or
- i. Sleeping.

36.2.2.A.3 An employee who has been removed from Authority service for a serious infraction may apply for reinstatement to Authority service after a minimum of thirty (30) days unless the employee was removed for conduct identified in Subsection 36.2.2.A.1 and 36.2.2.A.2. Such employees may not apply for reinstatement for Authority service at any time. Authority is under no obligation to reinstate employees to Authority service, and may do so only upon demonstration to Authority's satisfaction that the employee has received training and counseling, as necessary to prevent further conduct unbecoming an employee. Authority will not be responsible for any payments to any employee that may result from the findings of a disciplinary hearing, and will not be required by any such finding to return the employee to Authority service.

36.2.2.B. Lesser Infractions

36.2.2.B.1 Upon notice from Authority to Contractor that an employee has committed lesser infractions on two or more instances, Authority may direct Contractor to remove the employee from Authority service at Authority's sole discretion. The following is a non-comprehensive, illustrative list of examples of instances of lesser infractions:

- a. Littering rolling stock, station areas, facilities or any other part of the Service Property used in providing the Services; or
- b. Smoking outside of designated areas, reading, watching or listening to television, or engaging in other similar activities that are unrelated to provision of the Services while on duty.

36.2.2.B.2 An employee who has been removed from Authority service for lesser infractions may apply for reinstatement to Authority service after a minimum of thirty (30) days. Authority is under no obligation to reinstate employees to Authority service, and may do so only upon demonstration to Authority's satisfaction that the employee has received training and counseling, as necessary to prevent further conduct unbecoming an employee. Authority will not be responsible for any payments to any employee that may result from the findings of a disciplinary hearing,

and will not be required by any such finding to return the employee to Authority service.

- 36.2.2.C. Authority Determination. For the purposes of this section Authority may base its determination that an employee has engaged in conduct unbecoming an employee upon either (1) documentation of the conduct resulting from direct observation by a knowledgeable representative of Authority, one of its Member Agencies, or of Contractor; or (2) a repeated pattern of conduct unbecoming an employee, documented and confirmed by Authority based on an investigation that can rely on letters or communications from persons other than Authority employees, Member Agency representatives or Contractor personnel.

37. SECTION 13(c) COMPLIANCE

37.1. Unless otherwise provided in this Agreement, Authority shall be legally and financially responsible for any claims or obligations imposed by Section 13(c) of the Federal Transit Act (codified at 49 U.S.C. §5333(b)) or under Authority's Section 13(c) arrangement when such claims or obligations arise in connection with the provision of the Services when such claims or obligations arise as a result of any actions or requirements of Authority. Authority shall indemnify and hold Contractor harmless for any Section 13(c) claims or obligations described in this Section that are the responsibility of Authority. The parties specifically agree that termination of this Agreement pursuant to Section 9, Termination for Breach of Agreement or at the expiration of the term of this Agreement, including failure to exercise any option to renew this Agreement, shall not be considered an action of Authority that requires Authority to indemnify Contractor for any such claims or obligations.

37.2. The responsibilities of Contractor relating to Section 13(c) shall be as follows:

37.2.1. Contractor shall be financially and legally responsible for any Section 13(c) claims or other Section 13(c) obligations that arise out of acts or omissions of Contractor in connection with the performance of the Services, including any work performed by Subcontractors, that are not directly or expressly approved in writing by Authority. Contractor shall indemnify and hold Authority harmless for any Section 13(c) claims or obligations described in this Section that are the responsibility of Contractor.

