

Supplemental Agenda Item No. 32

Board of Directors Meeting

July 12, 2017

10:00 a.m.

Location

San Bernardino County Transportation Authority
Santa Fe Depot - First Floor Lobby – Board Room
1170 W. 3rd Street, San Bernardino, CA 92410

Discussion Calendar

Transit

32. Redlands Passenger Rail Project - Award of Rail Vehicle Contract

That the Board, acting as the San Bernardino County Transportation Authority:

A. Award Contract No. 16-1001531 to Stadler US in an amount not-to-exceed \$31,405,077 for the acquisition of passenger rail vehicles and associated tools, spare parts, and training for the Redlands Passenger Rail Project to be funded in accordance with Table 2 below, and authorize the Executive Director or designee to execute Contract No. 16-1001531 contingent upon SBCTA's receipt of a Letter of No Prejudice from the Federal Transit Administration for the acquisition of these passenger rail vehicles.

B. Approve a contingency amount not-to-exceed \$3,140,508 for Contract No. 16-1001531 and authorize the Executive Director or designee to release contingency as necessary for the acquisition of the passenger rail vehicles and associated tools, spare parts, and training to be funded in accordance with Table 2 below.

C. Approve an increase to the overall Redlands Passenger Rail Project budget of \$4,850,000 to be funded with Federal Congestion Mitigation and Air Quality funds, for a new total of \$285.4 million, which does not include contributions from other stakeholders totaling \$5 million for Project betterments.

D. Approve two budget amendments to the Fiscal Year 2017/2018 Budget to increase Task No. 0315, Transit Capital, Subtask 0324, Redlands Passenger Rail Project by \$4,267,450 in State Proposition 1B California Transit Security Grant Program funds and to increase Task No. 0314, Transit Operations, Subtask 0371, Arrow Service, by \$376,200 in San Bernardino Valley Metrolink/Passenger Rail Program funds.

This agenda item was made available after the posting of the agenda.

Minute Action

AGENDA ITEM: 32

Date: July 12, 2017

Subject:

Redlands Passenger Rail Project - Award of Rail Vehicle Contract

Recommendation:

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Background:

The San Bernardino County Transportation Authority (SBCTA) is the lead agency for the Redlands Passenger Rail Project (RPRP). The project will implement a nine-mile passenger rail service, branded as the Arrow, between the San Bernardino Transit Center (SBTC) and the University of Redlands. The Arrow service is envisioned as operating with 30-minute peak and 60-minute off-peak headways during the work week and 60 minute headways on the weekends. Five stations have been identified, including the San Bernardino Transit Center, Tippecanoe Avenue, New York Street (sponsored by Esri), Downtown Redlands, and the eastern terminus, University Station.

The Environmental Impact Report/Environmental Impact Statement (EIR/EIS), approved in 2015 identified the use of Diesel Multiple Units (DMU) as the preferred passenger vehicle type. A DMU is essentially a self-contained passenger train. A single car contains three modules: two

Entity: San Bernardino County Transportation Authority

passenger-carrying cab sections at each end and a propulsion unit in the middle. DMUs are generally perceived to have lower community impacts than conventional passenger trains due to their lower profile and quieter engines. The cars are lighter than conventional passenger rail cars and thus have lower emissions, operating costs, and noise impacts when compared to the conventional Locomotive Hauled Coaches (LHC) currently operated by Metrolink. However, the EIR/EIS did include the use of LHCs for two round trips per day for express train service and a one-seat ride into and out of the Los Angeles area. The current operating plan is to implement one round trip per day using Metrolink LHC to/from the Downtown Redlands Station to augment the Arrow DMU service.

The RPRP Vehicle and Operations Study, July 2015, compared the operating costs of conventional commuter trains and DMUs. Each technology requires a two-person crew to operate the train. However, the DMU has better fuel economy, 0.66 gallons per mile for the DMU versus 2.29 gallons per mile for conventional equipment, and lower maintenance costs due to not having to maintain a locomotive and two passenger coaches. The study recommended the acquisition of a four vehicle DMU fleet to allow for service reliability. The operating plan calls for two vehicles operating with 30 minute headways during the peak period. The third vehicle is a “ready spare” to replace a vehicle that experiences a mechanical failure. The fourth vehicle was recommended to ensure that a ready spare is continuously available. Due to funding constraints, staff is recommending three vehicles be procured as part of the base order and include in the proposed contract options to purchase up to three additional vehicles as funding permits. A three vehicle fleet means that if the ready spare is already in use due to one vehicle being in the shop for maintenance, inspections or repairs, the loss of an additional vehicle from service will result in 60 minute headways.

