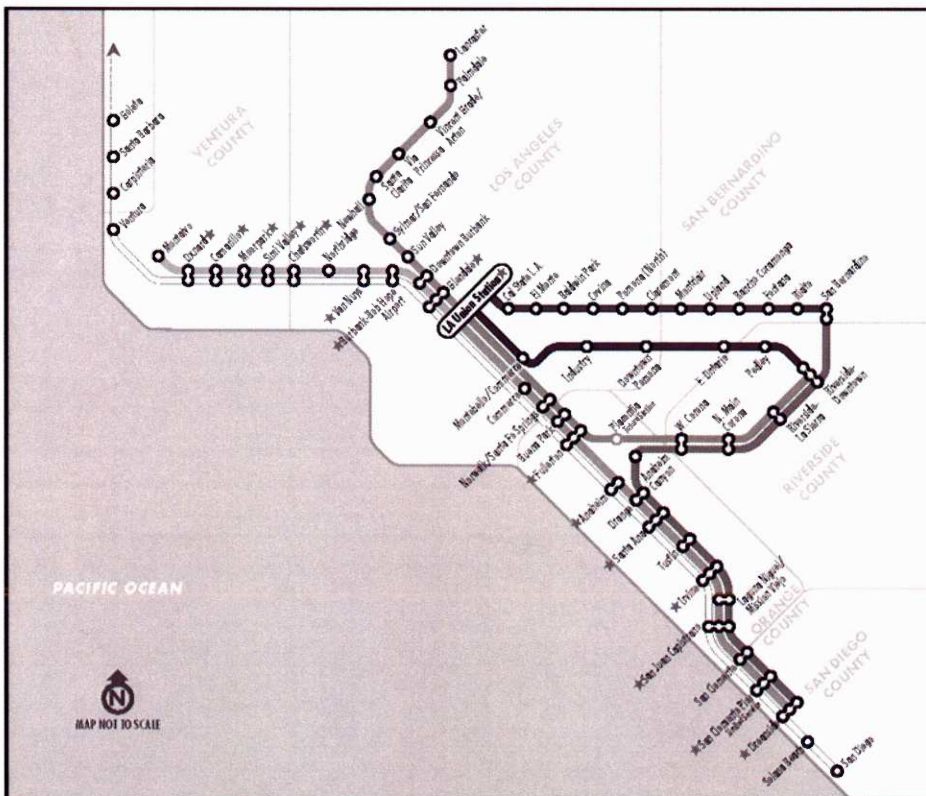




CONFORMED CONTRACT

NO. EP181-13

AGREEMENT FOR NEW TIER 4 LOCOMOTIVES



MEMBER AGENCIES

Los Angeles County
Metropolitan Transportation Authority

Orange County
Transportation Authority

Riverside County
Transportation Commission

San Bernardino
Associated Governments

Ventura County
Transportation Commission

CONTRACT AGREEMENT

between

Contractor

Electro-Motive Diesel, Inc.
9301 West 55th Street
La Grange, IL 60525
Attention: Director, Transit Sales

And

Southern California Regional Rail Authority
One Gateway Plaza, Floor 12
Los Angeles, California 90012
(hereinafter "AUTHORITY")

) **CONTRACT DOCUMENTS**
)
) **CONTRACT NO. EP181-13**
)
) **TIER 4 LOCOMOTIVES PROCUREMENT**

) SCCRA Project Manager:
) Name: Ron Svoboda
) Title: Director, Equipment
) Telephone: (323) 224-3481
) Email: SvobodaR@scrra.net
)
) Contract Administrator:
) Name: Lia McNeil-Kakaris
) Title: Assistant Director, Contracts
) Telephone: (213) 452-0237
) Email: McNeilKakarisL@scrra.net

This Contract may be funded in whole or in part by the U.S. Department of Transportation, Federal Transit Administration.

CONFORMED CONTRACT NO. EP181-13
AGREEMENT FOR NEW TIER 4 LOCOMOTIVES

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

CONTRACT NO. EP181-13

AGREEMENT FOR PURCHASE OF NEW TIER 4 LOCOMOTIVES

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This Agreement ("Agreement" or "Contract") is effective as of this day of May 23rd, 2013, by and between the SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (hereinafter referred to as "SCRRA" or "Authority") and ELECTRO-MOTIVE DIESEL, INC. (hereinafter referred to as "Contractor"). Authority and Contractor may hereinafter be referred to individually as a "Party", or collectively as the "Parties."

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 below;

WHEREAS, Authority desires to hire Contractor to design, manufacture, and deliver new Locomotives; and

WHEREAS, Authority has issued a Request for Proposals dated June 12, 2012, along with various addenda, the provisions of which are incorporated herein; and

WHEREAS the Contractor desires to provide Locomotives and has submitted a written proposal dated October 1, 2012, the provisions of which are incorporated herein; and

NOW THEREFORE, for the consideration hereinafter stated, the Parties agree as follows:

1. TERM.

The term of this Contract begins upon the Effective Date and continues through Contract Close-Out by the Authority of all Locomotives and completion of the 2 year warranty period, including satisfactory resolution of all warranty claims, unless otherwise terminated or extended as provided in this Contract. The Contractor will not commence performing work under this Contract until it is authorized in writing by the Authority to do so by a Notice to Proceed ("NTP"). The Authority's right to purchase Option Locomotives as set forth in Section 5.4 must be exercised within five years of the Effective Date.

2. CONTRACT DOCUMENTS AND PRECEDENCE.

This Contract consists of the documents listed below (the "Contract Documents"), each of which is on file in the main office of the Authority and all of which are incorporated herein and made a part hereof by this reference. The Contract Documents constituting the Contract between the Authority and the Contractor are intended to be complementary so that what is required by any one of them will be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they will take precedence in the following order, the first stated document being of the highest precedence:

- Amendments to this Contract, including change orders (if any)
- This Contract
- Conformed Technical Specification (Exhibit A)
- Insurance Certificate(s)

3. DEFINITIONS.

AAR – Association of American Railroads

ADA – Americans with Disabilities Act

Base Order – The Authority's initial order of 10 Locomotives.

Contract Close-Out – Satisfaction by the Contractor of the requirements set forth in Section 9.2.

Contractor – The entity to which the Authority has awarded this Contract and which is a party to this Contract.

Contractor Software – Any Software for which any applicable Intellectual Property Rights necessary to grant the licenses contained in this Contract are owned by Contractor (or its Subcontractors).

Defect -- Any failure or deficiency in any materials, or workmanship in the manufacture of a Locomotive.

Effective Date – The date the last Party signs this Contract.

EPA – Environmental Protection Agency

Fleet Defect Any Defect, as set forth in Section 15.17, in which the rate of such Defect reaches 20% of the total number of such items during any 12 consecutive month period.

FRA – Federal Railroad Administration

Intellectual Property Rights – Any and all inventions (whether patentable or unpatentable and whether or not reduced to practice), patent rights, copyrights, trademark or service-mark rights, trade secrets, know-how, or other intellectual-property or proprietary rights, regardless of whether any such rights have been recorded, perfected, or have been recognized in registrations or issued patents.

Key Personnel – The individuals identified in Section 17.

Licensed Uses – All uses or actions (by the Authority directly or by the Authority through its contractors, consultants, vendors, or other agents) reasonably necessary or desirable for operation of the Locomotives in the ordinary or reasonably foreseeable aspects of the Authority's operations and services.

Locomotives – The Locomotives ordered by the Authority under this Contract.

Locomotive Acceptance (Conditional Acceptance) – Satisfaction by the Contractor of the requirements set forth in Section 9.1 as applicable.

Project Manager -- The Authority representative with oversight of the Work and of the Contractor, including the power to enforce compliance with the Contract, including giving orders to do work determined necessary for Contractor to fulfill the requirements of the Contract. The Project Manager will have the authority to resolve disputes informally, and to issue change

orders or amendments to the Contract, provided that such change orders or amendments do not exceed the authority delegated to the Project Manager by the Authority's Board of Directors. The exercise of or failure to exercise such power will not relieve Contractor of any of its obligations under the Agreement.

RFP – The Request for Proposals issued on June 12, 2012.

Software -- Any and all Contractor-provided computer application programs which are incorporated in the Locomotives, or any of them, or in or as part of any system, subsystem, assembly, subassembly or components of any Locomotives (or any interfaces or interface system control between or among any of these), or which are used by Contractor for diagnostics on or other testing of the Locomotives.

Subcontractor – Any firm or person under contract to Contractor, authorized by the Authority to assist in the Work.

Systems Support – The provision of services associated with the Locomotives, including all design, engineering, manuals, catalogs, one-time qualification-type testing, field support, training sessions, extended warranties, and other items as required in the Technical Specification.

Technical Specifications – The Technical Specifications included in the RFP, as may be conformed during negotiations prior to award of the Contract.

Third Party Software – Any Software that is not Contractor Software.

Total Base Order Contract Price – The amount listed in Section 5.1, representing the total amount to be paid the Contractor for the base order of Locomotives under the Contract, including all spare parts and special tools.

Unit – A term used to either individually or collectively refer to a system, subsystem, component, assembly, subassembly or part of a Locomotive.

Work – All the obligations of Contractor under the Contract including but not limited to Locomotive design, delivery -- including loading and unloading, testing, submission of deliverables, performance of warranty obligations, furnishing of all equipment, items, materials, parts, systems, data, design, services, and other matters and things necessary or the required labor and management to be done by Contractor pursuant to this Contract, including all miscellaneous and incidental work.

4. SCOPE OF WORK.

4.1 General. Contractor will design, manufacture and deliver Locomotives and perform related tasks as described in Exhibit A. The Contractor is responsible for performing all work necessary to complete, in a manner satisfactory to the Authority, the Work described in this Contract, and in any properly approved Change Orders or amendments. The Contractor represents that it has or will obtain all personnel and equipment required to perform the work under this Contract. The Contractor represents and warrants that it and its subcontractors will procure and keep current throughout the duration of this Contract any and all license, permits, registrations or certificates which are or may be required by properly constituted authorities for the performance of Work under this Contract.

4.2 Specifications. The Contractor will manufacture, assemble, construct, deliver, and test the Locomotives in accordance with the Technical Specifications. The Technical Specifications are intended to provide minimum acceptable standards for the Locomotives. As set forth in the Technical Specifications, the Locomotives must meet all applicable federal regulations, including but not limited to FRA and EPA , as well as applicable industry standards including but not limited to APTA and AAR for this type of locomotive on the date of manufacture.

4.3 Title. The Contractor will provide to the Authority a Bill of Sale for securing title to the Locomotives in Los Angeles, California. The Contractor will provide the Bill of Sale for each Locomotive to Authority upon delivery of such Locomotive pursuant to the delivery terms described in this Contract. Provided that Contractor receives all payments due under this Agreement, Contractor warrants that title to the Locomotives will be delivered free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, and claims and demands of any character, including but not limited to any liens or other claims of the Contractor's suppliers, subcontractors, or employees.

Notwithstanding the foregoing, Authority grants Contractor a security interest in each Locomotive delivered until payment of the Purchase Price for such Locomotive is received by Contractor. Authority shall, at the request of Contractor, execute and deliver any instruments that Contractor may deem necessary to protect its security interest in the Locomotives. Subject to any security interest retained by Contractor, title to each Locomotive will pass to Authority as described in this Section 4.3.

4.4 Reports and Compliance with Funding. All reports and deliverables submitted by Contractor must comply with the following requirements set by the South Coast Air Quality Management District as listed in Exhibit B, Contract No. 13441 between Authority and the South Coast Air Quality Management District (the "AQMD Agreement"). These requirements include, without limitation, that reports must be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or card stock covers. The Authority, if directed by the South Coast Air Quality Management District, reserves the right to review, comment, and request changes to any report produced as a result of this Contract. Contractor will provide reasonable assistance to Authority to permit Authority to comply with its obligations under the AQMD Agreement.

5. COMPENSATION. MANNER OF PAYMENT.

5.1 Base Order. The Purchase Price for each Locomotive is \$6,295,000 for a base order of 10 Locomotives, plus \$500,000 for non-recurring engineering system support costs and procurement of spare parts up to \$3,000,000. In addition, the Authority has the option to purchase up to 20 Locomotives, but is exercising the option to purchase 7 Locomotives along with the base order, and will exercise the option to purchase another 3 Locomotives by June, 2014. The not-to-exceed Contract amount that includes the base order, non-recurring engineering system support, procurement of spare parts, and the option for 10 Locomotives (option for 7 Locomotives, plus the option for an additional 3 Locomotives for June 2014) is \$129,400,000. The price for the additional 10 Locomotives (i.e., the remaining 10 of the total aforementioned 20 option Locomotives) is not included in such not-to-exceed Contract amount. The Authority's payments to Contractor for the Locomotives will be in accordance with the schedule for Milestone Payments in Section 5.2. All prices are in U.S. Dollars and are inclusive of Free On Board ("FOB") delivery.

Conformed Contract Agreement EP181-13
EMD#2665274

Awarded by Board: 12-14-12

to the point of delivery as specified in Section 6.2. Prices do not include sales, use or excise taxes, special financing fees, special permits or licenses or similar charges. Authority shall either pay any and all such taxes (including sales tax) and charges or provide Contractor with acceptable exemption certificates. If Authority fails to provide such certificates at least ninety (90) days prior to the scheduled delivery date, Contractor shall provide Authority proof that such taxes were paid, and it shall be Authority's duty to recover such taxes. Should sales tax become applicable to any portion of the work, Contractor is entitled to add applicable sales tax in Contractor's invoice and the Authority is liable to pay such sales tax.

Item	Qty	Description	Unit Price	Extended Price
1	10	Locomotives – Base Order	\$6,295,000	\$125,000,000
2.	10	Option Locomotives	\$6,295,000	\$ 62,950,000
3.	20	System Support	\$ 25,000	\$ 500,000
4.	1	Spare Parts and Special Tools	N/A	\$ 3,000,000
		Not-To-Exceed Contract Price		\$129,400,000
		ADDITIONAL OPTIONS AVAILABLE TO AUTHORITY		
5.	20	Annual Cost of Maintenance for 10 years after warranty	\$2,025,750	\$ 40,550,000
6.	10	Option Locomotives	\$6,295,000	\$ 62,950,000

1) Includes cost of program management, testing, delivery, warranty, and bonding.

5.2 Milestone Payment Schedule

The Contractor shall submit invoices to SCRRA according to the milestone payment schedule set forth in Exhibit B. Milestones shall be paid as a percentage of the total price for the Locomotives, including all system support but not including spare parts and special tools, which shall be paid for as set forth below. The Contractor shall submit no more than one invoice a month, unless previously approved by SCRRA, and each invoice may include any number and combination of milestone payments that are payable that month. No partial payments will be allowed unless prior approval is granted from SCRRA. Invoices may be submitted out of sequence, when all conditions of any Milestone are completed and accepted. Each invoice shall be submitted electronically and in hard copy and shall include:

- Agreement Number
- Milestone reached
- Sales Tax, as applicable
- Amount of Payment Requested
- Additional documentation as may be required by Authority's Project Manager

Invoice(s) received that do not include the required information will be returned by Authority without payment.

Payments will be made within 30 days of Approval of invoice by the Authority's Project Manager. The Authority has no obligation to pay for costs incurred or services rendered when the application for payment is submitted more than ninety (90) days after an applicable milestone is reached. In the event that the Authority should overpay Contractor, such overpayment shall not be construed as a waiver of Authority's right to obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of Authority, Contractor shall immediately reimburse Authority the entire overpayment. Authority, at its discretion, may deduct any overpayment from Contractor's future invoices.

Contractor's invoice for final payment shall indicate that all 1) material or equipment has been reviewed and accepted, 2) title has passed to Authority as required, 3) Contractor has performed in compliance with all terms and conditions of the Agreement, and 4) no claims, loss, or disputes remain unresolved. Upon receipt of payment from the Authority, Contractor releases the Authority from any further payment obligation. After final payment is made, Authority is under no obligation to accept or review claims made against this Agreement.

Invoices may be submitted upon completion of a milestone, as listed in Exhibit B, or pursuant to the terms of any change order issued under Section 19. The invoice shall be in a form approved by the Authority and shall be prepared by and at the sole cost of the Contractor.

Contractor shall submit an original and one copy of the invoice to:

Southern California Regional Rail Authority
One Gateway Plaza, 12th Floor
Los Angeles, CA 90012
Attn: Accounts Payable

with a copy to:

Southern California Regional Rail Authority
One Gateway Plaza, 12th Floor
Los Angeles, CA 90012
Attn: Ron Svoboda

5.3 Payment for Spare Parts. Upon delivery and acceptance of spare parts, payment may be invoiced for those spare parts and special tools accepted by the Authority. Invoices should include any applicable sales tax. The rate for such tax is that applicable to Los Angeles, California.

5.4 Option Order. Contractor hereby grants the Authority options ("Options") to purchase, at its sole discretion, up to 20 additional Locomotives ("Option Locomotives"), 10 of which are being exercised per Section 5.1. The Options will be valid for a period of five years from the Effective Date of the Contract and must be exercised by written notice to Contractor,

which written notice shall be provided within twenty-four (24) months from the issuance of the first Notice to Proceed. There will be no minimum order quantity for any permissible Option order. Subject to the Authority's right to order modifications the Option Locomotives will have the same specifications as the Locomotives purchased under this Contract. All conditions, specifications, and requirements set forth in the Contract Documents apply to Locomotives purchased under the Option unless otherwise specified in this Section.

5.5 Assignability of Options. SCRRA, at its sole discretion, may exercise Options for its own procurement and/or assign Options to other eligible public agencies for Option Locomotives. Assigned agencies will enter into individual contracts with the Contractor to govern their procurements. SCRRA's right of assignment will remain in force over the entire term of the Contract or until all contract options are expended, whichever occurs first. SCRRA shall incur no financial responsibility or other liability in connection with contracts entered into between the Contractor and another public agency. The public agency shall accept sole responsibility for placing orders or making payments to the Contractor.

5.6 Option Pricing. The purchase price for any Locomotive option ordered within one year of Notice to Proceed shall be the same as the per-Locomotive price for Locomotives in the base order. Thereafter, the purchase price for each Locomotive in any option order will be based upon the Contractor's base-order pricing, as modified by the following escalation methodology.

5.6.1 Escalation

5.6.1.1 Labor Indices Adjustment

40% adjustment of the Base Price listed above is adjusted for labor cost in accordance with the following labor indices:

- 20% NAICS Code 3353 (Electrical Equipment)
- 5% NAICS Code 3359 (Other Electrical Equipment and Components)
- 75% NAICS Code 336 (Transportation Equipment)

5.6.1.2 Material Indices Adjustment

50% adjustment of Base Price is adjusted for material cost in accordance with the following material indices:

- 50% Metals and Metal Products – Code 10 (PPI, Metals and Metal Products, Series ID WPU10)
- 50% Materials for Durable Manufacturing (PPI, by Stage of Processing, Intermediate Materials, Supplies and Components, Series ID WPUSOP2130)

Notes:

- Base price will not be adjusted for options exercised within the first year of the contract.

- The adjusted Labor Indices and adjusted Material Indices will equal the difference between the Labor Indices and Material Indices for the last calendar quarter preceding the date of Notice to Proceed of the original contract, and the Labor Indices and the Material Indices for the last calendar quarter preceding the date of Notice of Award of the option contract.
- Index data is taken from the tables entitled “not seasonally adjusted.”