- 37.2.2.** Contractor agrees to afford to the employees of the current contractor who prior to the Start Date, are providing the services covered by this Agreement a priority in hiring for positions with Contractor. Contractor may independently establish reasonable qualifications for hiring, and may utilize such qualifications in the hiring process, including in connection with the hiring of any existing employees afforded a priority under this Section. Contractor shall provide to Authority a description of the process it will use to comply with this Section, including the procedure it will use in hiring and the training it will offer to assist existing employees now performing the Services covered by this Agreement to qualify for positions. Contractor must require that any Subcontractor comply with the requirements of this Section 37.2.2.
- 37.2.3.** Contractor shall bargain collectively with any labor organization that is selected by its employees in accordance with applicable law, and shall comply with the terms and conditions of any collective bargaining agreement that Contractor enters into with such labor organization.
- 37.2.4.** Contractor shall promptly provide Authority with all information Authority may request in connection with Authority's administration of its Section 13(c) obligations, including but not limited to the resolution or defense of Section 13(c) claims or disputes, and the negotiation of agreements or settlements over issues that may arise in connection with or relate to the Services. Contractor shall cooperate fully with Authority to avoid and minimize any Section 13(c) liability relating to the Services.
- 37.2.5.** The Capital Assistance Protective Arrangements Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53 for Authority, ATU, IBT, SEIU, IBEW, BLE, SCCC, NCEA and ALADS, CA-90-X908, dated May 6, 1999, and for Authority, the United Transportation Union, the Transportation-Communications International Union and the American Train Dispatchers Association, CA-90-X908 also dated May 6, 1999, which have been applied as well to other federal funds received by Authority for other projects, and other grants including CA-03-0662-00, CA-03-0747-00, CA-04-0045-01, CA-05-0205-00, CA-05-0208-00, CA-05-0223-01, CA-05-0235-05, CA-05-0258-00, CA-05-0271-02, CA-54-0001-00, CA-54-0014-02, CA-55-0005-00, CA-66-X017-00, CA-90-X908-03, CA-90-Y323-00, CA-90-Y412-00, CA-90-Y579-00, CA-90-Y608-03, CA-90-Y687-04, CA-90-Y934-00, CA-90-Y992-02, CA-96-X046-01, require any person, enterprise, body or agency which shall undertake the provision and/or operation of Authority's system, or any part or portion thereof, to

agree to be bound by the terms of those arrangements and accept the responsibility with Authority for full performance of those conditions. Contractor agrees to be bound by the terms of those arrangements and accepts the responsibility with Authority, as allocated in Sections 37.2.2 and 37.2.3 above of this Section, for full performance of these conditions.

38. LIMITATIONS ON COVENANTS NOT TO COMPETE

Contractor acknowledges that in the context of employment agreements, covenants not to compete, sometimes referred to as non-competition or non-compete clauses, are, with limited exceptions, void and unenforceable in California. If Contractor or any Subcontractor has any employment agreements that contain covenants not to compete that are not supported by an exception pursuant to California law, Contractor or such Subcontractor shall void any such covenant or modify such covenant by clearly stating such covenant is void and unenforceable in California. Contractor also agrees that neither it nor any Subcontractor shall intentionally enter into an employment agreement that Contractor or Subcontractor, as the case may be, knows is void and unenforceable in California.

39. FEDERAL REQUIREMENTS

39.1. APPLICABILITY OF FEDERAL GRANT AGREEMENT

This Agreement may be subject to one or more financial assistance agreements between Authority and the U.S. Department of Transportation, and which incorporate FTA Master Agreement and Circular 4220.1F, current as of the effective date of any such financial assistance agreement. Contractor and its Subcontractors are required to comply with all terms and conditions prescribed for third party agreements in such documents. Federal laws, regulations, policies and administrative practices may be modified or codified after the Effective Date of this Agreement and may apply to this Agreement. To assure compliance with changing Federal requirements, acceptance of this Agreement indicates that Contractor agrees to accept all changed requirements that apply to this Agreement.

39.2. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, the Master Grant Agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with any other provision in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority request that would cause Authority to be in violation of the FTA terms and conditions.

39.3. FEDERAL FUNDING LIMITATION

Contractor understands that a portion of the funds to pay for Contractor's performance for CTO work under this Agreement are anticipated to be made available from the United States Department of Transportation through FTA. All funds must be approved and administered by FTA. A portion of Authority's obligation hereunder may be payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, Authority may terminate or suspend Contractor's services without penalty. Authority shall notify Contractor promptly in writing of any non-allocation, delay, or disapproval of funding.