The proposed contract procures a fleet of three (3) low floor, Tier 4 compliant DMU vehicles. The vehicles are compliant with Federal Railroad Administration (FRA) Passenger Equipment Safety Standards (49 CFR Part 238) and meet the Federal Transit Administration (FTA) Buy America requirements. The vehicle’s dimensions will allow for shared platforms with Metrolink equipment at the San Bernardino Transit Center and Downtown Redlands Station. Lastly, the vehicles have the ability to be converted to low or zero emission power as those technologies are developed.

A Request for Proposals (RFP) was developed in spring 2016. SBCTA standard contracting language, including federal provisions, was used for the Terms and Conditions with the technical specifications based on the recent DMU procurement by Fort Worth Transportation Authority for their TEXRail Project. The RFP was released on October 18, 2016, and a pre-proposal conference, attended by four vehicle vendors was held on October 27, 2016. A single vendor, Stadler US, submitted a response. Stadler US has been working aggressively to develop a DMU vehicle that meets the FRA requirements and is Buy America compliant; currently, they are the only manufacturer that has met both of these requirements. On January 26, 2017, a technical review committee consisting of staff from the RPRP Program Management Consultant and Southern California Regional Rail Authority (Metrolink) evaluated the proposal for compliance with FRA and FTA requirements and suitability of the vehicle for the proposed RPRP service. The committee determined that the proposal was compliant; however clarifications from Stadler US were needed on some items.

The most critical item was the length of the proposed vehicle. Stadler US proposed a FLIRT 3 model with three passenger sections, instead of the two passenger section model called for in the RFP. Due to space constraints at the station locations and at the future rail vehicle maintenance facility site, SBCTA could not accept the proposed three section car and required Stadler US to eliminate the middle passenger section. Other items of concern included the final language of the contract, the design review process, pricing and production timing. The technical review committee's recommendation was presented on February 21, 2017, to the DMU Steering Committee, consisting of the SBCTA Executive Director, the Omnitrans Chief Executive Officer/General Manager, and SBCTA Transit and Rail staff. The DMU Steering Committee approved starting negotiations with Stadler US.

The DMU Steering Committee and/or SBCTA staff met with Stadler US three times between March and June to discuss the technical and pricing issues identified by the Technical Review Committee. These issues were resolved to each party's mutual satisfaction and staff is now recommending approval of the contract. A key aspect of the final terms was an agreement that SBCTA would limit Stadler US's contract liability to 50% of the total contract value. During the negotiations Stadler US stated that they normally only agree to a liability of 10% to 15% of the contract value. SBCTA staff deemed it important that the liability be increased.

A diagram of the proposed vehicle is provided in Attachment A and features of the proposed contract include:

- Base order of three (3) vehicles configured with two passenger-carrying cab cars connected by a single power car;
- Options for three (3) additional vehicles which can be purchased one at a time or collectively within the next five (5) years;
- Each vehicle provides 116 seats and room for an additional 112 standees, with a total capacity of 228;
- Provisions for bicycle storage, wheelchairs, and overhead luggage storage;
- Vehicle length of 168 feet;
- No restrooms;
- WiFi ready;
- Environmental Protection Agency Tier 4 level emissions compliant, with the ability to convert to low or zero emission technology in the future;
- FTA Buy America compliant, the vehicles will be assembled in Utah, using car body components manufactured in Europe and outfitted with interior features made in the United States for an overall American content in excess of 70%;
- FRA Part 238 compliant, allowing the vehicles to operate intermixed with Metrolink LHCs and freight trains;
- Delivery in late 2019 and early 2020.

The contract is attached to this item for review along with Exhibit B, "Approved Pricing Schedule". Exhibit A, "Scope of Work and Technical Specifications" is not attached due to the large number of documents; however it can be accessed online at:

<http://gosbcta.com/plans-projects/projects/arrow/16-1001531-ExhibitA.pdf>

A hard copy of all contract documents will be available for review with the SBCTA Clerk of the Board.

San Bernardino County Transportation Authority

Table 1 below presents a summary of the capital and initial operating and maintenance (O&M) vehicle costs associated with the award of Contract No. 16-1001531 and includes all recommended spare parts, special tools, and training in accordance with Stadler US's final proposal as negotiated with SBCTA. The funding plan for Contract No. 16-1001531 and requested 10% contingency is provided in Table 2.