5.6.2 Delivery Schedule. The delivery schedule for Locomotives ordered by the Authority by exercise of the Option in this Section will be mutually agreed upon by the Parties at the time the Authority exercises the Option.

5.6.3 Other Option Provisions. Except as specifically modified by this Section, all the provisions of the Contract Documents will apply to the delivery of, and payment for, Option Locomotives including, without limitation, the Liquidated Damages provision of Section 7.

5.7 Maintenance Pricing and Compensation. The Authority, at its sole discretion, may procure Contractor's services to provide post-warranty maintenance and support for its Locomotives at the annual price set forth above. Payment terms (other than the total annual cost), as well as the precise scope of maintenance services, will be set forth in a separately executed agreement between the Parties.

6. DELIVERY.

6.1 Delivery. Contractor may not commence delivery from its location of any Locomotive until the Authority has approved all Pre-Delivery testing as set forth in the Technical Specifications. Delivery of each Locomotive will be considered complete when the Post Delivery Inspection set forth in the Technical Specifications is satisfactorily completed and will be acknowledged by a signed receipt by Authority's Project Manager at the point of delivery. Delivery does not constitute Acceptance of any Locomotive, although delivery constitutes a transfer of any Risk of Loss or Damage, and transfer of title, from Contractor to Authority (subject to any security interest retained by Contractor).

6.2 Delivery Schedule. The Contractor will deliver all Locomotives and materials FOB to SCRRA's Central Maintenance Facility, located at 1555 N. San Fernando Road, Los Angeles, CA. in accordance with the following requirements. Delivery means complete delivery as set forth in Section 6.1.

Delivery of Initial Delivery Locomotives in Base Order	No later than 30 months after NTP (please see schedule attached)
Delivery of Remaining Locomotives	Please see schedule attached as <u>Exhibit A</u> .
Delivery of Spare Parts	No later than 30 days prior to delivery of the fifth Locomotive.
Delivery of test equipment and special tools	No later than 30 days prior to delivery of the

	fifth Locomotive.
Delivery of draft of all manuals and training materials	No later than 60 days prior to delivery of the first Locomotive
Completion of all required training	Must commence between 30-45 days prior to delivery of the first Locomotive. Completion of all required training is a requirement of Locomotive Acceptance (Conditional Acceptance) of the first Locomotive.

The Parties agree that the Contractor will make an initial delivery of two (2) Locomotives according to the mutually agreed-upon schedule (the "Initial Delivery Locomotives"). The Initial Delivery Locomotives may be placed into revenue service by the Authority. The Authority will allow Contractor to carefully monitor the Initial Delivery Locomotives, at no additional charge to the Authority, until the last Locomotive (including the last Option Locomotive, if applicable) is delivered to the Authority in accordance with the mutually agreed-upon delivery schedule. The Authority agrees to reasonably cooperate with Contractor, including providing Contractor with access to the Initial Delivery Locomotives, during the monitoring period of the Initial Delivery Locomotives. At the conclusion of such monitoring period, Contractor will schedule the upgrade of the engine of such Initial Delivery Locomotives, if required, at the discretion of the Contractor and at no cost to the Authority. Any engine or component upgraded as described in this paragraph will be subject to a re-commencement of the warranty period described in Section 14.2 that is applicable to such engine and components.

All Locomotives shall be delivered during the period Monday through Friday. No Locomotives shall be delivered on Saturdays, Sundays, or SCRRA holidays. Hours of delivery shall be 8:00 a.m. through 3:00 p.m. local time only. Contractor must give the Authority 10 calendar days advance notice before each delivery is made and prepare all materials and equipment in such a manner as to protect them from damage in transit and at the delivery site. The Locomotives must be delivered by a qualified and experienced common or contract carrier who is properly insured.

6.3 Delay in Delivery Schedule. (a) The Contractor must notify the Authority's Project Manager as soon as the Contractor has knowledge that an event has occurred which will delay delivery of any Locomotive to be provided under this Contract beyond the delivery date specified in Section 6.2. Within five (5) calendar days, the Contractor will confirm such notice in writing, furnishing as much detail as is then available. If the Contractor believes the delay in delivery is justified for such reasons, it may request an extension of the delivery date from the Authority, provided, however, that if any delay is caused by a Force Majeure event, the extension of the delivery date shall be as described in Section 7.3. The Contractor agrees to supply, as soon as such data is available, any reasonable proof that is required by the Authority's Project Manager to make a decision on such a request for extension. The Authority's Project Manager will examine the request and any documents supplied by the Contractor, and will determine if the Contractor is entitled to an extension and the duration of such extension. The Authority's Project Manager will notify the Contractor of his or her decision in writing. It is expressly understood and agreed that the Contractor will not be entitled to

damages or additional compensation, and will not be reimbursed for any losses, due to delays resulting from any cause under this provision.

7. LIQUIDATED DAMAGES—PERFORMANCE ASSESSMENTS.

The Parties agree that Authority will be damaged if Contractor fails to perform within the time allowed or if Contractor's act or omission disrupts the operations of Authority. It is impractical and/or difficult to ascertain the exact damage that the Authority will sustain in the event of such delay and the Parties have therefore made a good faith effort to estimate the damage and have agreed to the liquidated damages as set forth below. Liquidated damages may be deducted from any moneys due, or which may thereafter become due, to the Contractor under this Contract, and will not be deemed a penalty. The assessment of Liquidated Damages as set forth in this section will be the Authority's sole and exclusive remedy and Contractor's sole and exclusive liability in the event of Contractor's unexcused delay, and is subject to the terms of Section 48 ("Limitation of Liability").

7.1 Liquidated Damages for Late Delivery. In the event of unexcused delay in the completion of the delivery of any Locomotive beyond the dates specified in Section 6.2, the Authority may assess as liquidated damages the amount of \$500 per calendar day of delay per Locomotive, up to an aggregate maximum of two percent (2%) of the Purchase Price of the Locomotive for which delivery is delayed. For avoidance of doubt, no liquidated damages will be assessed so long as the first Locomotive is delivered within 30 months of NTP, and no liquidated damages will be assessed for late delivery of remaining Locomotives so long as Contractor complies with the delivery schedule.

7.2 Availability Assessments. In addition to Liquidated Damages, the Contractor will guarantee a minimum availability for the Locomotives at 95%. SCRRA may make a financial assessment (an "Availability Assessment") for failure to meet such availability requirements during any calendar-month measurement period ("Measurement Period") as set forth herein.

Availability performance shall be measured in availability percentage, which shall be calculated by applying the following formula.

$$\text{Availability Percentage ("AP")} = 100 \times (T - \text{UMT}) / T$$

Where:

T = total number of hours the Locomotives could have been available during the Measurement Period. This number is obtained by multiplying the number of days in the Measurement Period, times 24 hours, times the number of Locomotives that have been subject to this Agreement during the Measurement Period.

UMT = total number of hours that the Locomotives were in the maintenance location for unscheduled maintenance during the Measurement Period, plus, in the event of a Locomotive failure which causes the annulment or cancellation of a train in revenue service, the transit time of the Locomotive to the maintenance location.

At the conclusion of each Measurement Period, the Contractor shall calculate the AP, rounded to the nearest 1/10 of a percent, and determine the Availability

Assessment due if the AP is less than the required level of 95%. The Authority will also calculate the AP based on the Authority's records. If there are differences in the AP as calculated by each Party, the Parties will verify and adjust their respective records to reach a mutual agreement in determining the AP. Such mutually agreed upon AP will be considered official.

The AP measurement period will begin with the first Locomotive delivered after the Initial Delivery Locomotives, and only after each such Locomotive enters revenue service. A Locomotive will be included in the fleet for purposes of computing any Availability Assessment beginning on the dates determined below:

- First Locomotive delivered after the delivery of the Initial Delivery Locomotives - the Measurement Period will begin on the first day of the month following 90 days after the first day of revenue service (i.e., if 90 days following the first day of revenue service falls on a date that is not the first of the month, the AP calculation will begin on the first day of the following month)
- Second Locomotive delivered after the delivery of the Initial Delivery Locomotives (the **"Second Locomotive"**) - the Measurement Period will begin on the first day of the month following 60 days after the first day of revenue service
- All other Locomotives delivered after the Second Locomotive - the Measurement Period will begin on the first day of the month following 30 days after the first day of revenue service of each applicable Locomotive

The Measurement Period (and therefore, any Availability Assessment) will apply to the aforementioned Locomotives for a period of 24 months from the date such Locomotive becomes subject to the Measurement Period as described immediately above.

The AP described under this Section 7.2 shall be subject to the following conditions, limitations and exclusions:

1. Total time due to No Defect Found failures will not be counted.
2. Any transit time to the maintenance location will not be counted. Waiting time outside the shop for legitimate failures will not be counted.
3. Total time due to any repeat failure of the same defect, because the defect was not fixed properly, will not be counted, unless the repair was made under the supervision or direction of, or by, the Contractor, and Contractor indicated its approval of the repair in writing.
4. In the event a Locomotive is annulled or cancelled from revenue service due to a failure found to be the responsibility of the Contractor after a thorough analysis, the out of service time will be counted beginning when such Locomotive was annulled or cancelled due to the problem.
5. If a Locomotive has a repeat failure that is the responsibility of the Contractor after a thorough analysis, the total time the train is delayed will be counted.
6. Poor workmanship due to work outside of the control of the Contractor will not be counted; time delays due to parts not available will be assessed after a 5-day grace period.

7. Time spent on scheduled services (such as 92 days, 184 days and 365 days) or maintenance intervals will not be counted.
8. Total time due to Maintenance/Operations/accidents/derailments/upgrades and other similar failures will not be counted.
9. Total time due to the failures caused by deviations from the Contractor's Maintenance Instructions or not using OEM parts will not be counted.
10. Authority's specified stand alone equipment (PTC, LDVR, Radio, etc.) will not be counted.
11. The Initial Delivery Locomotives are excluded from the computation of the AP.
12. The AP will be based on a fleet average and any Availability Assessment will be paid out based on the following schedule, up to an aggregate maximum of two percent (2%) of the Purchase Price of each applicable Locomotive that was subject to the Availability Assessment.

Availability Assessment schedule:

- AP between 93 and 94.9% will be assessed in the amount of \$500/day x the number of days in the month being assessed
- AP between 90 and 92.9% = \$750/day
- Below 90% = \$1,000/day

8. Force Majeure. The Contractor will be granted an extension of time, and will not be assessed Liquidated Damages, for any portion of a delay in completion of the Work caused by acts of God or the public enemy, wars, civil disturbances, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, shipwreck, or weather more severe than normal or any other cause sufficiently outside of the reasonable control of Contractor (in the discretion of Authority) as to warrant an extension of time, providing that (1) the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, (2) the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and (3) the Contractor notifies the Authority in writing of the cause(s) for the delay within five days from the beginning of any such delay. Except under exigent circumstances caused by one of the preceding enumerated events, unavailability of personnel will not be considered an excusable delay. No claims for additional compensation or damages for the foregoing delays will be allowed to the Contractor, and the extension of time provided for herein will be the sole remedy of the Contractor on account of any such delays.

8.1 No Waiver. The payment of Liquidated Damages will not affect any other rights or remedies of the Authority upon default by the Contractor, except that any claim by the Authority associated with such rights or remedies will not include claims for which liquidated damages have been assessed by the Authority.

9. ACCEPTANCE.

Locomotive acceptance will come in two phases, conditional and final, as defined below.

9.1 Locomotive Acceptance (Conditional Acceptance). Locomotive Acceptance (Conditional Acceptance) will be granted for each Locomotive upon (1) completion of the acceptance testing described in the Technical Specifications (2) Submission to and approval by the Authority of all CDRs and reports required in the Technical Specifications, (3) Contractor's

satisfactory provision of title transfer documentation as set forth in Section 4.3, and (4) completion of all required training (for Locomotive Acceptance (Conditional Acceptance) of the first Locomotive). If the acceptance testing reveals only minor defects or defects that do not prohibit the Authority from placing the Locomotive in revenue service, then the Locomotive may be deemed Conditionally Accepted and the Authority may issue a Certificate of Locomotive Acceptance (Conditional Acceptance) to the Contractor. The Contractor must then correct all defects and upon successful correction or repair of such defects, the Authority will issue a Notice of Contract Close-Out of the Locomotive as set forth below. The Authority may choose to place the Locomotive into revenue service, at its sole discretion, prior to its approval of the acceptance testing reports. Placing the Locomotive into revenue service will be deemed Locomotive Acceptance (Conditional Acceptance), and will not constitute Contract Close-Out.

9.2 Contract Close-Out. No Locomotive will be finally accepted unless it satisfies all the requirements for Locomotive Acceptance (Conditional Acceptance). Contract Close-Out of each Locomotive will be granted when all Defects or deficiencies discovered through any test have been corrected and all open issues have been resolved to the Authority's satisfaction, all CDRLs have been approved, and the Locomotive is deemed by the Authority, in its sole discretion, capable of operating reliably. The Authority will issue a Notice of Contract Close-Out of the Locomotive to the Contractor within seven (7) calendar days of the Authority's determination that the Contractor has satisfied the requirements of this Section, provided, however, that if Authority fails to issue a Notice of Contract Close-Out within such seven (7) calendar day period, the Locomotive shall be deemed accepted. The Authority will not provide Contract Close-Out of Locomotives that do not meet all Contract requirements and specifications, even if the Contractor assures the Authority that any deficiencies will be handled under the warranty process.

10. RISK OF LOSS.

The Contractor will bear all risk of loss or damage to the Locomotives, and all materials to be delivered pursuant to this Agreement, until delivery. The Contractor will not be responsible for any loss or damage arising from the negligence or willful misconduct of the Authority. The Contractor's responsibility for Risk of Loss or damage will also apply to any Authority-furnished equipment or material in Contractor's sole care, custody and control.

Contractor will bear the risk of loss or damage to any Authority property arising from negligent actions or inactions of Contractor. In addition, Contractor will bear all risk of loss or damage with respect to all materials acquired and in the care, custody and control of Contractor for the purpose of providing the Locomotives. The foregoing applies to any property of Contractor, Subcontractors, workers, and others performing the work, as well as third parties. Contractor will protect from damage existing property, belonging to the Authority or any third parties affected by Contractor's negligent activities and will provide appropriate protection for all such property during progression of the work pursuant to the terms of Section 10. Any disputes relating to property damage shall be resolved in accordance with the terms of Section 20.

11. INDEMNIFICATION.

To the fullest extent permitted by law, the Contractor assumes liability for and will hold harmless, indemnify and defend the Authority and its member agencies, its operating railroad, and the South Coast Air Quality Management District, their directors, officers, agents, employees, representatives, contractors, subcontractors, insurers, attorneys, successors and assigns (all the foregoing, hereinafter collectively, "Indemnitees") from and against all claims, Conformed Contract Agreement EP181-13

Awarded by Board: 12-14-12

suits, demands, damages, losses, expenses, and liabilities of any kind whatsoever (all the foregoing, hereinafter collectively "Claims") including, without limitation, attorneys' fees, to the extent arising out of the negligent act and/or omission of Contractor, its officers, directors, employees, agents, subcontractors or suppliers that occurred during the performance of this Contract by the Contractor (including its subcontractors and suppliers), and that results in bodily injury, death or damage to property.

"Claims" as used in this section includes, without limitation, those for personal injuries, wrongful death, mental or emotional distress, loss of consortium, damage to or loss of use of real, personal or intangible property of any kind, loss of income, loss of earning capacity, and business, financial, commercial or pecuniary losses of any kind whatsoever, and reasonable attorneys' fees, and costs and expenses of any kind whatsoever.

Contractor's indemnity and defense obligations cover the negligent acts or omissions of any of Contractor's subcontractors, suppliers and consultants, and the employees of any of the foregoing.

The Contractor's indemnity and defense obligation under this Section includes, without limitation, any claims, suits, demands, damages, losses, expenses, and liabilities arising from allegations of violations of Contractor's or its Subcontractor's personnel practices or from any allegation of an injury to an employee of the Contractor or subcontractor performing work or labor necessary to carry out the provisions of this Contract.

The indemnification obligations in this Section are subject to the terms of Section 48. If any judgment is rendered against the Authority or any of the other individuals enumerated above in any Claim subject to this indemnity, the Contractor will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of this Agreement and the Contractor must procure and maintain insurance coverage with a Contractual Liability endorsement that will insure its indemnity obligations.

If the Authority is enjoined either temporarily or permanently from the use of the Locomotives due to a claim of infringement of any United States or Canadian patent by the Locomotives, Contractor will defend and indemnify the Authority against such claim of infringement or other violation of Intellectual Property Rights, provided the Authority promptly notifies Contractor in writing of the claimed infringement and Contractor is given authority, information, assistance, and control in the defense thereof. Contractor, at its sole cost and expense, must: (a) secure for the Authority the right to continue using the subject matter or materials at issue in the Locomotive(s) by suspension of the injunction or procuring a license which imposes no cost on the Authority; (b) replace the subject matter or materials at issue with non-infringing alternatives; or (c) modify the subject matter or materials at issue so that they become non-infringing or remove the enjoined subject matter or materials at issue and refund the sums paid for them without prejudice to any other rights of the Authority. The option of (a), (b), and (c) in the preceding sentence must be selected in consultation with the Authority and with the Authority's consent, which will not be unreasonably withheld or delayed. The selected option may not entail an unreasonable or excessive amount of time or cause undue disruption to the Authority's operations. The foregoing states the entire liability of Contractor with respect to any claim or action for intellectual property infringement.

Authority agrees that if any claim or action is brought against Contractor for any alleged infringement of any patent, design or specification integrated into the Locomotive by Authority or
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by Contractor at Authority's request of components or parts of any party's (other than Contractor) patent, design or specification, or as a result of any modification to the Locomotives that was not made by or at the direction of Contractor, or any use of the Locomotives in connection with third-party products or services the combination of which causes the infringement, then, in any such event, Authority shall defend Contractor and pay all the expenses incurred in recoveries and costs allowed therein, provided Contractor promptly notifies Authority in writing of the claimed infringement and Authority is given authority, information and assistance (at Authority's expense) in control and defense thereof.

12. INSURANCE

Throughout the duration of the Contract, Contractor shall maintain the following insurance, which shall be first dollar-coverage insurance and, unless approved in writing by Authority. Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the course of the Contract.

12.1 Within 10 days after receiving Notice of Award, Contractor shall furnish to Lia McNeil-Kakaris, Assistant Director, Contracts an endorsement showing the required insurance coverages for Contractor and further providing that:

12.2 Authority and its member agencies, and their officers, directors, employees, and agents are named as an additional insured via endorsement on commercial general liability and automobile liability insurance with respect to performance hereunder.

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

12.4 Prior written notice of cancellation of coverage shall be given to Authority by endorsement.

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

12.6 Any deductibles or self-insured retentions must be declared to and approved in writing by the Authority. At the option of the Authority, either the Contractor shall reduce or eliminate such deductibles or self-insured retentions with respect to the Contract to be awarded or shall procure a bond guaranteeing the amount of the deductible or self-insured retention. If the Authority agrees in writing to a deductible or self-insured retention, then the Contractor shall be responsible for the full cost of such deductible or self-insured retention.