39.4. AUDIT AND INSPECTION OF RECORDS

39.4.1. Contractor shall maintain a complete set of records relating to this Agreement in accordance with generally accepted accounting procedures. Contractor shall permit the Authorized Representatives of Authority, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor and all of its Subcontractors, relating to Contractor's and any Subcontractors' performance under this Agreement until the expiration of three (3) years after final payment under this Agreement. Such periods of access and examination will continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Authority shall have the right to reproduce any of Contractor's or any Subcontractor's books, records or accounts. All such books, records, accounts and documents shall be maintained and be accessible to Authority for three (3) years after completion or termination of this Agreement for any reason; provided, however, that in the event of litigation or settlement of claims arising from the performance of this Agreement, Contractor agrees to maintain all records until Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of such litigation, appeals, claims or exceptions related thereto. For purposes of audit, the date of completion of this Agreement shall be the date of Authority's payment for Contractor's final billing, as so noted on Contractor's invoice, pursuant to this Agreement.

39.4.2. Contractor further agrees to include in all of its subcontracts under this Agreement a provision to the effect that the Subcontractor agrees that Authority, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly Authorized Representatives shall, until the

expiration of three (3) years after final payment under such subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor. The term "subcontract" as used in this Section excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

39.4.3. The periods of access and examination described above for records that relate to (1) disputes between Authority and Contractor; (2) litigation or settlement of claims arising out of the performance of this Agreement; or (3) any payment by Authority shall be subject to a reasonable audit, in accordance with Generally Accepted Accounting Practices, and evaluation of operations, performance, and costs. The scope of such audit and evaluation may be either financial or operational, or both, and may include, in addition to costs and wages reimbursed by Authority, Contractor's controls, practices, and procedures and their effect upon the efficiency and quality of performance provided by Contractor. Upon completion of the audit, any adjustments required to make any reconciliation required shall be paid or credited, as the case may be, in accordance with the payment provisions of this Agreement.

39.4.4. Costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly Authorized Representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

39.5. NONRESTRICTIVE CLAUSES

39.5.1. Wherever brand, manufacturer or product names are indicated in Authority's specifications, they are included for the purposes of establishing identification and a general description of any item specified. Wherever such names appear, the term "OR APPROVED EQUAL" is considered to follow. The decision whether to accept any proposed equivalent product proposed by Contractor will be rendered by Authority.

39.5.2. Contractor acknowledges and agrees that if Authority specifies a brand name, components and/or equipment in any specification, such identification shall not relieve Contractor from its responsibility to produce such specified product in accordance with the performance warranty and contractual requirements set forth in this Agreement. Contractor is responsible for notifying Authority of any inappropriate brand name, component and/or

equipment that may be called for in Authority's specifications, and to propose a suitable substitute for Authority's consideration.

39.6. WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

39.6.1. Contractor whose employees are performing safety-sensitive functions, as defined by FTA rules applicable to Authority, shall comply with the FTA drug and alcohol testing regulations set forth at 49 CFR Part 655, as such statute may be amended, and U.S. Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs set forth at 49 CFR Part 40, as such regulation may be amended. Contractor's failure to comply with the requirements of this Section 39.6.1 will entitle Authority to suspend or terminate this Agreement or to withhold payment of all or part of any Contractor invoice.

39.6.2. For purposes of this compliance program, safety-sensitive employees are defined as those employees whose job functions are, or whose job descriptions include, the performance of functions related to the safe operation of mass transportation service. Any supervisor who performs or whose job description includes the performance of any function listed below is also considered a safety-sensitive employee. The following are categories of safety-sensitive functions:

- a. Operating a revenue service vehicle, including when not in revenue service;
- b. Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License (CDL);
- c. Controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service;
- d. Maintaining revenue service vehicles or equipment used in revenue service; and
- e. Carrying a firearm for security purposes.

39.7. PREFERENCE FOR RECYCLED PRODUCTS, SUSTAINABLE PRACTICES

39.7.1.A. Contractor should use both sides of paper sheets for copying and printing, where practicable.

39.7.1.B. In performing the Services, Contractor shall make all appropriate efforts to foster the use of fly ash (40 CFR Part 249).