Table 1 – Cost Summary

No.	Quantity	Item	Unit Price	Extended Price
Item 1	N/A	Management, engineering, tooling, testing and mock-ups		\$4,112,000
Item 2	3	New Diesel Multiple Units (DMUs)	\$7,449,000	\$22,347,000
Item 5	N/A	Special tools		\$291,970
Item 6	N/A	Test equipment		\$98,978
Capital Sub-Total:				\$26,849,948
Capital Contingency (10%):				\$2,684,995
CAPITAL TOTAL:				\$29,534,943
Item 3	N/A	Training		\$684,000
Item 4	N/A	Operations, maintenance and parts manuals		\$845,000
Item 7	N/A	Spare Parts		\$3,026,129
O&M Sub-Total:				\$4,555,129
O&M Contingency (10%):				\$455,513
O&M TOTAL:				\$5,010,642
TOTAL BASE CONTRACT				\$ 31,405,077
Total Contingency @ 10%				\$3,140,508
Total Not to Exceed Amount				\$34,545,585

Table 2 – Funding Source Summary

Fund Source	Amount
State Proposition 1B Public Transportation Modernization, Improvement and Service Enhancement Account	\$19,108,874
State Proposition 1B California Transit Security Grant Program	\$5,061,087
Measure I Valley Metrolink/Passenger Program	\$2,679,987
Measure I Valley Metrolink/Passenger Program (Contingency)	\$2,684,995
CAPITAL TOTAL	\$29,534,943
Measure I Valley Metrolink/Passenger Program Non-bond revenue	\$4,555,129
Measure I Valley Metrolink/Passenger Program Non-bond revenue (Contingency)	\$455,513
O&M TOTAL	\$5,010,642
TOTAL	\$34,545,585

The final vehicle costs are higher than what was projected in the RPRP Risk Register. The RPRP project team utilizes the FTA Risk Register tool to aid in the minimization of cost increases and schedule delays for the Project as a whole. The RPRP Risk Register has consistently shown the vehicle pricing as a high risk item due to a number of factors such as the limited availability of FRA and Buy America compliant vehicles as well as the variability in costs associated with the size of the vehicles available that are Buy America compliant. Stadler US manufactures two models for projects in the United States that would have met the capacity needs of the RPRP service; the smaller currently non-Buy America compliant GTW for Denton County Transportation Authority (DCTA) and the larger Buy America compliant FLIRT 3 for Fort Worth Transportation Authority's (FWTA) TEXRail Project.

The RPRP Risk Register included \$23,500,000 for vehicle capital costs based on the availability of cost data from the DCTA procurement in 2016 and allotted \$1,200,000 in contingency to address the expected high risk associated with procuring a FRA compliant and Buy America compliant vehicle, totaling \$24,700,000. The expense to develop a United States based supply chain and establish a manufacturing facility in the United States resulted in a higher cost, especially for early orders of Buy America compliant vehicles. If the contract is approved, SBCTA's order will be the second order of Buy America vehicles, after the vehicles being procured by FWTA. Due to the higher than projected costs for procuring the DMUs, staff is requesting an increase of \$4,850,000 to the RPRP budget, which is the difference in capital costs from what was estimated in the Risk Register and what was finally negotiated with Stadler US. The total RPRP budget would increase from \$280.5 million to \$285.4 million, not including an additional \$5 million in funding provided by stakeholders to complete Project betterments.

SBCTA is working with the FTA to obtain a Letter of No Prejudice (LONP) which is required before incurring costs for project activities not covered by automatic pre-award authority such as vehicle procurement. The authority granted under a LONP allows a FTA Small Starts applicant to incur costs on a project utilizing non-federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project grant agreement at a later date.

During the development of the SBCTA Fiscal Year 2017/2018 Budget, it was anticipated that there would be no expenditures on this contract in Fiscal Year 2017/2018. However, as a result of negotiations with Stadler US, it was agreed that initial payments totaling \$4,643,650 will be made in Fiscal Year 2017/2018. A budget amendment is requested as part of this item in Recommendation D.

Financial Impact:

This item is not consistent with the Fiscal Year 2017/2018 Budget. A budget amendment is requested to increase two Tasks in the total amount of \$4,643,650 as detailed in Recommendation D.

Reviewed By:

This item has not received prior policy committee or technical advisory committee review. SBCTA General Counsel and Procurement Manager have reviewed this item and the contract.