12.7 Limits of Insurances. The Contractor shall maintain the following limits:

12.7.1 Commercial General Liability to include Products/Completed Operations, Independent Contractor, Contractual Liability, and Personal Injury Liability; with the following limits of liability:

- a. Primary Bodily Injury Liability Limits of \$4,000,000 per occurrence, and
- b. Primary Property Damage Liability Limits of \$4,000,000 per occurrence, or

- c. Combined single limits of liability for Primary Bodily Injury and Primary Property Damage of \$4,000,000 per occurrence, \$8,000,000 annual aggregate.

12.7.2 Automobile Liability with the following limits:

- a. Primary Bodily Injury with limits of \$1,000,000 per occurrence; and
- b. Primary Property Damage with limits of \$1,000,000 per occurrence; or
- c. Combined single limits of Liability for Primary Bodily and Primary Property Damage of \$2,000,000 per occurrence.

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

12.7.4 Railroad Protective Liability Insurance

- a. Contractor shall provide, with respect to the operations they or any of their subcontractors perform on any property of Authority as per criteria shown in "Rules and Requirements for Construction on Railway Property."
- b. The policy shall have limits of liability of \$5,000,000 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 \$10,000,000 annual aggregate shall apply.
- c. Contractor shall include the following as insured under its Railroad Protective Liability Insurance:

Insured:

Southern California Regional Rail Authority (Authority)

Additionally Insured:

Burlington Northern Santa Fe Corporation (BNSF)
Los Angeles County Metropolitan Transportation Authority (MTA)
National Railroad Passenger Corporation (Amtrak)
Orange County Transportation Authority (OCTA)
Riverside County Transportation Commission (RCTC)
San Bernardino Associated Government (SANBAG)
Union Pacific Railroad Company (UPRR)
Ventura County Transportation Commission (VCTC)
Others at the request of Authority

13. PERFORMANCE GUARANTY.

Within 10 days of execution of this Contract, and prior to issuance of a Notice to Proceed, the Contractor must furnish at its own expense a Performance Guaranty executed by its parent corporation, and attached hereto as **Exhibit B**, to guarantee the faithful and timely performance of the Work in accordance with the terms and conditions of the Contract. The Performance Guarantee will be in an amount equal to one hundred percent (100%) of the Total Base Order Contract Price.

The Performance Guaranty must be effective from the date of award of the Contract to the completion of the warranty period and satisfactory resolution of any outstanding warranty claims. Notwithstanding the previous sentence, upon Contract Close-Out of the last Locomotive in the base order, the Authority will accept a reduced Performance Guaranty in the amount of 10% of the Total Base Order Contract Price that will remain in effect throughout the warranty period and until the resolution of all outstanding warranty claims of the base order.

Upon the Authority's order of any additional Locomotives purchased pursuant to the exercise of its options, the Authority may require the Contractor to increase the Performance Guaranty to a sum that includes 100% of the total amount of the Authority's Option order. Such revised Performance Guaranty is subject to the same reduction upon acceptance as described above regarding the base order.

14. QUALITY ASSURANCE.

The Contractor must establish and maintain an effective quality assurance program consistent with Appendix A of the Technical Specifications. The quality assurance program must exercise quality control over all phases of production from initiation of design through manufacture and preparation for delivery and will maintain an ongoing history of customer complaints with corrective action. The program must also control the quality of subcomponent articles. The quality assurance program must have the authority and responsibility for reliability, quality control, inspection planning, establishment of the quality control system, and acceptance/rejection of materials and manufactured articles in the production of the Locomotives.

15. WARRANTY REQUIREMENTS.

15.1 General Warranty.

The Contractor guarantees and warrants that all work, materials, equipment and Locomotives (including without limitation any Software) furnished under this Contract will conform to the Contract Documents, including without limitation the Technical Specifications. Except where longer periods of warranty are specified in Section 14.2 below, the Contractor warrants all Locomotives furnished under this Contract, including all equipment, spare parts and materials, and all labor performed, will be in full accordance with the Contract Documents, and will be free of all defects in materials and workmanship for a period of 2 years from and after each Locomotive is placed into revenue service, or for any longer period specified in any warranty available from any Subcontractor. The warranty will apply regardless whether the equipment, materials or labor were furnished or performed by the Contractor or by any of its subcontractors or suppliers of any tier. Without limiting any of Contractor's obligations under this Section, Authority shall be the beneficiary of any warranty provided by any Subcontractor.

Provided that Contractor receives all payments due under this Agreement, Contractor warrants that the title to the material, supplies or equipment covered by the Contract, when delivered to the Authority or to its successors or assigns, is free from all liens and encumbrances.

Upon notice from the Authority of any failure or defect in any materials or workmanship ("Defect"), the Contractor will diligently perform all work necessary to determine the cause thereof, and the time necessary to remedy the Defect, and will propose in writing to the Authority how and in what manner it will remedy the Defect. If the Authority determines that the proposal complies with the terms of the Technical Specification, it will authorize the Contractor to proceed to repair or replace the defective or failed items within the agreed time period.

In determining the cause of the Defect, the Contractor will perform such investigations and tests as the Authority may require to determine the cause, and to verify that repairs and replacements comply with the requirements of the Technical Specification. All costs associated with such investigation repair, replacement and testing, including, but not limited to, the removal, replacement, and reinstallation of equipment and materials necessary to gain access to defective Units, will be borne by the Contractor. Should the Contractor fail to commence the necessary investigation repair, replacement, and test within three (3) working days after receipt of a written notice from the Authority of a Defect, the Authority may perform or cause to be performed the same at the Contractor's expense.

The Contractor warrants such repaired or replaced Units against defective materials and workmanship for the remainder of the original warranty period as defined in Section 14.2.

Subject to the approval of the Authority, Contractor personnel may use Authority facilities and special equipment to perform warranty work, provided that such work does not interfere with other Authority activities, and is performed in accordance with Authority policies and directions. The Authority will designate which facilities and special equipment may be used, and the schedule thereof. Contractor will reimburse the Authority for any reasonable extraordinary expenses to the Authority arising from Contractor's use of Authority facilities and special equipment. If the Authority in its sole discretion determines that its facilities or special equipment cannot be made available, Contractor will be responsible for obtaining its own facilities and special equipment at Contractor's cost. Damages to Authority property caused by negligence or willful misconduct of the Contractor (or its subcontractors or suppliers) while such property is in the Contractor's sole care, custody and control, will be the sole responsibility of the Contractor, and will be corrected at the Contractor's expense.

The Contractor will be liable for the full performance of the warranties as set forth herein.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY NON-CONTRACTUAL LIABILITIES INCLUDING PRODUCT LIABILITIES BASED UPON NEGLIGENCE OR STRICT LIABILITY, and Contractor neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of the Locomotives.

15.2 Subsystems and Components.

Major Subsystems. The Contractor warrants specific Units against Defects as noted in the following table from and after the date that each Locomotive is placed into revenue service.

Item	Years
Base warranty – entire Locomotive	2
Locomotive body and underframe structural integrity and corrosion	10
Truck frame and bolster structural integrity, corrosion	10
Elastomers used in trucks	2
Traction motors	2
Major prime mover components (engines, alternators, generators, inverters, engine cooling system)	2
Paint and Graphics (no fading or deterioration)	2

A corrosion defect is defined as corrosion resulting from normal use and normal exposure of a surface to Authority operating environment. Corrosion that results from debris damage, collision damage or vandalism will not be considered a corrosion defect.

15.3 Extended Warranties. In the event any subcontractor, supplier or manufacturer offers a longer warranty period beyond those specified in Section 14.2, the Contractor shall state the terms of such warranty or warranties in writing and shall extend same to Authority without additional cost to Authority if no additional cost is incurred by Contractor.

15.4 Other Warranties or Guarantees. All express warranties and guarantees of subcontractors, suppliers of any tier and manufacturers are deemed to be made for the benefit of Authority regardless of whether stated as such, and the Contractor shall enforce such warranties and guarantees for the benefit of Authority.

15.5 Exceptions to Warranty. If a Defect was caused by Authority as a result of Authority's (a) misuse, negligence or accident, including, but not limited to, (i) using a Locomotive for purposes for which it is not designed or intended (such as use for freight purposes when such Locomotive is designed for passenger purposes, or vice versa), or (ii) using the Locomotives under conditions other than those contemplated in the specifications, or (iii) subjecting a Locomotive to improper installation or improper operation, or (iv) not maintaining a Locomotive according to either the Contractor's maintenance instructions applicable to the Locomotives or components, or other maintenance advices provided by Contractor to the Authority; or (b) a Unit was repaired or altered in any way by Authority or any other party not authorized or approved by Contractor (except for any repair, alteration or modification made as a result of Contractor's failure to promptly investigate, repair or replace beyond the applicable cure period as described in this Section 15.1), including but not limited to damage arising from Authority's application of non-Contractor parts, the warranty shall not apply to any such Locomotive, part or component.

In addition, warranty does not apply to any Locomotive, part or component that fails or is damaged as a result of any other component with respect to which any action under (a) or (b) was undertaken; or when Contractor's examination of the Locomotive, part or component discloses that no Defect exists.

The warranty shall not apply to Contractor-furnished consumables, such as filters, seat cushions, or brakes shoes, unless the Defect is due to defective manufacture or workmanship of the consumable; or to items furnished by Authority, except insofar as such an item is damaged by a Defect in a Unit for which the Contractor is responsible.

15.6 Detection of Defects. If Authority detects a defect within a warranty period as defined herein, it shall promptly notify the Contractor's Representative.

15.7 Contractor Response. Within three (3) working days after notification, the Contractor's Representative shall either agree that the defect is in fact covered by warranty, or reserve judgment until the Unit is inspected by the Contractor's Representative or is removed from the Locomotive and examined at Authority's property or at the Contractor's plant. At that time (or such longer period as necessary), the Contractor will provide Authority with its initial analysis of the Defect, and the Parties will attempt to resolve the status of warranty coverage on the Unit. If Contractor's examination of the Locomotive, part or component discloses that no Defect exists, the Authority will pay for any analysis performed by Contractor.

Notwithstanding any time necessary for the Contractor to analyze and resolve warranty status, if the Contractor has not commenced repair or replacement in good faith, within three (3) working days after the Contractor's notification, Authority reserves the right to perform the required repairs without further notice to the Contractor and to be reimbursed for all associated costs.

15.8 Scope of Warranty Provisions. The Contractor shall correct Fleet Defects under the warranty provisions in Section 17, Fleet Defect Status, at the Contractor's sole cost. After correcting the Fleet Defect, the Contractor shall promptly undertake and complete, at the Contractor's sole cost, a work program reasonably designed to prevent the occurrence of the same Fleet Defect in all other Locomotive purchased under this Contract including those for which the individual Locomotive or Unit warranty has already expired. The work program shall include inspection and repair or replacement of the defective Units in all the Locomotives delivered or to be delivered under this Contract.

The warranty on Units arising from Defects determined to be Fleet Defects shall apply to the entire fleet of Locomotive delivered or to be delivered under this Contract, and as to Locomotive previously accepted by Authority shall commence on the date remediation and correction by the Contractor is completed on the entire fleet accepted up to that date ("Corrected Date"). The period of warranty for a Fleet Defect shall be the greater of a) the full period of the entire original warranty on the defective Unit or b) one year from the first Corrected Date.

15.9 Repairs by Contractor. The Contractor or its designated representative shall perform warranty covered repairs that Authority determines in its sole discretion are beyond the scope of Authority's capabilities or available resources. Subject to the terms of Section 15.10, repairs that Authority determines in its sole discretion are within Authority's capabilities or available resources may be performed by Authority. If Authority requires the Contractor to perform repairs in addition to the requirements of Section 15.1, General Warranty through 15.8, Scope of Warranty Provisions, such request shall be pursuant to the terms of Section 19.

15.10 Repairs by Authority. It is understood that Authority may elect to perform the repairs stated in Section 15.9 of this Contract. If Authority elects to self-perform the repairs, it will consult the Contractor prior to beginning the repair work and obtain Contractor's agreement

as to the work to be performed to ensure that any existing warranty on the Unit to be repaired is not adversely affected. In such an event, Authority shall make repairs using the Contractor specified Units supplied by the Contractor specifically for this repair. Warranty claims for repairs covered by this warranty shall be submitted by Authority to the Contractor for reimbursement on a regular basis. The Contractor shall pay the warranty Labor Rate as mutually agreed upon by the Parties, excluding overtime, at the time of the incident for all Authority labor required, provided that such costs are reasonable and Contractor may, upon reasonable advance notice to Authority and at its sole cost, audit Authority's records reflecting the repairs completed and the amounts charged by Authority.

15.11 Contractor Supplied Parts. Authority may request that the Contractor supply new (or remanufactured to OEM standards) Units for warranty covered repairs being performed by Authority. These Units shall be shipped prepaid to Authority from any source selected by the Contractor. Replacement Units shall be shipped directly to Authority's maintenance facility. Contractor must provide an effective materials management program to ensure spare parts inventory sufficient to support the warranty. Authority reserves the right to verify and audit the adequacy of Contractor's spare parts inventory.

15.12 Defective Unit Return. The Contractor, in its sole discretion, may request that defective Units covered by the warranty be returned to the manufacturing plant. The Contractor shall make such requests no later than 120 days after repairs are completed. The cost of standard freight and insurance shall be paid by the Contractor. Units shall be returned in accordance with Contractor's instructions at the Contractor's cost.

15.13 Reimbursement. The Contractor shall reimburse Authority for all reasonable costs associated with performing warranty work.

15.14 Reimbursement for Labor. The Contractor shall reimburse Authority for all labor associated with the correction of Defect(s) as described in Section 15.10. The amount shall be determined by multiplying the number of labor hours actually required to correct the Defect by Authority's warranty Labor rate, of which Authority will notify the Contractor in writing at least twenty (20) days prior to the scheduled start date of any such labor. The Contractor shall also pay the cost of transporting the Locomotive if such action is necessary, provided, however, that if such transport is from a location on Authority's system to another location on Authority's system, Contractor shall not be required to pay such cost of transportation.

Should the Contractor request Authority to transport Locomotive to a vendor/subcontractor for repairs, the Contractor shall reimburse Authority for all expenses incurred including, but not limited to, labor, fuel, and transportation. The Contractor shall assume all liability for damage from the time Contractor assumes sole care, custody and control of the Locomotive until it is returned to Authority's care, custody and control. Reimbursement to Authority shall be made upon receipt of an invoice.

15.15 Defective Units and Parts. If the Authority self-performs repairs pursuant to the terms of Section 15.10, the Contractor shall provide to Authority replacements for Defective Units and for additional parts (i.e. gaskets, etc.) to correct the Defect under warranty.

15.16 Replacement or Repaired Part Warranty. If any Unit is repaired, rebuilt or replaced by the Contractor or by Authority's personnel pursuant to this Contract, the Unit shall have the warranty period of the original Unit as described in Section 15.2. If, following return of a part and upon analysis by Contractor, Authority is found to be responsible for the failure or

Defect, or if the original part is found to be free of the reported Defect, then Contractor shall invoice Authority for all charges for replacement parts and freight costs incurred by Contractor with respect to any replacement parts supplied to Authority.

15.17 Fleet Defect Status. A Fleet Defect may be declared in the event any single failure mode of an item develops and in which the rate of such failures reaches 20% of the total number of such items during any 12 consecutive month period. The rate calculation shall start when all Locomotives of the base order are accepted and continue until the expiration of the warranty applicable to that Item on the last Locomotive accepted by Authority in the Locomotive Fleet.

If a single failure (a failure of a single item on one Locomotive) represents a higher percentage than 20 percent, that single failure shall not constitute a Fleet Defect and shall be addressed as an isolated problem.

Each incident of an item failure shall count as a single Locomotive failure, even if multiple item failures are recorded on one Locomotive until such time that the first item that failed is corrected. If the failure occurs after a correction is made, it will be added to the failure count as a new failure.

The "Locomotive Fleet" shall consist of the number of Locomotive accepted by Authority at the time of any notice to the Contractor of a Fleet Defect, but not less than one hundred percent (100%) of the base order. For each Item reaching the 20% threshold, the Contractor and Authority shall jointly review the failure mechanism and agree on the remedy. Remedy may consist of repair, replacement, adjustment, or redesign. In the latter case, the Contractor at its sole cost shall furnish, install and replace defective items in up to one hundred percent (100%) of the Locomotive Fleet, including those Locomotives yet to be delivered (option Locomotives) and Locomotive for which the warranty has already expired, and all identical items contained in Authority's stock. Modified Items shall meet or exceed all performance requirements.

An item is defined as the minimum unit on which a corrective action may be performed (repair, replacement, adjustment or redesign), either directly on the Locomotive or in the shop. The Contractor shall update, as necessary, technical support information (parts, maintenance and operators' manuals) due to changes resulting from warranty repairs.

A Defect resulting in a safety hazard shall immediately upon discovery be deemed to be a Fleet Defect and the Contractor, at its sole cost, shall furnish, install and replace all defective items.

The Fleet Defect provisions shall not apply to Fleet Defects caused by Authority's non-compliance with the Contractor's minimum recommended normal preventative maintenance practices and procedures as contained in then current maintenance manuals supplied by the Contractor to Authority; provided, however, the Contractor, in any denial of Fleet Defect status must demonstrate by adequate proof that Authority did not comply, and if adequate proof is not provided the Fleet Defect provisions shall apply.

15.18 Warranty Claim Submittal. Warranty claim forms shall be supplied and submitted by Authority, and will contain the following information:

Identification Data:

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- Warranty repair claim number
- Locomotive number
- Locomotive mileage and megawatt hours
- In service date of Locomotive, or failed part if previously replaced
- Repair date
- Claim date
- Failure description
- Repairs made

Unit and Part Information:

- Quantity
- Unit or Part number
- Unit or Part description
- Serial number(s)

Labor Information:

- Labor hours

THE CONTRACTOR SHALL RESPOND TO THE WARRANTY CLAIM IN WRITING PURSUANT TO THE TERMS OF THIS SECTION 15. AUTHORITY WILL NOT PROCESS WARRANTY THROUGH A SUBCONTRACTOR OR COMPONENT MANUFACTURER.

16. SUBCONTRACTORS.

The Contractor may not subcontract any services to be performed by it under this Contract, or any materials or equipment incorporated into the Locomotives, for an amount of \$100,000 or higher without the prior written approval of the Authority's Project Manager, provided, however, that such approval shall not be required for any subcontract to any entity that is controlled by, under common control with, or a parent company of any tier of Contractor. Any subcontractors must be engaged under written contract with Contractor with provisions allowing the Contractor to comply with all requirements of this Contract. Without limitation to the generality of the foregoing, each such written subcontract will at a minimum contain the following express provisions:

- Contractor, not Authority, is solely responsible for payment to the Subcontractor for any amounts owing—and the Subcontractor will have no claim, and will take no action against Authority, Member Agencies or officers, directors, employees, or sureties of any of them for nonpayment by Contractor.
- Subcontractor agrees that the subcontract is subservient to this Contract and that it will be bound to the applicable terms and conditions of this Agreement.
- Without limitation to the generality of the foregoing, the Subcontract will require Subcontractor to agree to terms and conditions echoing or at a minimum effecting Section 7.

Consent by Authority's Project Manager to any subcontracting will not relieve the Contractor of its primary responsibility for performance under this Contract. If subcontracting is

approved, the Contractor agrees that all applicable FTA flow down compliance requirements will be included in such subcontracts and the Contractor will obtain all applicable FTA-required certifications before entering into any subcontract.