39.8. FEDERAL LOBBYING RESTRICTIONS

- 39.8.1.** Contractor has certified that it has not and shall not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency or any member of Congress in connection with obtaining any federal contract, grant or any other award subject to the requirements of 31 U.S.C. §1352. Each and every Subcontractor at all tiers shall certify to the contractor at the next tier above that such Subcontractor will not and has not used federal appropriated funds for such purpose. Contractor and all Subcontractors at all tiers shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on Contractor's or such Subcontractor's behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. §1352. Contractor shall require that such disclosures shall be forwarded from tier to tier up to Authority.
- 39.8.2.** In addition, if Contractor has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, Contractor must disclose all such activities. In such a case, Contractor shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities." Contractor must provide copies of all disclosure forms to Authority.
- 39.8.3.** Contractor and Subcontractors shall file with the Authority a disclosure form at the end of each calendar quarter in which there has occurred any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:
1. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or
 2. A change in the person(s) influencing or attempting to influence this federally funded Agreement; or
 3. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

39.9. ANTI-KICKBACK REQUIREMENTS

- 39.9.1.** Authority and Contractors are required to comply with the Copeland "Anti-Kickback" Act, 18 USC § 874 and 40 USC § 276(c), as supplemented in U.S. Department of Labor regulations at 29 CFR Part 3. Under State and federal law, it is a violation for Authority employees, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.
- 39.9.2.** "Kick-Back" as defined by Federal Acquisition Regulations means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract in connection with a subcontract relating to a prime contract.

39.10. REQUIREMENTS OF AMERICANS WITH DISABILITIES ACT

- 39.10.1.** Contractor is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:
1. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37.
 2. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27.
 3. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35.
 4. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36.
 5. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19.

6. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630.
7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F.
8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.
9. Any implementing requirements that the FTA may issue.

39.11. CONSERVATION

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

39.12. ENVIRONMENTAL STANDARDS

Contractor agrees to comply with all applicable standards, orders or requirements as follows:

39.12.1. Environmental Protection

- 39.12.1.A. Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, et seq., in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 15, et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.
- 39.12.1.B. Contractor shall not use any facility in the performance of this Agreement that is listed on the EPA List of Violating Facilities, unless and until the EPA eliminates said name of such facility from said

listing. Contractor shall promptly notify Authority of the receipt of any communication from the Director, Office of Federal Activities, EPA (or any successor agency), indicating that a facility to be used by Contractor is under consideration for listing on the EPA List of Violating Facilities. Contractor shall also report violations to Authority, to the FTA, and to the EPA Assistant Administrator for Enforcement.

39.12.1.C. Contractor shall provide Authority with the name, address and telephone number of any proposed disposal site. Contractor shall obtain Authority's written approval before using any disposal site. Such approval shall not relieve Contractor of its responsibilities under this Agreement and the law to secure a licensed, safe and secure disposal site.

39.12.2.Clean Air. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, et seq., all applicable standards of the State of California and all clarifications, mitigation measures, and any other requirements approved by Authority in accordance with State and federal laws.

39.12.2.A. Contractor shall comply with all rules, regulations, and ordinances of the South Coast Air Quality management District ("SCAQMD") and statutes of the State that apply to any Services performed pursuant to this Agreement, including any air quality rules, regulations, ordinances and statutes specified in Section 11017 of the California Government Code. Contractor, Subcontractors and all suppliers shall submit evidence to Authority that the governing air criteria are being met; such evidence will be retained by Authority.

39.12.2.B. In the absence of applicable air quality rules, regulations, ordinances or statutes governing solvents, including but not limited to the solvent portions of paints, thinners, curing compounds and liquid asphalt used on this Agreement, Contractor shall comply with the applicable requirements of SCAQMD. Containers of paints, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.

39.12.2.C. Contractor shall comply with California State law regarding pollution controls in operating or purchasing vehicles for use under this Agreement.

39.12.2.D. Material to be disposed of shall not be burned, unless otherwise allowed pursuant to the laws referenced herein.

39.12.2.E. Contractor agrees to report each violation to Authority and understands and agrees that Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

39.12.3. Clean Water. Contractor agrees as follows:

39.12.3.A. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251, et seq., all applicable water standards of the State of California; and all clarifications, mitigation measures, and any other requirements approved by Authority in accordance with State and federal laws.