Responsible Staff:

Carrie Schindler, Director of Transit and Rail

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Approved
Board of Directors
Date: July 12, 2017

Witnessed By:

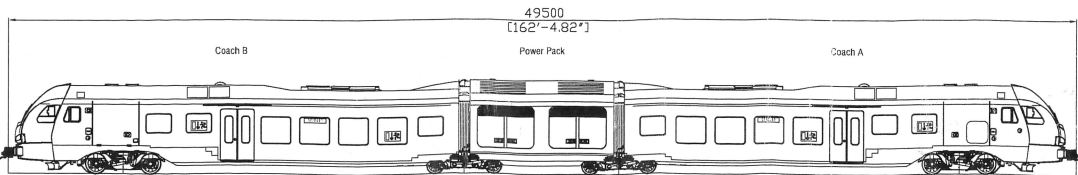
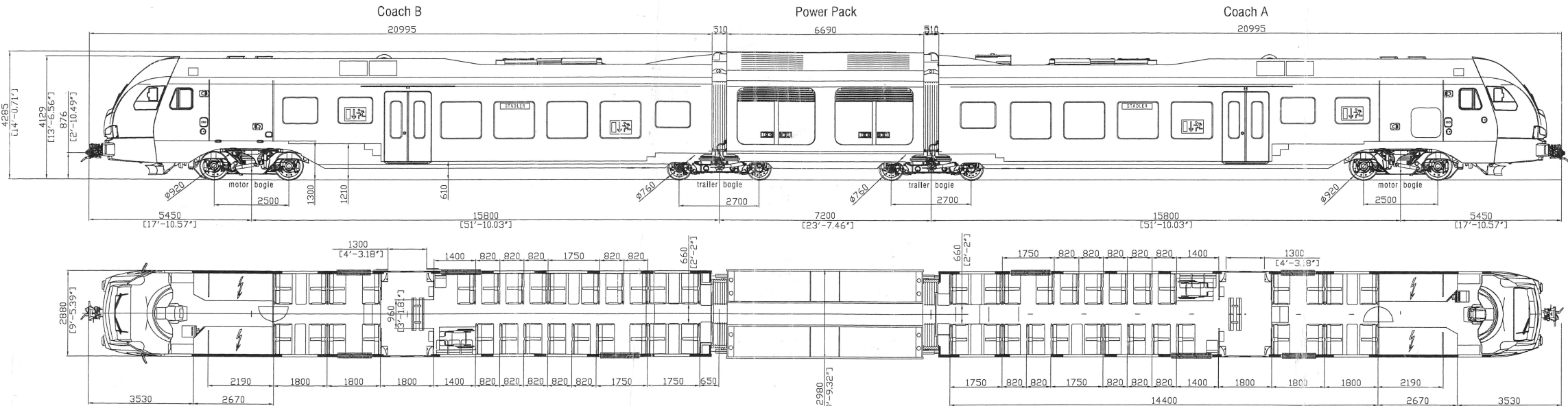
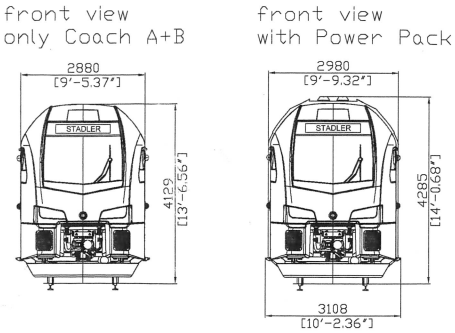
Attachment A

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A
B
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Document No.: 304.100
Document No.: 304.101

Emergency window

	B	A	TOTAL
FIXED SEATS	54	54	108
FLIP UP SEATS	4	4	8
TOTAL SEATS	58	58	116
STANDEES AREA (m ²)	14.75	14.75	29.5
STANDEES (4P/m ²)	59	59	118
TOTAL (fixed seats + standees)	113	113	226

Datum	Name	FLIRT ³ , DMU SANBAG General Arrangement Drawing
Bearb. 10.03.2017	frejul	
Gepr. 10.03.2017		

STADLER 521757

P-3675

Contract Summary Sheet
General Contract Information

Contract No: 16-1001531 Amendment No.: N/A Vendor No.: 03334
Vendor/Customer Name: Stadler, US Sole Source? ☐ Yes ☒ No
Description: RPRP - Rail Vehicles
Start Date: 07/12/2017 Expiration Date: 06/30/2026 Revised Expiration Date: _____
Has Contract Term Been Amended? ☒ No ☐ Yes - Please Explain _____
List Any Related Contracts Nos.: _____