The Contractor will be fully responsible to the Authority for all acts and omissions of its own employees, and of Subcontractors, Suppliers and their employees. The Contractor will also be responsible for coordinating the Work performed by Subcontractors/Suppliers. When a portion of the subcontracted Work is not performed in accordance with the Agreement, or if a Subcontractor/Supplier commits or omits any act that would constitute a breach of the Agreement, the Subcontractor/Supplier will be replaced at the request of the Authority and will not again be employed on the project.

The Contractor will be responsible for all materials and workmanship in the construction of the Locomotives and all accessories used, whether the same are manufactured by the Contractor, subcontracted, assigned, or purchased from a supplier. The Contractor will be solely responsible for reimbursing any subcontractors and the Authority will have no obligation to them.

Within ten (10) days of the Effective Date, the Contractor will submit for the Authority's approval a preliminary list of Subcontractors. In the event that the Authority, in the exercise of its reasonable discretion, does not approve a proposed Subcontractor, Contractor will propose a suitable replacement within ten days of notice of Authority's rejection of the initial proposed Subcontractor.

Nothing contained herein nor any course of conduct will be construed to create any contractual relationship between Authority and any Subcontractor. Upon request and subject to Contractor's confidentiality obligations with any such Subcontractor, Contractor will provide to Authority an executed copy of each subcontract agreement, including any amendments thereto.

17. PERSONNEL.

Contractor will assign only competent personnel to perform work hereunder. In the event that at any time the Authority, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder due to continued poor performance for which Authority has given Contractor written notice, Contractor will remove such person or persons immediately upon receiving written notice from the Authority. Key Personnel for this Contract are set forth below.

Brad Krier	Project Manager
Daniel Meyers	Vice President, Customer Service
Gary Eelman	Vice President, Transit Sales

Any and all persons identified in the above table are deemed by Authority to be Key Personnel. Contractor may not remove, replace, substitute, or otherwise change any Key Personnel without the prior written consent of the Authority, which consent shall not be unreasonably withheld.

In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor will be responsible for timely provision of adequately qualified replacements. In no event will a position remain unfilled for more than three months. Except for excusable delays as set forth in Section 8, unavailability of personnel, even due to factors

outside of Contractor's control, will not provide Contractor an excuse from meeting the time requirements under this Contract.

18. PROMPT PAYMENT TO SUBCONTRACTORS.

The Contractor will pay any Subcontractor approved by the Authority for work that has been satisfactorily performed no later than seven (7) days from the date of the Contractor's receipt of payments by the Authority.

In the event Authority holds retainage from the Contractor, it will make prompt and regular incremental acceptances of portions of the contract work, as determined by the Authority, and pay retainage to the Contractor based on these acceptances. The Contractor will return all monies withheld from all Subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Authority. Any delay or postponement of payment may take place only for good cause and with the Authority's prior written approval. In the event the Contractor does not make progress payments or release retentions to the Subcontractors in accordance with the time periods in this section, the Contractor will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment.

Upon the Authority's request, the Contractor will make available to the Authority evidence that the Contractor has paid Subcontractors all amounts due in accordance with this section. This section applies to both DBE and non-DBE Subcontractors.

19. CHANGES.

19.1 General. All changes to the Contract must be accomplished through the procedures set forth in this Section. Any plan or method of work, whether suggested by Contractor, SCRRA, Project Manager, Contracting Officer, and/or Engineer to Contractor, but not specified or required in the Contract, if adopted or followed by Contractor in whole or part without compliance with this Section 19 shall be adopted at the risk and responsibility of Contractor, and SCRRA shall assume no responsibility. In particular, any unwritten/verbal approval by SCRRA's Project Manager of any modification, sample, schedule document, substitution, drawing or other matter not accomplished by the procedures set forth in this section 19 will not impose any liability upon Authority or relieve Contractor of any responsibilities under the Contract, including without limitation, the accuracy of any drawing or any obligation under any warranty provision, or the responsibility to deliver Locomotives that are compliant with regulatory requirements, the Technical Specification, and this Contract. There are no verbal modifications to the Contract. The Contractor shall be responsible to ensure proper interrelation, functioning and systems integration of all aspects of the work related to the Locomotive systems and their relationship with other equipment and systems of the Locomotive. The Contractor shall be responsible to ensure the suitability of the systems, devices, apparatus, components and parts for the service intended.

19.2 Contractor Changes. Any Contractor-proposed change in this Contract must be submitted to the Authority for its prior approval. Oral change orders are not permitted. All Contractor initiated requests for a change must be made within 20 days after Contractor knows of the issues giving rise to the request. At the Authority's request, Contractor will provide information giving the basis for the requested change, or will provide a proposal containing the information set forth in Section 19.3. No change in this Contract will be made unless the Authority gives prior written approval therefor. The Contractor will be liable for all costs resulting

from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Authority.

19.3 Authority Changes. The Authority may obtain changes to the Contract by notifying the Contractor in writing. As soon as reasonably possible but no later than ten (10) calendar days after receipt of the written change order to modify the Contract, the Contractor will submit to the Authority's Project Manager a detailed price and schedule proposal for the work to be performed as follows.

19.3.1 The proposal must detail all applicable direct costs, including labor and materials if possible, with the unit price and corresponding quantity if possible. The information must be in sufficient detail for the Authority to determine if the proposed costs are fair and reasonable.

19.3.2 Contractor agrees that in no event will the combined profit and overhead of the supplier(s)/Subcontractor(s) and Contractor with respect to any change order work for services or labor exceed 10 percent (10%) above Contractor's fully burdened cost. Calculation of profit for the change order will be on the costs of Contractor and any subcontracted services or labor without profit and overhead of the Contractor or supplier(s)/subcontractor(s). The Contractor agrees that it will endeavor to include a provision in each subcontract which conforms to the provisions of the preceding sentence.

19.3.3 Equipment costs used for the work will be reimbursable to Contractor. All receipts, vouchers and all other supporting documentation required to substantiate the material costs will be available for the Authority's inspection and verification.

19.4 Change Order

19.4.1 Contractor's price and schedule proposal will be accepted or modified by negotiations between the Contractor and the Authority. At that time a detailed modification will be executed in writing by both Parties. Modifications that increase the cost to be paid to Contractor may need to be approved by the Authority's Board of Directors. Disagreements that cannot be resolved within negotiations will be resolved in accordance with the procedures in Section 20 below. In the event of a disagreement over a change order, the Authority reserves the right unilaterally to direct the Contractor to perform work through a change order that does not need to be executed by both parties. The Contractor will perform the work as directed and may exercise its rights to pursue a claim pursuant to Section 20.1. Regardless of any disputes, the Contractor will proceed with the Work ordered.

19.4.2 A change order must be issued and executed before any work is started on the items covered by the change order. Any extra work done without a written change order signed by the Authority's authorized representative will be considered as unauthorized and at the sole expense of Contractor. In the event Contractor receives direction, instruction, interpretation, or determination from any source which may cause any change in the Work, Contractor will promptly notify the Authority. Such written notification will be given to the Authority before Contractor acts on said direction, instruction, interpretation, or determination.

19.4.3 Unless specified, no change order shall impose any liability upon SCRRA, nor shall any change order relieve Contractor of any responsibilities under the Contract, including without limitation, the accuracy of drawing or any obligation under any warranty provision. End result must be that the Locomotive is compliant with regulatory requirements, Contract, and Technical Specification, and the Contractor is solely responsible for fulfilling this requirement.

20. DISPUTE RESOLUTION.

20.1 Contractor Claims

The Contractor will be solely responsible for providing timely written notice to the Authority of any claims for additional compensation and/or time in accordance with the provisions of this Contract. It is the Authority's intent to investigate and attempt to resolve any Contractor claims before the Contractor has performed any disputed work.

Claims by the Contractor disputing the meaning and intent of this Contract or arising from performance of this Contract will be referred in writing to the Authority's Project Manager for a written decision. Except for claims that result from a disagreement over a proposed change order pursuant to Section 19, all such claims must be filed within 20 days after Contractor knows of the issues giving rise to the claim, and must be accompanied by written documentation substantiating the reasons for which the Contractor believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim. Claims resulting from a disagreement over a proposed change order pursuant to Section 19 must be filed with 20 days of the documented failure to resolve any disagreement. The Authority's Project Manager will respond to the Contractor in writing with a decision within 20 calendar days following receipt of the Contractor's claim. Unless agreed to otherwise by the Authority, failure to provide timely notice as described in this paragraph will constitute a waiver of Contractor's claims for additional compensation and/or time.

The Contractor will not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Authority, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the Authority due written notice of the claim as set forth above.

20.2 Appeal of Project Manager Decision. If the Contractor disagrees with any determination or decision of the Authority's Project Manager, the Contractor will, within 15 calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Chief Executive Officer of the Authority. Such written appeal will include all documents and other information necessary to substantiate the dispute or claim. The Chief Executive Officer of the Authority will review the dispute or claim and meet with a designated representative of Contractor. Both shall use their best efforts to settle such dispute or difference within 30 calendar days from the receipt of the dispute or claim. To this end, Chief Executive Officer of the Authority and Contractor shall consult and negotiate with each other in good faith to reach a just and equitable solution within a reasonable time, and if the dispute or difference cannot be satisfactorily so settled, it shall be resolved by alternative dispute resolution pursuant to the terms of Section 20.3 upon written request of either Party hereto. Submission of a dispute or claim to the Chief Executive Officer of the Authority will be a condition precedent to any alternative dispute resolution under this Contract. The Chief Executive Officer of the Authority may, at his or her discretion, extend the time period for response to the Contractor specified in this Section.

20.3 Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between the Authority and Contractor which cannot be resolved through the efforts described above, may, by specific agreement of the Parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the Parties at the time. Each Party will bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any independent decision maker will be shared equally between the Parties. If a dispute is not resolved through discussion or the Parties do not agree to alternative dispute resolution, either Party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. Contractor must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action.

20.4 Any matter that is subject to the express sole discretion of either Party to this Agreement will not be subject to the dispute resolution process described in this Section.

20.5 Pending final decision of a dispute under this Section 20 the Contractor will proceed diligently with the performance of the Contract and the question or claim will be temporarily resolved in accordance with the decision of the Chief Executive Officer of the Authority, until final resolution of the question or claim.

21. SUSPENSION.

The Authority may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the work for a specified period of time. If any suspension is a full suspension of all the Work, and such suspension reaches thirty (30) days, Contractor may terminate this Contract upon written notice to Authority and without Contractor incurring any liability to Authority.

The Contractor will comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the work covered by the suspension during the period of work stoppage. Contractor must continue the work that is not included in the suspension and will continue such ancillary activities as are not suspended. The Contractor will resume performance of the suspended work upon expiration of the notice of suspension, or upon direction from the Authority.

The Contractor will be allowed an equitable adjustment in the contract price and/or an extension of the contract time, as a result of any suspension. However, no adjustment will be made under this section for any suspension, delay or interruption due to the negligence of the Contractor, or for which an equitable adjustment is otherwise provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the Parties, after receipt of the written suspension of work notice, the Contractor will submit to the Authority a detailed price and schedule proposal for the suspension, delay or interruption.

22. TERMINATION OF CONTRACT.

22.1 Termination for Default

If Contractor fails to perform any of the provisions of this Contract after ten (10) days of its receipt of a written notice thereof, the Authority may find Contractor to be in partial or

complete default. If Contractor does not cure such default within thirty (30) days after receipt of written notification that such failure has occurred, or provide a plan to cure such default which is reasonably acceptable to the Authority within the time specified by the Authority, then the Authority may, in its discretion, terminate this Contract, in whole or in part, on the basis of Contractor's default of this Agreement.

The term "default" for purposes of this Section includes, but is not limited to: the performance of the work in violation of the terms of the Contract; abandonment, assignment or subletting of the Contract without approval of the Authority; filing a petition for bankruptcy by or against the Contractor or appointment of a receiver for Contractor's property; initiation of a federal or state proceeding for relief of debtors by or against Contractor; failure of the Contractor to perform its obligations under the Contract Documents (including but not limited to use of materials, supplies, plant, or equipment of quality or quantity below the requirements in the Contract Documents; failure to perform its obligations under the Contract Documents within the time specified therein; failure to meet Tier 4 Certification prior to delivery, or the performance of the Contract in bad faith.

If the Contract is terminated in whole or in part for default, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, Locomotives or services similar to those so terminated. Without in any way affecting the Authority's rights under the Performance Guaranty, the Contractor may be liable to the Authority for any reasonable costs or expenses incurred by Authority in reprocurring elsewhere similar Locomotives or services.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the Parties will be the same as if the notice of termination had been issued pursuant to termination for convenience of the Authority.

All finished documents and any completed Locomotives produced pursuant to this Contract will become the property of the Authority upon the effective date of such termination for default.

22.2 Termination for Failure to Meet Tier 4 Certification

The Locomotives must meet all Tier 4 requirements to the satisfaction of the United States Environmental Protection Agency. Successful certification of Tier 4 compliance is a requirement of Locomotive Acceptance (Conditional Acceptance) of the first Locomotive. Failure to obtain such Tier 4 certification prior to delivery is a material breach of this Agreement and may subject Contractor to immediate termination for cause.

The Milestone Payment Schedule set forth in Section 5.2 calls for payment in the amount of 43% of the Base Order of Locomotives prior to Locomotive Acceptance (Conditional Acceptance), the point in time at which it will be known whether Tier 4 certification has been successfully achieved. In the event that the Authority terminates the Agreement for cause for Contractor's failure to obtain Tier 4 certification by the required deadline, provided however that Contractor shall be provided 30 days cure period prior to such termination, Contractor must refund to Authority all payments made up to the termination. Such refund shall be the Authority's sole remedy, and Contractor's sole liability, under this Section 22.2. The

Performance Guaranty required by Section 13 is expressly required to be available to the Authority as security for any payment made prior to termination.

22.3 Termination for Convenience

The Authority may terminate this Contract for convenience, including for non-availability of funds, in whole or in part, upon 30 calendar days' notice sent by certified mail, return receipt requested, to the Contractor, provided, however, that such termination may be exercised only prior to the scheduled delivery date of any Locomotive. If the Authority terminates this Contract for convenience, the Contractor will:

- Stop work under the Contract on the date and to the extent specified in the notice of termination.
- Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.
- Settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Authority, to the extent that may be required, which approval or ratification will be final for all the purposes of this Section.
- Use its best efforts to sell, reuse, or scrap, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Authority, any property of the types referred to above, provided however, that the Contractor will not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the Authority. The value of any reuse or scrap, or proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by the Authority to the Contractor under this Contract or will otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Authority may direct.
- Complete performance of such part of the work as will not have been terminated by the notice of termination.

In the event of termination for convenience, the Contractor will be paid all sums actually due and owing for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by Contractor to effect such termination in addition to a termination fee equal to ten percent (10%) of the unpaid balance of this Contract (including Options, if any). Thereafter, Contractor will not be entitled to make any claim against the Authority in connection with this Agreement. All finished documents and completed Locomotives produced pursuant to this Agreement will become the property of the Authority upon the effective date of such termination for convenience.

In the event of termination for convenience, Contractor, and its Subcontractors, will provide reasonable and good faith cooperation in any transition to other vendors or contractors as the Authority may determine necessary.

Contractor Responsibility for Subcontracts. If this Contract is terminated, the Authority will have no liability or responsibility for leases or contractual agreements entered into by the Contractor for performance of the Contractor's responsibilities under this Contract, except as provided in this Section.

23. RECORD-KEEPING; AND ACCESS TO RECORDS; AUDIT.

23.1 Establishment and Maintenance of Information. The Contractor agrees to establish and maintain accurate, detailed, and complete books, accounts, financial records, documentation, and other evidence pertaining to: i) the performance of the work under this Contract, and ii) the receipt and expenditure of all funds received under this Contract. The Contractor will also maintain the financial information and data used in preparation or support of the cost submission for any negotiated Contract amendment or change order under this Contract. The Contractor will establish and maintain all such information in accordance with generally accepted accounting principles and practices and will retain intact all such information until the latest of:

- (a) complete performance of this Contract; or
 - (b) six years following the end of the term of this Contract; or
 - (c) if any litigation, claim, or audit is commenced during either such period, when all such litigation, claims or audits have been resolved.
1. If the Contractor engages any subcontractors to perform any of the work under this Contract, the Contractor agrees to endeavor to include provisions requiring the subcontractor to establish and maintain information in accordance with the provisions of this Section and to allow access to and audit of such information in accordance with Section 23.2 below.
 2. **Access to Data and Other Information.** Upon reasonable prior notice and only during business hours, the Authority, as well as representatives of the California Air Resources Board, the South Coast Air Quality Management District, and the Federal Transit Administration, will have access to all Contractor data under this Contract and Contractor will cooperate with the Authority's reasonable requests for access to the data for the purpose of inspection and copying. The Contractor must maintain the data in convenient formats reasonably requested by the Authority. The Contractor will provide reasonable facilities for such access, inspection, audit, and copying and will endeavor to require that this Section be included in any subcontract for the work under the contract. For the Authority to determine whether the Contractor has complied with the requirements under this Section, the Contractor will, at any time when requested, submit to the Authority properly authenticated documents or other satisfactory proof as to the Contractor's compliance with such requirements. The term "data" for the purposes of this Section includes

all information and records collected, created, received, maintained, or disseminated by the Contractor in the performance of the work under this Contract, regardless of physical form, storage media, or conditions of use. Any such audit will be at no cost to the Contractor (nor will Contractor receive any reimbursement for the internal costs it may incur to prepare for such audit) and shall be subject to the terms of Section 26.

23.2 Audits. The accounts and records of the Contractor relating to this Contract will be audited in the same manner as all other accounts and records of the Contractor are audited during normal business hours, upon reasonable prior notice, and at no cost to the Contractor (nor will Contractor receive any reimbursement for the internal costs it may incur to prepare for such audit). Authorized representatives of the Authority, as well as representatives of the California Air Resources Board, the South Coast Air Quality Management District, and the Federal Transit Administration, will have access to all such books, records, documents, and other information for the purpose of inspection, audit, and copying during normal business hours. The Contractor will provide reasonable facilities for such access and inspection. Financial adjustments resulting from any audit by the Authority will be paid in full within 30 calendar days of the Contractor's receipt of audit. To the extent permitted by applicable law, in no event shall Authority, as well as representatives of the California Air Resources Board, the South Coast Air Quality Management District, and the Federal Transit Administration, be granted access to any financial records relating to the profitability or price build-up of the Locomotives or any other goods, parts, products, or services sold on a lump-sum or fixed price basis. The Authority's rights as described in this paragraph are subject to the terms of Section 26.

23.3 Within 30 calendar days after completion, the Contractor will deliver to the Authority a copy of any audit of the Contractor done by the Contractor or at its request or at the direction of any governmental agency or department which relate to the performance of the work under this Contract.

24. CONFLICT OF INTEREST.

In addition to those direct conflicts of interest discussed and prohibited in the RFP, Contractor will take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Contract. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the Authority. Contractor will not engage the services of any Subcontractor or consultant on any work related to this Agreement if the Subcontractor or consultant, or any employee of the Subcontractor or consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement Contractor becomes aware of an organizational conflict of interest in connection with the work performed thereunder, Contractor immediately will provide the Authority with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. The Authority will consider the conflict presented and the alternatives proposed and meet with the Contractor to determine an appropriate course of action. The Authority's determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, Contractor must maintain lists of its employees, and the Subcontractors and consultants used and their employees. Subject to applicable laws and confidentiality agreements that restrict disclosure, Contractor will provide relevant information to the Authority upon request to address conflict of interest concerns.