39.12.3.B. Contractor agrees to report any violation of these requirements resulting from any Project implementation activity to Authority and the appropriate U.S. EPA Regional Office.

39.12.4. Energy Conservation

Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

39.12.5. Material Storage

In compliance with all applicable federal, State or local laws, Contractor shall take all necessary precautions and steps to store flammable or combustible liquids, gases or other Material and all hazardous chemicals in a safe manner.

39.12.6. Use of Public Lands

39.12.7. Historic Preservation

39.12.7.A. Contractor shall assist the federal government in complying with Section 106 of the National Historic Preservation Act, 16 USC § 470f, involving historic and archaeological preservation and shall consult with the California State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Services, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," at 36 CFR Part 800. Contractor shall notify the Authority of any properties so affected.

39.12.7.B. All things of historical, archaeological, paleontological or scientific interest encountered by Contractor during Contractor's performance of the Services shall be reported immediately to Authority. Construction in the vicinity of any discovery shall be halted in order to preserve and protect such discovery until its significance can be determined by Authority. Authority will issue instructions to Contractor with respect to the disposition of any discovery.

39.12.8. Mitigation of Adverse Environmental Effects

Contractor agrees that if performance of the Services should cause adverse environmental effects, Contractor will take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622. Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on any properties as described in Section 39.12.7.

39.13. PRIVACY

39.13.1. Should Contractor, any of its Subcontractors, or any employee of either of them administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering such system of records.

39.13.2. For purposes of the Privacy Act, when this Agreement involves the operation of a system of records on individuals to accomplish a government function, Authority, Contractor, any Subcontractor, any third party contractor, and their respective employees

involved in operating such system of records are considered to be government employees with respect to such government function. The requirements of the Privacy Act, including any civil and criminal penalties for violations of the Privacy Act, apply to those individuals described in this Section 39.13.2 and any applicable regulation. Any failure by Contractor or any Subcontractor to comply with the applicable terms of the Privacy Act or this Section 39.13.2 will constitute a breach of this Agreement and Authority may seek any and all remedies set forth herein.

- 39.13.3.** Contractor agrees to include a clause substantially similar to this Section 39.13 in all subcontracts awarded pursuant to this Agreement that require the design, development, or operation of a system of records on individuals subject to the Privacy Act.

39.14. CHANGES IN GOVERNMENTAL REGULATIONS

- 39.14.1.** In the event any local, State or Federal law or regulation affecting Contractor's performance of the Services is enacted or amended before the Start Date of Services that (1) make any such standards more stringent or (2) make compliance more costly, Contractor shall notify Authority in writing of such changes to applicable laws or regulations and the effects of such changes on the cost of providing the Services promptly after Contractor first becomes aware of such new or amended laws or regulations. Authority will determine whether it will reimburse Contractor for any expenses relating to such new or amended laws or regulations. Contractor shall be deemed to have had notice of any Federal law or regulation announced or enacted as of the Effective Date, even though such law or regulation may not have taken effect or become operative until some date after the Effective Date.

- 39.14.2.** If Contractor fails to promptly notify Authority when Contractor becomes aware of any changed requirements as described in this Section 39.14, Contractor shall be deemed to have waived all rights under this Section 39.14. In the event any governmental requirements are removed, relaxed or changed in any way after the Effective Date so as to make Contractor's performance less expensive, or less difficult, then Authority shall have the option either (1) to require Contractor to perform pursuant to the more rigorous requirements or (2) to receive a reduction in the cost of Services for all savings in Direct Costs which Contractor may realize by reason of such change, including such deductions for overhead and profit made so as to reflect actual savings realized by Contractor. Authority shall give Contractor notice of Authority's determination, and anticipated savings.