25. PUBLICITY.

Neither Party, nor their respective employees, subcontractors, and agents will refer to the other Party, or use any logos, images, or photographs of the other Party for any commercial purpose, including, but not limited to, advertising, promotion, or public relations, without the prior written consent of such Party. Such written consent will not be required for the inclusion of the Authority's name on a customer list.

26. CONFIDENTIALITY.

All materials to which either Party has access or materials prepared by either Party during the course of this Contract ("Confidential Information") will be held in confidence by the Parties, who will exercise all reasonable precautions to prevent the disclosure of Confidential Information to anyone except the officers, employees and agents of the receiving Party as necessary to effect the purpose of this Contract.

Neither Party will release any reports, information or promotional materials prepared in connection with this Contract, whether deemed confidential or not, to any third party without the approval of the disclosing Party.

Confidentiality obligations hereunder will not apply to any portion of the Confidential Information which:

- (a) has become a matter of public knowledge other than through an act or omission of the receiving Party;
- (b) has been made known to the receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) was in the possession of the receiving Party prior to the disclosure of such Information by the disclosing Party and was not acquired directly or indirectly from any person or entity in a relationship of trust and confidence with the disclosing Party with respect to such Information; or
- (d) Contractor is required by law to disclose.

27. PUBLIC RECORDS ACT.

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 work under this Agreement, will 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.

Contractor may designate material submitted to Authority as "Trade Secret" or "Proprietary" and request that Authority not disclose such information to the public. If the Authority agrees not to disclose such information, Contractor assumes all responsibility for any challenges resulting from the non-disclosure, and will indemnify and hold harmless the Authority from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Contractor's information), and pay any and all costs and expenses related to the withholding of Contractor's information. Contractor will not make a claim, sue, or maintain any legal action against the Authority or its member agencies, directors, officers, employees, or agents concerning the withholding from disclosure of Contractor information.

28. HAZARDOUS AND NON-HAZARDOUS CHEMICALS AND WASTES.

Contractor will bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances at any of Contractor-owned facilities during the course of performance of this Contract except to the extent that any such releases are caused by the negligence, omission or misconduct of the Authority or any of its employees, agents, contractors, representatives, or any other party that is accountable directly to the Authority or for whom Authority is responsible. The Contractor will be solely responsible for all claims and expenses associated with the response to, removal and remediation of such release at any Contractor-owned facilities, including, without limit, payment of any fines or penalties levied against the Authority by any agency as a result of such release and will hold harmless, indemnify and defend the Authority from any claims arising from such release. For purposes of this Section only, the term "claims" will include (i) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (ii) any claim, cause of action, or administrative or judicial proceeding brought against the Authority, its member agencies, their directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including the Authority. This indemnification will survive the termination of the Contract.

If the performance of the work outlined by these contract specifications creates any hazardous wastes at any Contractor-owned facility, those wastes will be properly disposed of according to federal, state, and local laws, at the expense of Contractor. The Contractor will dispose of the wastes under its own EPA Generator Number. In no event will the Authority be identified as the generator. The Contractor will notify the Authority of any such hazardous wastes relevant to the production of the Locomotives.

29. TECHNOLOGY AND INTELLECTUAL PROPERTY RIGHTS.

29.1 Development and Deliverables

Contractor represents and warrants that all Contractor Software:

- (a) has been developed or will be developed in conformance with those standard industry interfaces and protocols specified by the Authority to permit interchangeability of Contractor-provided systems, subsystems, assemblies, subassemblies, and components;
- (b) is capable of maintenance, modification, and upgrades in accordance with conventional and industry software standards and practices; and

- (c) utilizes conventional command sequence and structure.

Contractor will not incorporate or deliver any Third Party Software in or as part of the Software without express prior written informed consent from the Authority. If Contractor wishes to incorporate or delivery any Third Party Software in or as part of the Software, Contractor will notify the Authority of this intent along with any information appropriate, desirable, or necessary for the Authority to consider the request. Notwithstanding the foregoing, the Authority recognizes that Contractor has or may have incorporated Third Party Software into Contractor provided systems, subsystems, or components, but that successful use of such already existing Third Party Software has been proven. Such existing use of Third Party Software shall be considered as pre-approved by the Authority.

Contractor will furnish to the Authority the documentation listed in this Section, in compliance with any requirements as to form, format, or media set forth in the Technical Specification, promptly as each such document reaches final form—and in any event no later than delivery of the last Locomotive in the base order; and Contractor will furnish to the Authority any new, modified, or updated versions of such documentation promptly as such documentation becomes available. The copies of documentation to be delivered to the Authority by Contractor are the property of the Authority. Contractor reserves ownership rights for any and all technology and intellectual property embodied and expressed in the documentation, and the Authority agrees to protect the confidentiality and proprietary nature of such technology and intellectual property with at least the reasonable precaution that the Authority would use to protect its own technology and intellectual property:

- (a) documentation relating to Contractor Software reasonably necessary or desirable for the Authority's Licensed Uses, including without limitation: user manuals, systems manuals, training manuals, and other such guides; logic diagrams; programmer's notes; flow-charts; algorithms; development tools and platforms, and data identifying source, functional characteristics, and performance requirements.
- (b) documentation relating to any input/output protocols and operating paramaters for all microprocessor-based control systems in or used with the Locomotives, including without limitation a complete list of all commands and operating parameters generated by electronic input devices (such as manual controls, sensors, and test equipment used with the system) and responses generated by the controller to such devices, directives and responses sent between controllers, and the output to the controlled system; and
- (c) documentation relating to the form, fit, and function of any and all systems, subsystems, assemblies, subassemblies, or components thereof in or relating to the Locomotives, including without limitation: as-built drawings; parts lists; schematics and diagrams; data relating to items, components, or processes sufficient to enable physical and functional interchangeability; data identifying source, size, configuration, mating, and attachment characteristics; and performance requirements.

Notwithstanding any warranties and representations provided elsewhere in this Contract, Contractor assumes no responsibility for defects, failures, or inadequate operations of any Locomotives caused in whole or in part by Authority-initiated modifications.

29.2 Licenses

Contractor hereby grants to the Authority a non-exclusive, limited, royalty-free perpetual license to use the software executable delivered to the Authority with or on the Locomotives, including, but not limited to, any embedded controls, display, or diagnostic software executable, that is stored in any format on any device or media (the "Embedded Software"), solely for the purpose of operation and maintenance of the Locomotives. The Authority acknowledges that, as between the Authority and Contractor, and except as expressly stated in this Section 28, Contractor is the sole owner of all right, title, and interest in and to the Embedded Software, including, without limitation, all intellectual property rights related to the Embedded Software. The Authority will not, and it will ensure that no other persons or entities will, modify, decompile, reverse engineer, disassemble, rent, lease, loan, transfer, or reduce to human-readable form any of the Embedded Software.

All rights and licenses granted under or pursuant to this Contract are and will be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property," as defined under Section 101 of the U.S. Bankruptcy Code (or any successor or amended statutory provision). The parties agree that the Authority, as a licensee of such rights under this Contract, will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; however, nothing herein will be deemed to constitute a present exercise of such rights and elections.

29.3 Sourcecode

Contractor shall provide a machine-readable copy of all source code, installers, and executable files for all Contractor Software, provided that the Authority protects such information in accordance with the terms of Section 26. The machine readable files provided shall contain all the data required to enable the Authority to restore, reinstall, add, modify, or delete any displays, reports, and interfaces to other systems. The Authority acknowledges and agrees that if it modifies any source code, installers, or executable files for all Contractor Software, any such modification may void all warranties provided by Contractor under this Agreement.

29.4 Tooling Rights

The Contractor, its Subcontractors, Suppliers and Manufacturers will not sell destroy, or otherwise dispose of their rights to the use of, the castings, patterns, and forming or extrusion dies after their use in the manufacture of the Locomotives without first offering them to the Authority, at a fair market price.

The terms "sell" and "sale" will not include transfer of these assets to a successor corporation or other entity which assumes the business and obligations of any Contractor, Subcontractor, Supplier, or Manufacturer herein, including obligations arising under this Contract.

Upon the Authority's refusal of Contractor's offer of any of the rights described in this Section, Contractor's obligation under this Section will cease.

30. TRACK AND SITEWORK COORDINATION AND ACCESS.

Contractor will coordinate, under the Authority's direction, and at all times fully cooperate with any other entity or individual performing work on Authority property, including, but not

limited to, maintenance of tracks, signals, or structures, or construction of track, signals, structures, stations, or other facilities by any of Authority's contractors or other third party contractors authorized to work on Authority's property. Contractor will not seek reimbursement from Authority for any costs incurred by Contractor to meet the requirements of this section.

The Authority will provide the Contractor the necessary access to its property as necessary for and to be used in provision of the Work.

31. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS.

This Agreement may be subject to one or more financial assistance agreements between the Authority and the U.S. Department of Transportation, which agreements incorporate FTA Master Agreement and Circular 4220.1F, current as of the effective date of any such financial assistance agreement. Contractor and its Subcontractors will comply with all federal laws and regulations identified in FTA Circular 4220.1F or any subsequent version of FTA Circular 4220.1F, and/or the most current version of the FTA Master Agreement. Contractor will not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Contractor and/or Authority to be in violation of any such federal laws or regulations and/or any of the terms and conditions of the FTA Master Agreement. Any such federal law or regulation, or term and condition of the FTA Master Agreement, will be deemed to control in the event of a conflict with any other provision of this Agreement. Contractor will require lower tier Subcontractors to comply with any federal laws and regulations necessary to assure the Contractor's and/or the Authority's full compliance with any of the federal laws or regulations identified in FTA Circular 4220.1F and/or any of the terms and conditions of the FTA Master Agreement, as they apply at the time of execution of the Contract or as they may be modified from time to time. The following federal requirements will apply:

31.1 Access to Records.

31.1.1 In accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

31.1.2 The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

31.1.3 The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or

any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

31.2 Federal Energy Conservation Requirements

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

31.3 Civil Rights Requirements

Civil Rights - The following requirements apply to the underlying contract:

31.3.1 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, the 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, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

31.3.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

31.3.3 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, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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 construction activities undertaken in the course of the Project. The 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 will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

31.4 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, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

31.4.1 Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply

with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

31.4.2 The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

31.5 No Government Obligation to Third Parties

31.5.1 The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

31.5.2 The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

31.6 Program Fraud and False or Fraudulent Statements Or Related Acts

31.6.1 The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

31.6.2 The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

31.6.3 The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

31.7 Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any subcontract it enters into.

The Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Authority. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

31.8 Participation by Disadvantaged Business Enterprises (DBEs)

The Authority receives federal financial assistance from the U.S. Department of Transportation (U.S. DOT) and, as a condition of financial assistance agreements, has established a Disadvantaged Business Enterprise (DBE) Program and an overall DBE goal, in conformance with Title 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. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

31.8.1 New Race-Neutral DBE Policy Implementation

Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation and the Federal Transit Administration's (FTA) Guidance* (Docket No. FTA-2006-24063; dated March 23, 2006) stipulating a Notice of New Policy implementation to Western States Public Transportation Providers, the Authority has implemented a wholly Race-Neutral DBE Program. A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, the Authority does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. Contractor shall not be required to achieve a specific level of DBE participation as a condition of compliance with DBE requirements in the performance of this DOT-assisted Contract.

31.8.2 Race-Neutral DBE Participation

At the time of contract execution, the Contractor committed to utilize DBE(s) in the performance of this DOT-assisted Contract, and further agrees to ensure that DBE

subcontractors listed on the “DBE Race-Neutral Participation Listing” form (Exhibit D) perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Authority prior to the Contractor effectuating any changes to its race-neutral DBE participation commitment(s) (Refer to the Subsection entitled “Performance of DBE Subcontractors”).

OR

At the time of contract execution, the Contractor did not commit to utilize DBE(s) in the performance of this DOT-assisted contract. However, in the event DBE(s) are utilized in the performance of this contract, the Contractor shall comply with reporting requirements delineated in the “Contractor’s Race-Neutral DBE Reporting Requirements (Post-Award)” section of this contract.

31.8.3 Contractor’s Race-Neutral DBE Reporting Requirements (Post-Award)

Contractor shall complete and submit the following DBE reporting forms at the times specified:

31.8.3.1 “DBE Race-Neutral Participation Listing” Form (Exhibit D)

31.8.3.1.1 If Contractor is a DBE or intends to utilize DBE subcontractors and/or purchase goods or services from DBE Contractors or DBE suppliers during the performance of this contract, the Contractor shall complete and submit the “DBE Race-Neutral Participation Listing” form to facilitate capturing race-neutral DBE participation under this contract. The Contractor is to provide the following information for each DBE that will participate in the contract:

- The complete name and address of each DBE who will participate in the contract;
- A description of the work that each DBE will perform or provide;
- The dollar amount of the work to be performed or provided by the DBE;
- Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26;

31.8.3.1.2 In the event that the Contractor does not intend to utilize DBEs in the performance of this contract, the Contractor shall indicate “None” on the form.

31.8.3.2 Contractor shall submit a signed and completed “DBE Race-Neutral Participation Listing” form with the executed contract documents.

31.8.3.3 Contractor shall also submit, for each DBE to perform under this contract, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

31.8.3.4 SCRRA Form 103 – “Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” (Form 103)

31.8.3.4.1 If the Contractor is a DBE firm and/or has proposed to utilize DBE firms, the Contractor will be required to complete and submit a Form 103 to the Authority by the 15th of each month until completion of the contract to facilitate reporting of race-neutral DBE participation, following the first month of contract activity. The Contractor will submit via the Authority's on-line form submittal process and/or via hard copy, as required by the Authority. The Contractor shall show the total dollar figure paid to DBEs utilized on the contract through the applicable reporting period, including the scope of work/services performed/provided and the corresponding subcontract dollar value of work. The Contractor is advised not to credit the participation of DBEs on the respective reporting form until the amount being credited has been paid to the DBE firm.

31.8.3.4.2 Upon completion of the contract, the Contractor will be required to prepare and submit to the Authority a “Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” (Form 103) clearly marked “Final” to facilitate reporting and capturing actual DBE race-neutral utilization.

31.8.3.4.3 Contractor shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

31.8.4 DBE Eligibility and Commercially Useful Function Standards

- A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, Contractor of material or supplies, or as a trucking company.
- A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control,

management, risks and profits of the joint venture commensurate with its ownership interest.

- A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
- DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the Caltrans "Civil Rights" web site, which can be accessed at www.dot.ca.gov/hq/bep.

31.8.5 DBE Crediting Provisions

31.8.5.1.1 When a DBE is proposed to participate in the contract, either as a prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.

31.8.5.1.2 If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with its own forces. Services subcontracted to a non-DBE firm may not be credited toward the Contractor's race-neutral DBE attainment.

31.8.5.2 Contractor is to calculate and credit participation by eligible DBE Contractors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:

- Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
- One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.

31.8.5.3 The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:

- Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
- Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
- Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.

31.8.5.4 Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

31.8.5.5 If the Contractor listed a non-certified DBE 1st tier Subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE

certified Subcontractor or Contractor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

31.8.5.6 Contractor is advised not to count the participation of DBE Subcontractors toward the Contractor's race-neutral DBE attainment until the amount being counted has been paid to the DBE.

31.8.6 Performance of DBE Subcontractors

31.8.6.1 DBE subcontractors listed by the Contractor in its "DBE Race-Neutral Participation Listing" form (Exhibit D) submitted with the executed contract documents shall perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from the Authority to perform the work with other forces or to obtain the materials from other sources.

31.8.6.2 The Contractor shall provide written notification to the Authority in a timely manner of any changes to its anticipated race-neutral DBE participation. This notice should be provided prior to the commencement of that portion of the work.

31.8.7 Additional DBE Subcontractors

In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the contract, Contractor shall notify the Authority by submitting **Exhibit D: "Request for Additional DBE Firm"** to enable Contractor to capture all race-neutral DBE participation. Contractor shall also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

31.8.8 DBE Certification Status

If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the project, the DBE subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Authority in a timely manner.

31.8.9 Contractor's Assurance Clause Regarding Non-Discrimination

Contractor shall ensure that the following clause is placed in every subcontract agreement: "The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Blanket Purchase Order. The Contractor shall carry out applicable requirements of federal law. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate."

31.9 Clean Water Requirements

31.9.1 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as

amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

31.9.2 The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

31.10 Clean Air Requirements

31.10.1 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

31.10.2 The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

31.11 Compliance With Federal Lobbying Policy

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any public agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

31.12 Buy America-Pre Award and Post Delivery Audits

The Contractor agrees to comply with 49 U.S.C. 5323(j) and FTA's implementing regulations at 49 C.F.R. Part 661.11, which provide that Federal funds may not be obligated unless rolling stock is assembled in the United States and has 60 percent domestic content. The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663. Contractor will cooperate with the Authority in conducting all post-delivery audit necessary to insure compliance with the Buy America requirements.

31.13 Cargo Preference

The Contractor agrees:

(a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this

Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;

(b) to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Authority (through the Contractor in the case of a Subcontractor's bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

31.14 Fly America

31.14.1 The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

31.14.2 Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

31.15 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.

(a) 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.

(b) Violation; Liability for Unpaid Wages; Statutory Penalties. In the event of any violation of this Section, 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, 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 .

(c) Withholding for Unpaid Wages on Statutory Penalties. The 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 above.

(d) 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.

(e) Subcontracts. Contractor shall insert in any subcontracts the clauses set forth in Sections 1 through 4 of this Section 30.14 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.

31.16 ADA

31.16.1 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:

(a) U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37.

(b) U.S. Department of Transportation regulations, "Accessibility Specifications for Transportation Vehicles " 49 CFR Part 38.

(c) 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.

(d) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35.

(e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36.

(f) U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19.

(g) U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630.

(h) 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.

(i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

(j) Any implementing requirements that the FTA may issue.

31.17 Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Authority and FTA, as it may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

31.18 Incorporation Of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successor 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 other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.

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

To ensure compliance with Authority's Ethics Policy, Contractor will 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 the Authority, or (2) served as a Board Member/Alternate or an employee of the Authority within the previous 12 months of the date of the proposed employment or retention by Contractor. Contractor's written notice will indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of the Agreement.

33. WHISTLEBLOWER REQUIREMENTS.

Contractor may not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee

believes the information discloses violation or noncompliance with a state or Federal regulation; nor may an employer retaliate against an employee for taking such actions as set forth in the California Labor Code §1101 et seq.

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

No member of, or delegate to, the Congress of the United States will be admitted to a share or part of this Contract or to any benefit arising there from.

35. EQUAL EMPLOYMENT OPPORTUNITY.

In the performance of this Contract, Contractor will not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, gender identity, age, or physical or mental disability and will comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. The Contractor will take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religious creed, color, national origin, ancestry, sex, gender identity, age, or physical or mental disability. Such actions will include, but not be limited to, the following: employment, upgrading, demotion or transfer recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to endeavor to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

36. NON-DISCRIMINATION ASSURANCE.

The Contractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate. The Contractor will obtain the same assurances from its subcontractors and subconsultants by including this assurance in all subcontracts entered into under this Contract.

37. CONTINUING OBLIGATIONS.

The Contractor acknowledges that the following provisions of this Contract impose continuing obligations on the Contractor which extend and are effective notwithstanding termination or the conclusion of the term of this Contract: Sections 11, 20, 22, 23 (but only for the period described in Section 22), 25, 26, 27, 28, 29, 39, 40, 42, 43, 45, and 48.

38. NOTICE.

Notice for purposes of this Contract will be sufficient if personally delivered or sent by certified mail to the other Party at the following addresses:

To the Authority:

Southern California Regional Rail Authority
One Gateway Plaza, 12th Floor
Los Angeles, CA 90012
Attn: Lia McNeil-Kakaris
Assistant Director, Contracts

To the Contractor:

Electro-Motive Diesel, Inc.
9301 West 55th Street
La Grange, IL 60525
Attention: Director, Transit Sales

With a copy to:
Electro-Motive Diesel, Inc.
9301 West 55th Street
La Grange, IL 60525
Attention: Legal Services

Any notice legally required to be given by one Party to another or otherwise required concerning the Work to be performed under the Agreement shall be in writing and dated. The notice shall be signed by the Party giving such notice or by a duly authorized representative of such Party.

Notices sent by certified mail will be deemed to have been given as of the day of mailing.

39. NON-WAIVER.

A Party's failure to insist on any one or more instances upon the other Party's performance of any term or condition of the Contract will not be construed as a waiver or relinquishment of its right to such performance, or to future performance, of such term or condition, and the other Party's obligation for performance of that term or condition will continue in full force and effect.

40. APPLICABLE LAW, JURISDICTION, AND VENUE.

All matters relating to the performance of this Contract will be controlled by and determined in accordance with the laws of the State of California. Venue for all legal proceedings arising out of this Contract, or breach of this Contract, will be in the state or federal court with competent jurisdiction in Los Angeles County, California.

41. ASSIGNMENT.

The Contractor will not assign any interest, obligation, or benefit under or in the Contract or transfer any interest in the Contract, whether by assignment, or novation, without prior written consent of Authority's Project Manager, provided, however, such consent shall not be required for any assignment to an entity that is under the control of, under common control, or a parent of any tier of Contractor, and as long as Contractor provides written notice thereof to Authority. If assignment is approved, the Contract will be binding upon and inure to the benefit of the successors of the Contractor. Except as otherwise specified herein, any attempt by the Contractor to assign any interest in the Contract without the Authority Project Manager's prior written consent will be null, void, and of no effect whatsoever.

42. SUCCESSION.

This Contract is binding on the Parties, their successors, and assigns.

43. ATTORNEYS' FEES.

If any legal proceeding should be instituted by either of the Parties to enforce the terms of this Contract or to determine the rights of the Parties under this Agreement, the prevailing Party in said proceeding may recover, in addition to all court costs, reasonable attorneys' fees as awarded by a court of competent jurisdiction.

44. NO THIRD PARTY BENEFICIARIES.

This Agreement is not for the benefit of any person or entity other than the Parties.

45. WARRANTIES.

Neither Party makes any warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

46. CONTRACTOR STATUS

Neither the Contractor nor any party contracting with the Contractor will be deemed to be an agent or employee of the Authority. The Contractor is and will be an independent contractor, and the legal relationship of any person performing services for the Contractor will be one solely between that person and the Contractor.

47. COMPLETE CONTRACT AND SEVERABILITY.

This Contract, including exhibits and other documents incorporated in this Contract or made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the contract between the contractor and the authority. This Contract supersedes all prior representations, understandings, and communications. In the event any agreement, section, subagreement, paragraph, sentence, clause, or phrase contained in the Contract will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other agreements, sections, subagreements, paragraphs, sentences, clauses, or phrases of the Contract, which will remain in full force and effect as if the agreement, section, subagreement, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract.

48. LIMITATIONS OF LIABILITY

Notwithstanding any other provisions contained in this Contract, and to the maximum extent permitted by law, the total liability of Contractor, its parent, affiliates, subcontractors, agents, officers, and employees arising out of the performance or nonperformance of this Contract or any of its obligations, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, shall not exceed in the aggregate a sum equal to seventy-five million dollars (\$75,000,000.00). Notwithstanding any other provisions contained in this Contract, and to the maximum extent permitted by law, neither Authority or Contractor or their parents, affiliates, subcontractors, agents and/or employees shall be liable for any loss of use, loss of profit, losses resulting from or related to downtime of the goods, nor any special, indirect, punitive, exemplary, incidental, or consequential loss or damages of any nature, howsoever caused, and whether based on warranty, contract, tort (including negligence), strict liability, or any other theory of law, regardless of whether a Party had advance notice of the

potential of any such damages. The provisions of this Section 48 shall survive expiration, cancellation or termination of this Contract, and prevail over any conflicting or inconsistent term contained in any documents comprising the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized representatives on the dates shown below, and effective on the date first hereinabove written.

CONTRACTOR

Name

Title

Date

**SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY**

Michael P. DePallo

Chief Executive Officer

Date

APPROVED AS TO FORM:

Don Del Rio
General Counsel

Tax I.D. No. 20-1932740

EP181-13 Agreement for New Tier 4 Locomotives CONFORMED CONTRACT

Attachments on Disk and available on Contracts Shared Drive:

Attachment A - EMD Locomotive Schedule

Attachment A-EMD Loco Specs

Attachment A - SCRRA-New-Build-Spec-8-08-2012-Rev2

Attachment B - Milestone Payment Schedule 5-20-2013

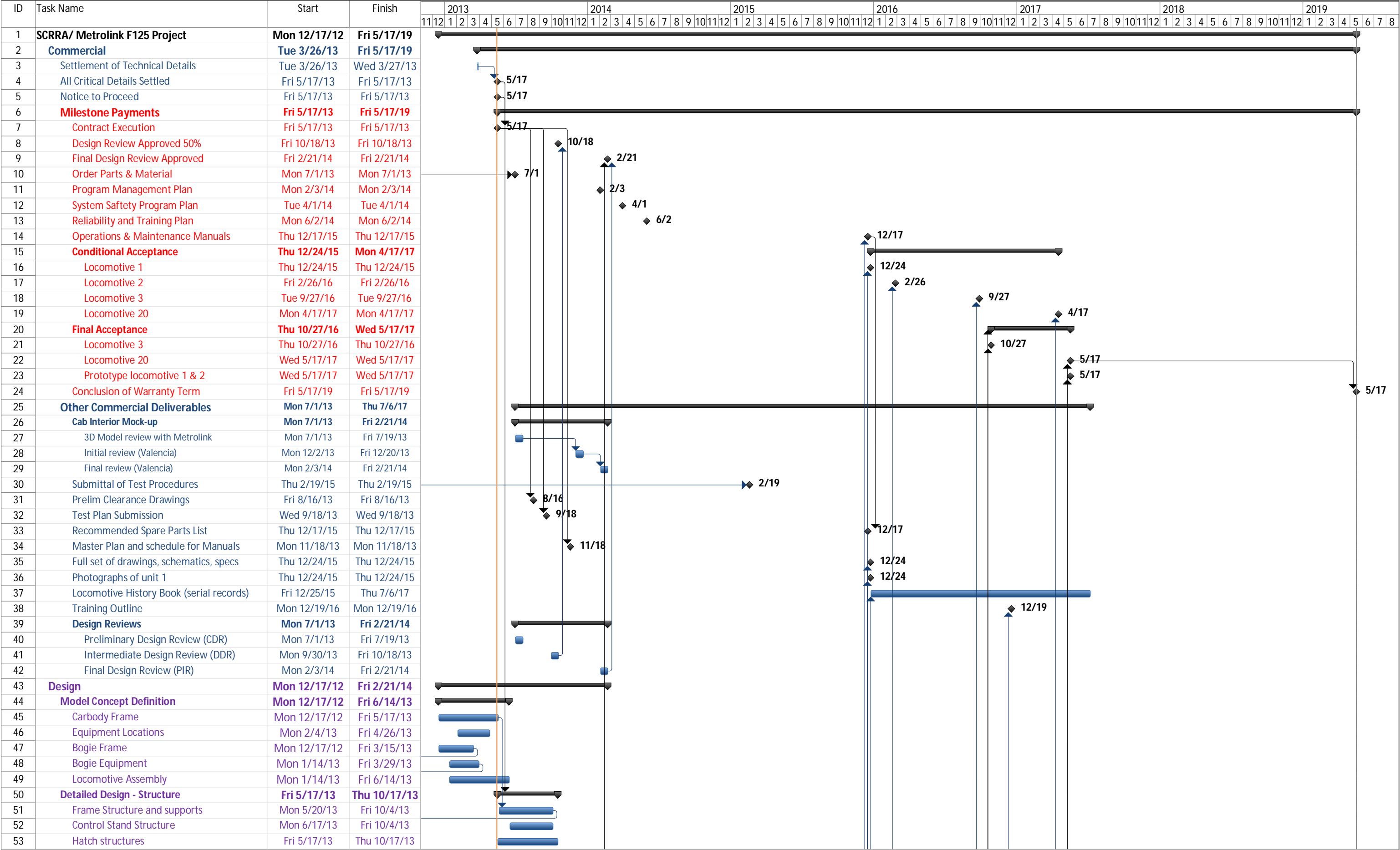
Attachment D - DBE Forms

Attachment E - \$34M AQMD Contract Fully Executed

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EXHIBIT A

CONFORMED TECHNICAL SPECIFICATION



ID	Task Name	Start	Finish	2013												2014												2015												2016												2017												2018												2019							
				11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8																						
190	Delivery of Locomotives #8	Fri 11/4/16	Thu 12/1/16																																																																																
191	Conditional Acceptance	Fri 12/2/16	Thu 12/8/16																																																																																
192	Final Acceptance	Mon 1/9/17	Mon 1/9/17																																																																																
193	Loco #9	Wed 6/1/16	Thu 1/19/17																																																																																
194	Pilot Engine 7 Available	Wed 6/15/16	Wed 6/15/16																																																																																
195	Final Assembly Locomotive #9	Wed 6/1/16	Tue 8/23/16																																																																																
201	In-Plant Test Locomotive #9	Wed 8/24/16	Tue 9/20/16																																																																																
202	Delivery of Locomotives #9	Wed 11/16/16	Tue 12/13/16																																																																																
203	Conditional Acceptance	Wed 12/14/16	Tue 12/20/16																																																																																
204	Final Acceptance	Thu 1/19/17	Thu 1/19/17																																																																																
205	Loco #10	Mon 6/20/16	Tue 2/14/17																																																																																
206	Pilot Engine 8 Available	Thu 6/30/16	Thu 6/30/16																																																																																
207	Final Assembly Locomotive #10	Mon 6/20/16	Fri 9/2/16																																																																																
213	In-Plant Test Locomotive #10	Mon 9/5/16	Fri 9/30/16																																																																																
214	Delivery of Locomotives #10	Mon 12/12/16	Fri 1/6/17																																																																																
215	Conditional Acceptance	Mon 1/9/17	Fri 1/13/17																																																																																
216	Final Acceptance	Tue 2/14/17	Tue 2/14/17																																																																																
217	Loco #11	Mon 1/16/17	Tue 2/21/17																																																																																
218	Conditional Acceptance	Mon 1/16/17	Fri 1/20/17																																																																																
219	Final Acceptance	Tue 2/21/17	Tue 2/21/17																																																																																
220	Loco #12	Mon 1/23/17	Tue 2/28/17																																																																																
221	Conditional Acceptance	Mon 1/23/17	Fri 1/27/17																																																																																
222	Final Acceptance	Tue 2/28/17	Tue 2/28/17																																																																																
223	Loco #13	Wed 2/1/17	Thu 3/9/17																																																																																
224	Conditional Acceptance	Wed 2/1/17	Tue 2/7/17																																																																																
225	Final Acceptance	Thu 3/9/17	Thu 3/9/17																																																																																
226	Loco #14	Fri 2/10/17	Mon 3/20/17																																																																																
227	Conditional Acceptance	Fri 2/10/17	Thu 2/16/17																																																																																
228	Final Acceptance	Mon 3/20/17	Mon 3/20/17																																																																																
229	Loco #15	Tue 2/21/17	Wed 3/29/17																																																																																
230	Conditional Acceptance	Tue 2/21/17	Mon 2/27/17																																																																																
231	Final Acceptance	Wed 3/29/17	Wed 3/29/17																																																																																
232	Loco #16	Thu 3/2/17	Fri 4/7/17																																																																																
233	Conditional Acceptance	Thu 3/2/17	Wed 3/8/17																																																																																
234	Final Acceptance	Fri 4/7/17	Fri 4/7/17																																																																																
235	Loco #17	Mon 3/13/17	Tue 4/18/17																																																																																
236	Conditional Acceptance	Mon 3/13/17	Fri 3/17/17																																																																																
237	Final Acceptance	Tue 4/18/17	Tue 4/18/17																																																																																
238	Loco #18 (projected)	Wed 3/22/17	Thu 4/27/17																																																																																
239	Conditional Acceptance	Wed 3/22/17	Tue 3/28/17																																																																																
240	Final Acceptance	Thu 4/27/17	Thu 4/27/17																																																																																
241	Loco #19 (projected)	Fri 3/31/17	Mon 5/8/17																																																																																
242	Conditional Acceptance	Fri 3/31/17	Thu 4/6/17																																																																																
243	Final Acceptance	Mon 5/8/17	Mon 5/8/17																																																																																
244	Loco #20 (projected)	Tue 4/11/17	Wed 5/17/17																																																																																
245	Conditional Acceptance	Tue 4/11/17	Mon 4/17/17																																																																																
246	Final Acceptance	Wed 5/17/17	Wed 5/17/17																																																																																

EXHIBIT B
MILESTONE PAYMENTS

Milestone Payment Schedule

For Units #1-17

MS#	Milestone	%	Estimated Billing Date
1	Notice to Proceed	5.0%	1/3 30 days after NTP 1/3 60 days after NTP 1/3 90 days after NTP
2	Engineering Design and Design Requirements Approved at 50% Level	10.0%	¼ 30 days after approval ¼ 60 days after approval ¼ 90 days after approval ¼ 120 days after approval
3	Final Design Review Approved	5.0%	¼ 30 days after approval ¼ 60 days after approval ¼ 90 days after approval ¼ 120 days after approval
4	Order Parts and Materials	4.0%	1/3 30 days after order 1/3 60 days after order 1/3 90 days after order
5	Completion and Acceptance Program Management Plan	2.5%	1/3 30 days after accept 1/3 60 days after accept 1/3 90 days after accept
6	Submittal and Acceptance of System Safety Program Plan	2.5%	1/3 30 days after accept 1/3 60 days after accept 1/3 90 days after accept
7	Submittal to and Acceptance of Reliability Plan and Training Program	5.0%	¼ 30 days after accept ¼ 60 days after accept ¼ 90 days after accept ¼ 120 days after accept
8	Submittal to and Acceptance of Parts Manual, Maintenance Manual and Operating Manual	3.0%	¼ 30 days after accept ¼ 60 days after accept ¼ 90 days after accept ¼ 120 days after accept
9	Locomotive Acceptance (Conditional Acceptance), including acceptance of all documentation for each locomotive. This milestone shall be pro-rated by locomotive.	51.0%	Units #1 & 2: 50% of MS # 9 upon Loco Acceptance. Remaining 50% upon Loco Acceptance of Unit #3. Units 3 – 17: 100% of MS 9 upon Loco Acceptance on a per-unit basis
10	Contract Close-out (Final Acceptance)	12.0%	Upon final acceptance on a per unit basis
	TOTAL for Units #1-17	100.0%	

For Units #18-20

MS#	Milestone	%	Estimated Billing Date
1	Contract Execution (After T-4 Certif)	5.0%	½ 30 days after NTP ½ 60 days after NTP
2	Engineering Design and Design Requirements Approval at 50% Level	10.0%	¼ 30 days after approval ¼ 60 days after approval ¼ 90 days after approval ¼ 120 days after approval
3	Final Design Review Approval	5.0%	¼ 30 days after approval ¼ 60 days after approval ¼ 90 days after approval ¼ 120 days after approval
4	Order Parts and Materials	4.0%	1/3 30 days after order 1/3 60 days after order 1/3 90 days after order
5	Completion and Acceptance Program Management Plan	2.5%	1/3 30 days after accept 1/3 60 days after accept 1/3 90 days after accept
6	Submittal to and Acceptance of System Safety Program Plan	2.5%	1/3 30 days after accept 1/3 60 days after accept 1/3 90 days after accept
7	Submittal to and Acceptance of Reliability Plan and Training Program	5.0%	1/5 30 days after accept 1/5 60 days after accept 1/5 90 days after accept 1/5 120 days after accept 1/5 150 days after accept
8	Submittal to and Acceptance of Parts Manual, Maintenance Manual and Operating Manual	3.0%	1/3 30 days after accept 1/3 30 days after accept 1/3 30 days after accept
9	Locomotive Acceptance (Conditional Acceptance), including acceptance of all documentation for each locomotive. This milestone shall be pro-rated by locomotive.	51.0%	Upon Loco Acceptance on a per unit basis
10	Contract Close-out (Final Acceptance)	12.0%	Upon Final Acceptance on a per unit basis
	TOTAL for Units #18-20	100.0%	

*Percentage of the price of the base order of Locomotives, including system support but not including spare parts, special tools, and test equipment)

EXHIBIT C

PERFORMANCE GUARANTY

EXHIBIT D

DBE COMPLIANCE FORMS

EXHIBIT D– DBE RACE-NEUTRAL PARTICIPATION LISTING

Bidder:

EMD

EXHIBIT D

DBE RACE-NEUTRAL PARTICIPATION LISTING

INSTRUCTIONS TO BIDDER:

1. THE BIDDER MUST EXECUTE AND SUBMIT THIS FORM ENTITLED "DBE RACE-NEUTRAL PARTICIPATION LISTING" TO THE AUTHORITY, EVEN IF NO DBE PARTICIPATION WILL BE REPORTED. IN THE EVENT OF NO DBE PARTICIPATION, BIDDER SHALL MARK "NONE" UNDER DBE FIRM NAME.
2. REFER TO THE DBE PARTICIPATION CLAUSE FOR IMPORTANT PROVISIONS CONCERNING DBE RACE-NEUTRAL PARTICIPATION CREDITING.

DBE Firm Name*: RAUL V. BRAVO & ASSOCIATES, INC.		DBE Certification No. and Expiration Date: I.D. # 8585		Item of Work and Description or Services to be Subcontracted or Materials to be Provided: C8700 CONSULTANT, NON ENGINEERING													
Street Address: 1889 PRESTON WHITE DRIVE, #202				<table border="1"><tr><td colspan="3">Check Appropriate Box Describing Subcontractor/Supplier Activity</td></tr><tr><td>Subcontractor (100%)</td><td>Supplier (60%)</td><td></td></tr><tr><td>Regular Dealer (60%)</td><td>Broker</td><td></td></tr><tr><td>Manufacturer (100%)</td><td>Trucker</td><td></td></tr></table>		Check Appropriate Box Describing Subcontractor/Supplier Activity			Subcontractor (100%)	Supplier (60%)		Regular Dealer (60%)	Broker		Manufacturer (100%)	Trucker	
Check Appropriate Box Describing Subcontractor/Supplier Activity																	
Subcontractor (100%)	Supplier (60%)																
Regular Dealer (60%)	Broker																
Manufacturer (100%)	Trucker																
Contact Person: RAUL V. BRAVO																	
Telephone: 703-326-9092		Fax: 703-326-9096															
License No., Classification and Expiration:																	
Subcontract Amount: \$200,000.00																	

*DBE certification letter must be attached for each proposed DBE firm. DBEs must be certified on the date bids are opened.