39.15. CIVIL RIGHTS REQUIREMENTS

The following civil rights requirements apply to this Agreement:

39.15.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and federal transit law at 49 U.S.C. §5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and any other implementing requirements FTA may issue. Equal Employment Opportunity:

39.15.1.A. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, Contractor agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of this Agreement. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay; other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

39.15.1.B. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as

amended, 29 U.S.C. §623 and federal transit law at 49 U.S.C. §5332, Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

39.15.1.C. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

39.15.1.D. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, Authority shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to (1) withholding of payments to Contractor under this Agreement until Contractor complies; and/or (2) cancellation, termination or suspension of this Agreement, in whole or in part.

39.15.2. Incorporation of Provisions. Contractor agrees to include and require these requirements set forth in this Section 39.15 in every subcontract financed at any time in whole or in part with Federal funds.

39.16. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

39.17. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, Contractor agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

39.18. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to any Grant Agreement to which Contractor's performance of the Services may be subject. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligation or liability to any party, including a subrecipient or third party Contractor.

39.19. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

39.19.1. Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to Contractor's performance of the Services. Accordingly, by signing this Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement Contractor has made, now makes, or may make pertaining to any applicable Grant Agreement, cooperative agreement, contract or project. In addition to other penalties that may be applicable, Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Contractor, to the extent the Federal Government deems appropriate.

39.19.2. Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on Contractor the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

39.20. PROMPT PAYMENT TO SUBCONTRACTORS

39.20.1. Contractor agrees to make prompt payment to all Subcontractors for satisfactory Services performed. For purposes of this Agreement "prompt payment" shall mean payment of all invoices substantiated to Contractor's requirements no later than ten (10) working days from Contractor's receipt of payment from Authority.

39.20.2. Should Contractor retain partial payment of any Subcontractor's invoice to insure performance or for any other reason, Contractor agrees to make payment of such retainage within 15 (fifteen) working days of satisfactory completion of the Services or other obligation.

39.20.3. Failure of Contractor to make prompt payment as defined in this Section 39.20 or to delay payment without prior written consent of Authority shall constitute noncompliance with this Agreement. If Contractor fails to render prompt payment to any Subcontractor, Authority may withhold payment of all or part of any Contractor invoice until Contractor makes payment to such Subcontractor, or may terminate this Agreement in accordance with Section 9.

39.21. BUY AMERICA REQUIREMENTS

39.21.1. Funds for the performance of work pursuant to this Agreement are to be provided from FTA grant funds obligated after January 6, 1983. Therefore, Contractor must comply with Section 165 of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424 (Buy America Provision) and 49 CFR Part 661. Among other things, steel and manufactured products used in Contractor's performance of the Services must be produced in the United States. Contractor is advised to review the specific Buy America requirements contained in the regulations at 49 CFR Part 661.

39.21.2. Whether or not a Contractor certifies that it will comply with the applicable requirement, Contractor is bound by its original certification and is not permitted at any point to change its certification during the term of this Agreement. If Contractor certifies that it will comply with the applicable Buy America requirements, it may not change its certification at any point and is not eligible for any waiver of those requirements other than any waivers granted by FTA prior to the execution of this Agreement pursuant to 49 CFR Part 661.13(c)).

39.22. FLY AMERICA

The Federal government shall not participate in the cost of international air transportation of any persons involved in or property acquired in connection with Contractor's performance of the Services unless such air transportation is provided by U.S. flag air carriers, to the extent service by these carriers is available, and is required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC Section 40018, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions", 4 CFR Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen LEXIS 2116, March 31, 1981.

39.23. CARGO PREFERENCE

Pursuant to 46 CFR Part 381, Contractor agrees:

- 39.23.1.** To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- 39.23.2.** To furnish within twenty (20) calendar days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, commercial ocean bill of lading in English for each shipment of cargo described in Section 41.23.1 above to Authority and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, SW, Washington, D.C., 20590, marked with appropriate identification of the project.
- 39.23.3.** To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.
- 39.23.4.** Contractor must have properly executed and submitted to Authority Form B-15, "Cargo Preference Certificate".

39.24. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contractor agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§327-333) and implementing U.S. DOL regulations at 29 CFR Part 5 and 29 CFR Part 1926.