Bidder: _____

DBE Firm Name*: <i>RUBIO MACHINERY</i>	DBE Certification No. and Expiration Date: <i>I.D. 31804</i>	Item of Work and Description or Services to be Subcontracted or Materials to be Provided: <i>C8907</i> <i>CONTRACT MACHINING</i>									
Street Address: <i>5133 CALMVIEW AVE.</i>		Check Appropriate Box Describing Subcontractor/ Supplier Activity:									
Contact Person: <i>ANTHONY RUBIO</i>											
Telephone: <i>626-338-9689</i>	Fax: <i>626-338-0046</i>										
License No., Classification and Expiration:											
Subcontract Amount:											
		<table border="1"> <tr> <td>Subcontractor (100%)</td> <td>Supplier (60%)</td> <td></td> </tr> <tr> <td>Regular Dealer (60%)</td> <td>Broker</td> <td></td> </tr> <tr> <td>Manufacturer (100%)</td> <td>Trucker</td> <td></td> </tr> </table>	Subcontractor (100%)	Supplier (60%)		Regular Dealer (60%)	Broker		Manufacturer (100%)	Trucker	
Subcontractor (100%)	Supplier (60%)										
Regular Dealer (60%)	Broker										
Manufacturer (100%)	Trucker										

*DBE certification letter must be attached for each proposed DBE firm. DBEs must be certified on the date bids are opened.

DBE Firm Name*: <i>STRACON, INC.</i>	DBE Certification No. and Expiration Date: <i>I.D. 33839</i>	Item of Work and Description or Services to be Subcontracted or Materials to be Provided: <i>D3670</i> <i>ELECTRONIC COMPONENTS & ACCESSORIES</i>									
Street Address: <i>1672 KAISER AVENUE #1</i>		Check Appropriate Box Describing Subcontractor/Supplier Activity:									
Contact Person: <i>SON PHAM</i>											
Telephone: <i>949-851-2288</i>	Fax: <i>949-851-2299</i>										
License No., Classification and Expiration:											
Subcontract Amount:											
		<table border="1"> <tr> <td>Subcontractor (100%)</td> <td>Supplier (60%)</td> <td></td> </tr> <tr> <td>Regular Dealer (60%)</td> <td>Broker</td> <td></td> </tr> <tr> <td>Manufacturer (100%)</td> <td>Trucker</td> <td></td> </tr> </table>	Subcontractor (100%)	Supplier (60%)		Regular Dealer (60%)	Broker		Manufacturer (100%)	Trucker	
Subcontractor (100%)	Supplier (60%)										
Regular Dealer (60%)	Broker										
Manufacturer (100%)	Trucker										

*DBE certification letter must be attached for each proposed DBE firm. DBEs must be certified on the date bids are opened.

Contractor:		Contract No.:	
Contact Name:		Total Contract Amount:	\$
Title:		DBE Race Neutral Participation Value (% of Total Contract Value):	
Address:			
City/State/Zip:			
Phone:			
Fax:			

DBE RACE-NEUTRAL PARTICIPATION CREDITING PROVISIONS:

Identify all DBE firms participating in the contract, regardless of tier. Names of the DBE Subcontractors and their respective item(s) of work listed above should be consistent, where applicable, with the names and items of work for subcontractors listed in your bid. Provide copies of DBE subcontract agreements, and if applicable, copies of joint venture agreements. This listing shall be pursuant to the Subcontractors Listing Law and the other Special Contract Provisions, if applicable.

1. Enter DBE prime and subcontractors' certification numbers. Prime contractors shall indicate all work to be performed by DBEs, including work performed by its own forces.
2. If 100% of a work item is not to be performed or furnished by a DBE, describe the exact portion of the item to be performed or furnished by the DBE.
3. Refer to Contract Sections entitled "DBE Eligibility and Commercially Useful Function Standards" and "DBE Crediting Provisions" and 49 CFR 26.55: "Counting DBE Participation" for DBE calculating and crediting provisions.

Signature of Authorized Representative

Printed Name

Date

Title



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

Office of Civil Rights
1200 New Jersey Avenue SE
Washington, DC 20590

January 8, 2013

Mr. Billy Ainsworth, CEO
Electro Motive Diesels, Inc.
9301 W. 55th St.
LaGrange, IL 60525

TVM DBE Goal Approval—Fiscal Year 2013

Dear Mr. Ainsworth:

This letter is to inform you that the Federal Transit Administration's (FTA) Office of Civil Rights (TCR) has received Electro Motive Diesels, Inc.'s (EM Diesels) Disadvantaged Business Enterprise (DBE) Goal and Methodology for FY 2013. This submission is required pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP-21) and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" and must be implemented in good faith.

We have reviewed your DBE Goal methodology and determined that it is compliant with the U.S. Department of Transportation's DBE regulations for the period of October 1, 2012—September 30, 2013. You are now eligible to bid on FTA funded transit contracts. Please present this approval to FTA recipients when bidding on FTA funded procurements. The Federal Transit Administration reserves its right to remove/suspend this approval if your DBE Program or FY2013 DBE Goal is not implemented in good faith. In accordance with this good faith, a TVM must submit their DBE Uniform Report in the DOORS system semi-annually on December 1st and June 1st.

Please also be mindful that your FY2014 DBE Goal Methodology must be submitted to FTA by August 1, 2013. Therefore, you should publish your goal on or before June 12, 2013. If you have any questions regarding this approval or creating the necessary DOORS account, please contact Jonathan Ocana at (202)493-0314 or via email jonathan.ocana@dot.gov. Thank you for your cooperation.

Sincerely,

Marci Malaster
TCR, Headquarters Operations Division Chief

cc: Greg Poropat; and Lynne B. Passet (via e-mail)

EXHIBIT E

SCAQMD AGREEMENT



South Coast Air Quality Management District

Contract No. 13441
Carl Moyer Program

This Contract consists of 17 pages.

1. PARTIES - The parties to this Contract are the South Coast Air Quality Management District (referred to here as "SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and the Southern California Regional Rail Authority (referred to here as "CONTRACTOR") whose address is 1555 North San Fernando Road, Los Angeles, California 90065.
2. RECITALS
 - A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California. SCAQMD is authorized to enter into this Contract under California Health and Safety Code Section 40489. Through this Carl Moyer Program-funded Contract, the parties desire to fund the incremental costs of certain cleaner-than-required equipment in order to generate cost-effective and surplus air emission reductions within the geographical boundaries of the South Coast Air Quality Management District. Accordingly, SCAQMD desires to contract with CONTRACTOR for the project described in Attachment 1 - Statement of Work, attached here and made a part here by reference.
 - B. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
 - C. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.
 - D. "Equipment," as used in this Contract, means the equipment described in Attachment 1 - Statement of Work and funded in whole or in part by the Carl Moyer Program, which may include, but is not limited to, trucks, engines, marine vessels, retrofit devices, electrification infrastructure, cargo handling equipment and/or locomotives, as applicable.
3. PERFORMANCE REQUIREMENTS
 - A. CONTRACTOR agrees to obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees. CONTRACTOR further agrees to immediately notify SCAQMD in writing of any change in its licensing status which has a material impact on the CONTRACTOR's performance under this Contract.
 - B. CONTRACTOR shall submit reports to SCAQMD as outlined in Attachment 1 - Statement of Work. All reports shall be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or cardstock covers. SCAQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
 - C. CONTRACTOR shall perform all tasks set forth in Attachment 1 - Statement of Work, and shall not engage, during the term of this Contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in Attachment 1 - Statement of Work.
 - D. CONTRACTOR must ensure that the Equipment to be purchased or installed is in compliance with all applicable federal, state, and local air quality rules and regulations, and that it will maintain compliance for the full Contract term.

- E. CONTRACTOR shall require its subcontractors to abide by the requirements set forth in this Contract.
4. TERM - The term of this Contract is from the date of execution by both parties, which is the effective date of this Contract, to June 30, 2038, unless further extended by amendment of this Contract in writing. No work shall commence until this Contract is fully executed by all parties. CONTRACTOR assumes all financial risk and is in no way guaranteed Carl Moyer Program funds for work done prior to the effective date of this Contract. The Contract term above encompasses both the project completion and project implementation periods, as described below, to ensure that the SCAQMD and the California Air Resources Board ("CARB") can fully enforce the terms of this Contract during the life of this Carl Moyer Program-funded project.
- A. Project Completion – Project completion is the time frame starting with the date of Contract execution by both parties to the date the project post-inspection confirms that the project has become operational. This includes the time period when the Equipment described in Attachment 1 - Statement of Work is ordered, delivered and installed.
- B. Project Implementation - The project implementation time frame is the second part of the Contract term and equals the project life, which is the number of years that the Equipment must operate as specified in the Attachment 1 – Statement of Work to obtain surplus emissions reductions that are cost-effective. CONTRACTOR is required to operate and maintain the Carl Moyer Program-funded Equipment according to the terms of this Contract for the full project implementation period.
5. TIME PERIOD FOR CONTRACT EXECUTION - This Contract must be signed by the CONTRACTOR and received by SCAQMD within sixty (60) days from the receipt of the Contract by the CONTRACTOR. Failure to timely sign and return the Contract to SCAQMD may result in the withdrawal of the award. Time is of the essence in executing this Contract.
6. TERMINATION
- A. CONTRACTOR's failure to comply with any term or condition of this Contract shall constitute a material breach of this Contract. The SCAQMD will either notify the CONTRACTOR that it must timely cure this breach, or provide ten (10) days' written notification of SCAQMD's intention to terminate this Contract and invoke the penalties under Clause 6.D. The SCAQMD reserves all rights under law and equity to enforce this Contract or to recover damages.
- B. Notwithstanding sub-Clause 6A, this Contract may be terminated without penalty prior to completion of the Contract term as to a particular piece of Equipment if that Equipment becomes inoperable through mechanical failure of components or systems and cannot be repaired or replaced and such failure is not caused by CONTRACTOR's negligence, misuse or malfeasance. CONTRACTOR shall submit written documentation supporting any basis for early termination under this sub-Clause for the approval of SCAQMD.
- C. SCAQMD reserves the right to terminate this Contract, in whole or in part without cause upon thirty (30) days' written notice. Once such notice has been given, CONTRACTOR shall, except as otherwise directed by SCAQMD, discontinue any work being performed under this Contract and cancel all of CONTRACTOR'S orders in connection with such work, and shall use its best efforts to terminate existing subcontracts upon terms satisfactory to the SCAQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any work already in progress and to dispose of any property as requested by SCAQMD.

CONTRACTOR shall also promptly deliver to SCAQMD all copies of documentation and other information and data prepared or developed by CONTRACTOR under this Contract. CONTRACTOR will be paid in accordance with this Contract for work performed before the effective date of termination.

- D. Should CONTRACTOR desire to terminate this Contract in whole or in part prior to the completion of the Contract term for reasons other than those stated in sub-Clause 6B, CONTRACTOR shall return to SCAQMD a prorated share of the funds already paid under this Contract, in an amount determined by SCAQMD.
7. STOP WORK – SCAQMD may, at any time, by written notice to CONTRACTOR, require CONTRACTOR to stop all or any part of the work tasks in this Contract. A stop work order may be issued for reasons including, but not limited to, the project exceeding the budget, out of scope work, delay in project schedule, or misrepresentations. Upon receipt of the stop work order, CONTRACTOR shall immediately take all necessary steps to comply with the order. CONTRACTOR shall resume the work only upon receipt of written instructions from SCAQMD cancelling the stop work order. CONTRACTOR agrees and understands that CONTRACTOR will not be paid for performing work while the stop work order is in effect, unless SCAQMD agrees to do so in its written cancellation of the stop work order.
8. INSURANCE
- A. CONTRACTOR shall furnish evidence to SCAQMD of workers' compensation insurance for each of its employees, in accordance with either California or other states' applicable statutory requirements prior to commencement of any work on this Contract.
 - B. CONTRACTOR shall furnish evidence to SCAQMD of general liability insurance with a limit of at least \$2,000,000 per occurrence, and \$5,000,000 in a general aggregate prior to commencement of any work on this Contract. SCAQMD must be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to SCAQMD.
 - C. CONTRACTOR shall furnish evidence to SCAQMD of automobile liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries, and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage, prior to commencement of any work on this Contract. SCAQMD must be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to SCAQMD.
 - D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, SCAQMD reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.
 - E. All insurance certificates should be mailed to: SCAQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4182. **The SCAQMD Contract Number must be included on the face of the certificate.**
 - F. CONTRACTOR agrees to maintain the above required insurance as well as property insurance with sufficient limits to cover the loss of the Equipment. CONTRACTOR must provide updates on the insurance coverage throughout the term of the Contract to ensure that there is no break in coverage during the period of Contract performance. Failure to provide evidence of current coverage is grounds for termination for breach of Contract.

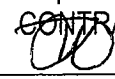

- G. If CONTRACTOR subcontracts all or part of the work under this Contract, CONTRACTOR shall require its subcontractors to comply with the above-mentioned insurance requirements and to name SCAQMD as an additional insured in the above-mentioned insurance policies.
9. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, defend and indemnify SCAQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action judgments, attorney's fees, or any other expenses arising from or related to any third party claim against SCAQMD, its officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any actual or alleged act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract.
10. COMPLIANCE WITH CARL MOYER PROGRAM GUIDELINES – CONTRACTOR warrants that the project upon which this Contract is based complies with CARB's Carl Moyer Program Guidelines (revised 2011) ("CMP Guidelines"), incorporated herein by reference, which include, but are not limited to, the following:
- A. The low emissions technology used in the project has been certified or verified by CARB and meets the applicable NOx, PM and/or ROG requirements, or if it has not been certified/verified by CARB, the low emissions technology has been approved by CARB on a case-by-case basis.
 - B. Rights to the emission reductions generated by the project must not be claimed by any participant as emission reduction credits or be used under any emission averaging banking and trading program. In addition, rights to the emission reductions may not be claimed by the engine or equipment manufacturer in any flexibility or "early introduction" incentive program.
 - C. The Equipment must not have been ordered or purchased prior to the date of the SCAQMD Governing Board approval of the Contract award.
 - D. For repowers and replacement projects, the existing (old) engine must be destroyed and rendered permanently unusable and irreparable. There must be no cannibalization of parts from the old engine. Destruction methods and requirements are specified in the Statement of Work and the CMP Guidelines.
 - E. For repower projects, the installation of the engine must be completed in a manner such that it does not void the engine warranty provided by the manufacturer and any remaining warranty provided by the equipment manufacturer.
 - F. In signing this Contract, CONTRACTOR certifies that its fleet, engine(s) or equipment/vehicle is in compliance with all applicable federal state, and local air quality rules and regulations at the time of Contract execution, and that it will maintain compliance for the full Contract term.
 - G. The Project must be included when defining the size of the CONTRACTOR's fleet for determining regulatory requirements.
 - H. Throughout the Contract term, the Project must not be used to generate credits or compliance extensions, and must be excluded when determining regulatory compliance.
11. INCORPORATION OF CARL MOYER PROGRAM APPLICATION – CONTRACTOR'S application for the project funded under this Contract is hereby incorporated by reference and made a part of this Contract.

12. MAINTENANCE - CONTRACTOR shall maintain the Equipment in accordance with the manufacturer's specifications for the project life. Tampering with the engine is strictly prohibited. CONTRACTOR is responsible for maintaining a working hour meter or other SCAQMD-approved measuring device to track Equipment usage for projects that use hours of operation as a means of calculating emission reductions and cost-effectiveness. If the hour meter/usage device fails, CONTRACTOR must immediately notify SCAQMD, and CONTRACTOR remains responsible for validating any hours not recorded by the hour meter/usage device. The CONTRACTOR must either repair or replace the non-operating meter/device or provide other documentation of Equipment operating hours acceptable to SCAQMD.
13. ON-SITE INSPECTIONS AND AUDIT - SCAQMD, CARB, or their designee(s) shall have the right to conduct a fiscal audit of the project, and to inspect the Equipment described in the Statement of Work and the associated records during the term of the Contract.
14. INSPECTIONS
 - A. A Pre-Inspection shall be conducted by the SCAQMD on **all** existing (old) equipment (including engines and vehicles) prior to any work commencing under this Contract. SCAQMD must verify that CONTRACTOR has met all requirements of the Carl Moyer Program regarding eligibility of the existing equipment. This includes documentation of the type of equipment, operational condition, mileage, vehicle and engine identification. This Contract may be modified or terminated based upon the results of the Pre-Inspection should the SCAQMD determine that: the existing equipment is non-operational; does not match the information submitted for analysis (i.e. vehicle make, model, model-year, engine type, horsepower, model year, etc.); or other factors exist that would not result in the calculated real, quantifiable and surplus emission reductions. For fleets owned or operated by public agencies, SCAQMD may conduct the Pre-Inspection by requiring the public agency to provide documentation to verify that all requirements of the Carl Moyer Program regarding eligibility of existing equipment/vehicles/engines are met. It is the responsibility of the CONTRACTOR to contact SCAQMD and arrange a Pre-Inspection of the existing equipment, and to confirm with SCAQMD that the equipment has been pre-inspected and is eligible to participate in the Carl Moyer Program.
 - B. A Post-Inspection shall be conducted by the SCAQMD after receipt of the invoice from the CONTRACTOR. SCAQMD must verify that CONTRACTOR has met all requirements of the Carl Moyer Program. Final payment will not be made unless the SCAQMD verifies that: the retrofit device or engine listed in the Statement of Work has/have been installed; that the Equipment is operational; and, where applicable, that the replaced engine(s) or vehicle(s) has/have been destroyed and rendered useless and there is no evidence of cannibalization of parts from the old engine(s). For fleets owned or operated by public agencies, SCAQMD may conduct the Post-Inspection through a statistically significant random sample of the vehicles, where the project under this Contract consists of more than twenty (20) vehicles.
15. MONITORING AND ENFORCEMENT - CONTRACTOR agrees to operate the Equipment according to the terms of this Contract, including the CMP Guidelines, and to cooperate with SCAQMD and CARB in implementation, monitoring, enforcement, and other efforts to assure the emission benefits are real, quantifiable, surplus, and enforceable. CONTRACTOR also understands and agrees that in addition to SCAQMD, CARB, as an intended third-party beneficiary of this Contract, also has the right to enforce the terms of this Contract to ensure emission reductions are generated. SCAQMD and CARB will seek

whatever legal, equitable and other remedies are available for CONTRACTOR's failure to comply with the terms of this Contract, including the CMP Guidelines.

16. RECORDS AND RECORDS RETENTION – CONTRACTOR shall maintain records related to this project and retain these records for at least three years beyond the Contract term.
17. REPORTING REQUIREMENTS - CONTRACTOR shall submit reports in accordance with Attachments 1, 1A and 1B, attached here and incorporated herein by reference. Non-compliance with the reporting requirements of this Contract may result in the implementation of on-site monitoring by the SCAQMD.
18. SUCCESSORS-IN-INTEREST – This Contract shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns.
19. EQUIPMENT USAGE
 - A. The percentage of each Equipment's annual mileage or engine hours of operation that must be accrued within the geographical boundaries of the South Coast Air Quality Management District shall be in accordance with Attachment 1 – Statement of Work. Information included in the annual reports required under this Contract will be used to verify this usage.
 - B. CONTRACTOR is prohibited from removing the Equipment from service in California during the term of this Contract, unless the Equipment become inoperable through mechanical failure of components or systems, and cannot be repaired or replaced, and such failure is not caused by CONTRACTOR'S negligence, misuse, or malfeasance. CONTRACTOR shall promptly notify SCAQMD if any Equipment is removed from service in California.
 - C. If the Equipment usage reported in the annual report does not meet the usage specified in Attachment 1 – Statement of Work, the SCAQMD will flag the project. SCAQMD will take appropriate action to ensure the contracted emissions reductions are realized, which may include, but are not limited to, recapturing funds in an amount proportional to the unrealized emissions reductions or extending the project life.
20. FUNDS FROM OTHER SOURCES
 - A. In signing this Contract, CONTRACTOR certifies that it has disclosed all other public funds that it applied for or received for the project described in the Statement of Work. CONTRACTOR understands that failure to disclose shall, at a minimum, result in disqualification from receiving funding for that project, the recapture of funds, and may result in CONTRACTOR being banned from submitting future applications to any and all Carl Moyer Program solicitations.
 - B. CONTRACTOR is prohibited from applying for or receiving other public funds for the same project described in the Statement of Work, except CONTRACTOR may apply for and receive additional funding for the same project from federal programs to reduce greenhouse gas emissions (GHG) or funding provided by the Alternative and Renewable Fuel and Vehicle Technology Program to reduce GHG. Such funding is subject to the disclosure requirements of Clause 20.A.
 - C. The total amount of public funds received by CONTRACTOR for the same project during the term of this Contract must not exceed eighty-five (85) percent of the project cost. If the total amount of public funds exceeds eighty-five percent, CONTRACTOR shall return sufficient amounts to SCAQMD to decrease the total amount of public funds funding the same project to eighty-five percent.

21. PAYMENT

- A. SCAQMD will reimburse CONTRACTOR an amount not-to-exceed Thirty Four Million Six Hundred Sixty Thousand Dollars (\$34,660,000) in accordance with Attachment 2, Payment Schedule, attached here and incorporated herein by reference.
- B. Payment under this contract is contingent on SCAQMD Chief Financial Officer's (CFO) approval of the status of CONTRACTOR'S accounts related to the locomotive purchase as described in the Attachment 1 – Statement of Work, Task 4.
- C. Payment may be made directly to the dealer or distributor upon submission of an itemized invoice from the CONTRACTOR requesting that such direct payment be made. If the purchase is being financed, CONTRACTOR may choose to have the payment sent directly to the financing company, or provide SCAQMD with proof of payment to the financing company in order for CONTRACTOR to be reimbursed. Payments made under this Contract must be used to reduce the principal owed for the Equipment.
- D. Before any payment can be made, CONTRACTOR must submit itemized invoices from the engine supplier for repowers or invoices from the vehicle owner for replacement vehicles, and the Post-Inspection pursuant to Clause 14.B. must indicate that the project is operational. The itemized invoices must include enough detail to ensure that only eligible project costs are paid, in accordance with the CMP Guidelines. Each invoice must be prepared in duplicate, on company letterhead, and list SCAQMD's Contract number, period covered by invoice, and CONTRACTOR's Social Security Number or Employer Identification Number and submitted to: South Coast Air Quality Management District, Attn: Carl Moyer Contract Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
- E. Payment under this Contract is contingent upon receipt of funds from CARB.
- F. SCAQMD may de-obligate from the Contract funds that remain unexpended as required in the Contract upon thirty (30) days' written notice to CONTRACTOR. ~~CONTRACTOR~~ to initial here acknowledging consent to de-obligation of non-expended funding.  

22. MOBILE SOURCE EMISSION REDUCTION CREDITS - No emission reductions generated by Carl Moyer Program-funded projects may be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity. All validated emission reductions shall be applied toward the State Implementation Plan (SIP) attainment demonstration. All emission reductions generated from the expenditure of Carl Moyer funds may not be converted into tradable credits, and shall be used for the sole purpose of meeting the attainment schedule contained in the applicable SIP.

23. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to any intellectual property developed under this Contract shall at all time remain with SCAQMD. Such material is agreed to be SCAQMD's proprietary information.

- A. Rights of Technical Data - SCAQMD shall have the unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by CONTRACTOR under this Contract. CONTRACTOR shall have the right to use data for its own benefit.
- B. Copyright - CONTRACTOR agrees to grant SCAQMD a royalty free, nonexclusive, irrevocable license to produce, translate, publish, use, and dispose of all copyrightable material first produced or composed in the performance of this Contract.

24. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt indicated on the return receipt card.

SCAQMD: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Carl Moyer Contract Administrator, Technology Advancement

CONTRACTOR: Southern California Regional Rail Authority
1555 North San Fernando Rd.
Los Angeles, CA 90065
Attn: Anne Louise Rice

25. INDEPENDENT CONTRACTOR – CONTRACTOR is an independent contractor. CONTRACTOR, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of SCAQMD or CARB, nor shall CONTRACTOR, its officers, employees, agents, representatives, or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by SCAQMD to its employees. SCAQMD will not supervise, direct, or have control over, or be responsible for, CONTRACTOR's or subcontractor's means, methods, techniques, work sequences or procedures or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements. CONTRACTOR shall promptly notify SCAQMD of any material changes to subcontracts that affect the Contract's scope of work, deliverable schedule, and/or payment/cost schedule.

26. PUBLICATION

- A. SCAQMD shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from SCAQMD in connection with performance under this Contract.
- B. Information, data, documents, photographs or reports developed by CONTRACTOR for SCAQMD, pursuant to this Contract, shall be part of SCAQMD's public record unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information provided to SCAQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.
- i. "This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management District (SCAQMD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of SCAQMD. SCAQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. SCAQMD has not approved or disapproved this report, nor has SCAQMD passed upon the accuracy or adequacy of the information contained herein."

27. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.
28. ASSIGNMENT - The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by either party without the prior written consent of the other, and any attempt by either party to do so shall be void upon inception.
29. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or SCAQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.
30. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
31. FORCE MAJEURE - Neither SCAQMD nor CONTRACTOR shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of SCAQMD or CONTRACTOR.
32. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
33. HEADINGS - Headings on the Clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
34. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
35. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.

36. CITIZENSHIP AND ALIEN STATUS

- A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations. Notwithstanding the above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
- B. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless SCAQMD, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or SCAQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.

37. SUBCONTRACTOR APPROVAL – If CONTRACTOR intends to subcontract all or a portion of the work under this Contract, then CONTRACTOR must first obtain written approval from SCAQMD's Executive Officer or designee prior to subcontracting any work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or payment/cost schedule shall also require the prior written approval of the Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from SCAQMD.

38. TAX IMPLICATIONS FROM RECEIPT OF CARL MOYER PROGRAM FUNDS – CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Carl Moyer Program.

39. DISCLAIMER OF WARRANTY – The decision to participate in the Carl Moyer Program and to purchase Program-eligible Equipment is CONTRACTOR's decision. **SCAQMD does not make any express or implied warranty of merchantability, fitness for a particular purpose or otherwise, quality or usefulness of the technology or Equipment.** SCAQMD will not be financially responsible or otherwise liable for the installation or performance of the Equipment.


40. ENTIRE CONTRACT - This Contract represents the entire agreement between CONTRACTOR and SCAQMD. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the authorized representative of the party against whom enforcement of such waiver, alteration, or modification is sought.

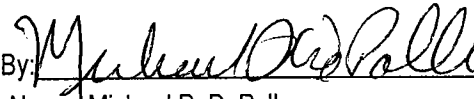
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IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY

By: 
Dr. William A. Burke, Chairman, Governing Board

By: 
Name: Michael P. DePalo
Title: CEO

Date: 5-17-13

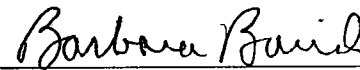
Date: 5-16-13

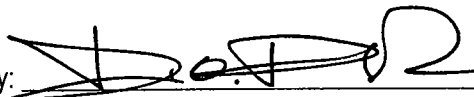
ATTEST:
Saundra McDaniel, Clerk of the Board

By: 

APPROVED AS TO FORM:
Kurt R. Wiese, General Counsel

APPROVED AS TO FORM:
Dan. O. Del Rio, General Counsel

By: 

By: 

ATTACHMENT 1

STATEMENT OF WORK SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY FY 2011-12 CARL MOYER PROGRAM FUND 80 -AB 923

The purpose of this Contract is to reduce emissions by replacing up to twenty (20) Passenger locomotives with new locomotives certified to meet the U.S. EPA Tier 4 emission standards of 1.3 g/bhp-hr of NOx and 0.03 g/bhp-hr of PM. Project emissions reductions were calculated using a twenty-year project life. The new locomotives are expected to generate emissions reductions, as identified in Table 1 below.

PROJECT REQUIREMENTS:

Tasks necessary to implement this intent are subject to the due dates specified in Attachment 1A and are as follows:

Task 1: Inspections

CONTRACTOR shall make the original locomotives (the locomotives to be replaced) available to SCAQMD staff for pre-inspection prior to any work commencing to implement this Contract. The locomotives must be in working order.

CONTRACTOR shall provide access to all vehicle identification numbers, engine identification numbers and other legal identification of the new locomotives to SCAQMD staff for post-inspection in accordance with the Post-Inspection Clause of this Contract.

CONTRACTOR shall make five of the locomotives to be replaced available for demonstration of various alternative fuel technologies including, but not limited, to liquefied natural gas (LNG). These locomotives shall be available for a period of up to 3 years for demonstration purposes. The demonstration period can be extended by up to an additional 2 years if mutually acceptable to SCAQMD and CONTRACTOR. The original Tier 0 locomotive engines, main and HEP, shall be destroyed and rendered permanently unusable and irreparable no later than the end of the demonstration, in a manner as described in Clause 10.D. of the Contract.

CONTRACTOR shall destroy or render useless the engines of the remaining 15 locomotives to be replaced, main and HEP, in a manner as described in Clause 10.D. of the Contract.

Task 2: Procurement of New Locomotives

CONTRACTOR shall provide documentation of procurement of the new locomotives that meet the above-mentioned emission standards. This documentation shall include, at a minimum: US EPA Certificate of Conformity under the line-haul duty cycle or CARB verification certificate showing that CARB has verified the U.S. EPA engine certification test results under the line-haul duty cycle, identification of engine manufacturer; price of the locomotive, including any taxes,

delivery fees, installation fees, and other costs. Should the new locomotive be Family Emission Limit certified, CONTRACTOR shall provide proof of Average Banking and Trading credit retirement. (See 40 CFR Part 1033.901, 1033.701-750.)

CONTRACTOR shall provide proof of manufacturer's warranty on the new locomotives.

Task 3: Operation of Locomotives

- 3.1 CONTRACTOR shall place the new locomotives into regular service and shall inform the SCAQMD where the locomotives are stored.
- 3.2 CONTRACTOR agrees to operate new locomotives at least 75% of the annual fuel use within the geographical boundaries of the South Coast Air Quality Management District.
- 3.3 CONTRACTOR agrees to make operational information for the locomotive available, upon reasonable notice, to SCAQMD or CARB staff during the life of the locomotive. This information may include annual hours operated, location data from the Positive Train Control (PTC) system, and amount of fuel consumed.

Table 1: Project Implementation/Life

Equipment	Average Annual Fuel Usage per Unit*	Estimated Annual NOx + ROG Reductions (T/yr) per Unit	Estimated Annual PM Reductions (T/yr) per Unit
20 Diesel Locomotives	107,000 gal	12.74	0.36

*If over the Project Implementation/Life, CONTRACTOR operates 30% below the above listed annual average fuel use, CONTRACTOR shall, at the SCAQMD's discretion, make up any deficiency in fuel use and report to SCAQMD within one year after the due date of the final report.

Task 4: Reporting

- 4.1 CONTRACTOR shall provide annual reports to SCAQMD, as described under Deliverables, Attachment 1B.
- 4.2 CONTRACTOR shall meet quarterly with SCAQMD's Chief Financial Officer (CFO) to review the project's financial documents until all Contract funds are expended. Quarterly review shall evaluate the source of all funds used to complete this project, to insure that funding sources are consistent with the CMP Guidelines.
- 4.3 Should the non-Moyer funding source(s) and/or funding source amount(s) change, the CONTRACTOR shall contact SCAQMD who will then discuss the options available to the CONTRACTOR. In accordance with Clause 20, if the existing ratio of Moyer funds,

which is calculated based on the cost-effectiveness formula as required in the Moyer Guidelines, to other funds is undermined, CONTRACTOR acknowledges and understands this change may cause a reduction of funding under this contract.

- 4.4 CONTRACTOR shall provide a copy of the Annual Audited Financial Statements to SCAQMD, including all accompanying reports prepared by independent auditors and provided to staff and/or CONTRACTOR's Board of Directors within 30 days of audit report date.
- 4.5 CONTRACTOR shall provide a copy of the Annual OMB A-133 Single Audit Report to SCAQMD within 30 days of audit report date.
- 4.6 CONTRACTOR shall provide notice to SCAQMD of any internal/external audits, reviews, or inspections that are of a financial nature. These include, but are not limited to, those performed by consultants, auditors, Member Agency Advisory Committee, CONTRACTOR Committees, and/or local/state/federal agencies. Additionally, notice must be provided as soon as CONTRACTOR becomes aware of the audit/review/inspection, and a copy of any subsequent audit/review/inspection reports must be provided to SCAQMD within 30 days of audit/review/inspection report date.
- 4.7 CONTRACTOR shall provide to SCAQMD project cash flow reports on a quarterly basis for quarters ending March 31, June 30, September 30, and December 31 until completion of the Contract. Project cash flow reports must include quarterly and cumulative cash inflows/outflows/balance.

ATTACHMENT 1A

**PROJECT MILESTONES
STATEMENT OF WORK
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
FY 2011-12 CARL MOYER PROGRAM
FUND 80 - AB 923**

<u>Milestone</u>	<u>Due Date</u>
Issue Notice to Proceed no later than	December 1, 2013
Delivery and Acceptance Completed	May 20, 2017
New Locomotives (s) in Service	January 31, 2018
Submittal of All Invoices Note: Post-Inspection must be completed prior to any invoices paid by AQMD	June 15, 2018
Quarterly Progress Report	every 3 months after contract execution, until delivery of final locomotive
Quarterly fiscal meeting with SCAQMD CFO	every 3 months after contract execution, until final locomotive payment
Annual Progress Reports	June 15, 2019- June 15, 2023
Biannual Progress Reports	June 15, 2025 June 15, 2027 June 15, 2029 June 15, 2031 June 15, 2033 June 15, 2035 June 15, 2037
Final Annual Progress Report	June 15, 2038

ATTACHMENT 1B
DELIVERABLES
STATEMENT OF WORK
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
FY 2011-12 CARL MOYER PROGRAM
FUND 80 - AB 923

In addition to the deliverables set forth in the above-referenced statement of work, CONTRACTOR shall supply the following reports to the SCAQMD under this Contract. Each submitted report shall be stapled, not bound, printed in black ink, double-sided type, on an 8-1/2 by 11 inch page, and shall include camera-ready originals.

1. Two stapled copies of each quarterly progress report due by the 15th day of each month following the reporting period. CONTRACTOR shall submit two copies of each progress report to SCAQMD's Carl Moyer Contract Administrator-Technology Advancement, in conjunction with any applicable invoice for the same period. Quarterly reports are required until all locomotives are placed into regular operating service. Each progress report shall include, but not be limited to, the following:
 - a. Reference to SCAQMD contract number and title of project.
 - b. Reporting time period (months, year).
 - c. Description of work completed during the reporting period, including a discussion of problems encountered and how those problems were resolved; and other relevant activities. Include information such as:
 - Accumulated fuel consumed per locomotive in service during the reporting period.
 - Discussion of locomotives performance, including operational performance and repairs and maintenance performed.
 - d. Proof of workers compensation insurance, general liability insurance and casualty insurance in accordance with Clause 8 of the Contract
2. Two stapled copies of an annual/biannual report, to be submitted for the term of the agreement. This document shall be considered in the public domain, in conformance with the California Public Records Act (Government Code Section 6250 et seq.). The annual report shall include, but not be limited to, the following:
 - a. Reference to SCAQMD contract number and title of project.
 - b. Color photographs in a digital format, such as .ppt, .tif, .jpg on a CD or sent electronically, of:
 - The locomotive or locomotives funded by the Carl Moyer Program.
 - The fueling site used by the locomotives.
 - c. A description of the operation of the locomotives, including:
 - Accumulated hours of operation per locomotives in service during the reporting period, and the percentage of the total annual accumulated hours operated within the SCAQMD boundaries.
 - Discussion of locomotives performance, including operational performance and repairs and maintenance performed.
 - d. Problems - a discussion of significant problems encountered during the year and how they were resolved.
 - e. Provide proof of workers compensation insurance, general liability insurance and casualty insurance in accordance with Clause 8 of the Contract.

ATTACHMENT 2

PAYMENT SCHEDULE STATEMENT OF WORK SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY FY 2011-12 CARL MOYER PROGRAM - FUND 80 - AB 923

CONTRACTOR shall be reimbursed for part of the cost of purchasing up to 20 new passenger locomotives certified to meet the U.S. EPA Tier 4 emission standards, after a satisfactory post-inspection conducted by SCAQMD staff. The maximum reimbursement for each locomotive under this Contract is \$2,600,000, and the total payments for all locomotives shall not exceed \$34,660,000. All invoices must be accompanied by supporting documentation, including vendor invoices, and a written report documenting delivery and placement into service.

Maximum Cost Per Locomotive to be Reimbursed By SCAQMD Carl Moyer Program	Number of Units	Total Cost
\$2,600,000	up to 20	\$34,660,000
Total contract not-to-exceed		\$34,660,000

Payments will be made after: (1) SCAQMD receives and approves the required documentation for payment, including vendor invoices supporting the purchase of the new locomotives, proof of U.S. EPA certification or CARB verification and a written report documenting delivery; (2) the placement of the locomotives into service; (3) the satisfactory completion of the SCAQMD post-inspection for each new locomotive; and (4) the SCAQMD CFO determines that all CONTRACTOR accounts related to the locomotive purchases are in order. For the first two locomotives, SCAQMD will withhold fifty percent (50%) of the amount due for the first two locomotives delivered and placed into service, and the 50% withhold will be released after the delivery and placement into service of the third locomotive.

If the locomotives are sold and released under an EPA-issued experimental operating permit, payment shall not be made until after subsequent verification or certification of the locomotives is completed by EPA or CARB. CONTRACTOR agrees and understands that CONTRACTOR will not be paid any amount under this Contract until said certification or verification is completed, and that CONTRACTOR's commencement of work described under this Contract prior to the locomotives' certification or verification is done at CONTRACTOR's risk.

The cost to purchase locomotives must not exceed \$6,295,000 each. Should the cost to purchase the locomotives exceed \$6,295,000 each, the SCAQMD will withhold reimbursement payment until all funding sources are reviewed by SCAQMD to insure that funding does not exceed the incremental costs of the project, less any other public incentives, including grants, pursuant to Health and Safety Code Section 44283 (g).

Should CONTRACTOR desire to terminate this Contract in whole or in part prior to the completion of the Contract term, CONTRACTOR shall return to SCAQMD a prorated share of the funds already paid under this Contract. Prorated share shall mean the amount paid by SCAQMD per locomotive, multiplied by the number of months remaining in the Contract and divided by the project life in months (i.e. 240 months).