- 39.24.1. Overtime Requirements.** Neither Contractor nor any Subcontractor contracting for any part of the Services which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such Services to work in excess of 40 hours in such work week unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work week.
- 39.24.2. Violation; Liability for Unpaid Wages; Statutory Penalties.** In the event of any violation of this Section 39.24, Contractor and

any Subcontractor responsible for any such violation shall be liable for any unpaid wages. In addition, Contractor and such Subcontractor shall be liable to the United States for statutory penalties. Such statutory penalties shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this Section 39.24, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by this Section 39.24.1.

39.24.3. Withholding for Unpaid Wages on Statutory Penalties.

Authority shall upon its own action or upon written request of an Authorized Representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of Services performed by Contractor or any Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contractor subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or Subcontractor for unpaid wages and statutory penalties as provided in Section 39.24.2 above.

39.24.4. Safety. No laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his or her health or safety.

39.24.5. Subcontracts. Contractor shall insert in any subcontracts the clauses set forth in Sections 1 through 5 of this Section 39.24 in addition to a clause requiring all Subcontractors to include these clauses in any contracts with lower tier subcontractors. Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in this Section 39.24.

39.25. COORDINATION WITH CALIFORNIA LAW

When a conflict exists between California law and Federal law, the law establishing the higher standard applies. Contractor and any Subcontractors shall insert this clause in any lower tier contract.

39.26. SEISMIC SAFETY

Contractor shall comply with all applicable regulations of U.S. DOT relating to seismic safety at 49 CFR Part 41 and any implementing guidance FTA may issue.

40. WAIVER/INVALIDITY

40.1. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of this Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

40.2. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

41. FORCE MAJEURE

Each party shall be excused from performance of any of its obligations to the other hereunder, where such nonperformance is occasioned by any event beyond the nonperforming party's control which shall include without limitation, any order, rule or regulation of any federal, state, or local government body, agent, or instrumentality, acts of God or the public enemy, wars, civil disturbances, fires, floods, earthquakes that disrupt Metrolink service, epidemics, quarantine restrictions, freight embargoes, Work Stoppage or accident; provided, however, that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy, or remove such event in the shortest practical time. Contractor shall use its best efforts to undertake and complete the repair, restoration, or replacement of any property which is necessary for the provision of Services in accordance with established train schedules and shall resume normal operations and performance of its other obligations hereunder as soon as reasonably possible.

42. GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California. By entering into this Agreement, Contractor consents and submits to the jurisdiction of the Federal or State courts situate in the State of California over any action at law, suit in equity, and/or other proceeding that may arise out of this Agreement.

43. ENTIRE AGREEMENT

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between Authority and Contractor and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

44. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in this Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives of Authority and Contractor duly authorized to enter into and modify this Agreement. In order to be

effective, amendments may require prior approval by Authority's Board of Directors, and in all instances require prior signature of a duly authorized representative of Authority.

45. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement and its Appendices, (2) provisions of RFP NO. OP137-15, and (3) Contractor's proposal dated June 27, 2014 and May 26, 2015, except that the revision and supplement to Contractor's Cost Proposal dated September 14, 2016 shall take precedence over the Cost Proposals dated May 18, 2016.

46. PARENT COMPANY GUARANTEE

Contractor shall provide by July 1, 2017, a Parent Company Guarantee following its standard format used for similar projects in order to guarantee the performance of Contractor's obligations, up to an amount equaled to the value of the first year of the Agreement. The Parent Company Guarantee shall be renewed annually throughout the term of the Agreement.

47. LIMITATION OF LIABILITY

Contractor's total aggregate liability under the Agreement (whether based upon contract, tort, negligence, strict liability or otherwise) may in no event exceed one hundred percent (100%) of the Total Contract Value.

Neither party shall be liable to the other for any special incidental or consequential damages, including but not limited to lost revenues or lost profits, as a result of this agreement or any breach of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective on the date first hereinabove written.

**BOMBARDIER MASS TRANSIT
CORPORATION**



Thomas J. Martin
General Manager, Americas Division



Julie Turgeon
Vice President, Contracts & Legal Affairs, Americas Division

Tax I.D. No. 03-0349631

**SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY**



Arthur T. Leahy
Chief Executive Officer

APPROVED AS TO FORM:
Don O. Del Rio
General Counsel