Dollar Amount			
Original Contract	\$ 31,405,077.00	Original Contingency	\$ 3,140,508.00
Revised Contract (Inclusive of Prior Amendments)	\$ -	Revised Contingency (Inclusive of Prior Amendments)	\$ -
Current Amendment	\$ -	Contingency Amendment	\$ -
TOTAL CONTRACT VALUE	\$ 31,405,077.00	TOTAL CONTINGENCY VALUE	\$ 3,140,508.00
		TOTAL DOLLAR AUTHORITY (Contract Value and Contingency)	\$ 34,545,585.00

Contract Authorization

☐ Executive Director Date: _____
Executive Director Action: _____
☒ Board of Directors Date: 07/12/2017
Board of Directors Action: _____

☒ **Contract Management: Payable/Miscellaneous**

Invoice Warning: 20% Renewals: _____ Type: ☐ Capital ☐ PAA ☐ Other
☐ Retention: % Maximum Retention: \$ -
Services: ☐ Construction ☐ Intrgrnt/MOU/COOP ☐ A & E Services ☐ Other Professional Services
☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

☐ **Contract Management: Receivable**

☐ E-76 and/or CTC Date _____ (Attach Copy) ☐ Program Supplement No.: _____
☐ Finance Letter ☐ Reversion Date: _____ ☐ EA No.: _____

All of the above MUST be submitted to FINANCE including originals, amendments and miscellaneous transaction changes

Additional Information

Project Manager: Justin Fornelli

CONTRACT No. 16-1001531

BY AND BETWEEN

SBCTA

AND

STADLER US, Inc.

FOR

Procurement of Diesel Multiple Unit (DMU) Rail Vehicles

This contract (referred to as “Contract”), is made and entered into by and between the San Bernardino County Transportation Authority (“SBCTA”) whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and Stadler US, Inc. (“Contractor”) whose address is: 900 North 500 West, Salt Lake City, UT 84116. SBCTA and Contractor are each a “Party” and collectively the “Parties”.

RECITALS:

WHEREAS, SBCTA requires Work as described in Exhibit A of this Contract and;

WHEREAS, Contractor has confirmed that Contractor has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the Work identified herein; and

WHEREAS, Contractor desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

TABLE OF CONTENTS

SECTION 1: GENERAL CONDITIONS (GC)	1
GC 1. Definitions	1
GC 2. Materials and Workmanship	7
GC 3. Conformance with Specifications and Drawings	7
GC 4. Inspection and Testing	8
GC 4.1 General	8
GC 4.2 Defective Work	9
GC 4.3 Risk of Loss.....	9
GC 5. Title and Warranty of Title.....	10
GC 6. Intellectual Property	10
GC 6.1 Intellectual Property Indemnification.....	10
GC 6.2 Intellectual Property Warranty	11
GC 6.3 Tooling Rights.....	11
GC 7. Data Rights	11
GC 7.1 Proprietary Rights/Rights in Data	11
GC 7.1.1. Uses	12
GC 7.1.2. Limits.....	12
GC 7.2 Escrow Account	13
GC 7.2.1. Software Escrow.....	13
GC 7.3 Access to Onboard Operational Data	14
GC 8. Changes	14
GC 8.1 Contractor Changes	14
GC 8.2 SBCTA Changes	15
GC 9. Legal Clauses	16
GC 9.1 Indemnification	16

GC 9.1.1. Joint or Concurrent Negligence	17
GC 9.1.2. Limitation of Liability	17
GC 9.1.3. Intentionally Omitted.....	17
GC 9.1.4 Attorney’s Fees	17
GC 9.2. Suspension of Work	17
GC 9.2.1. General	17
GC 9.2.2. Compliance	17
GC 9.2.3. Adjustments	17
GC 9.3 Notice of Labor Dispute	18
GC 9.4 Force Majeure	18
GC 9.5 Termination	19
GC 9.5.1. Termination for Convenience	19
GC 9.5.2. Termination for Default	21
GC 9.6 Compliance with Laws and Regulations	22
GC 9.7 Changes of Law.....	22
GC 9.8 Governing Law and Venue.....	23
GC 9.9 Claims	23
GC 9.9.1. Notice of Intent to Claim.....	23
GC 9.9.2. Claim Submittal.....	23
GC 9.9.3. Claims Process	24
GC 9.9.4. No Claims after Final Payment	25
GC 9.10 Disputes	25
GC 9.10.1 Dispute Timeline	25
GC 9.10.2 Proceeding with Work During Disputes	26
GC 9.11 Maintenance of Records; Access by Agency; Right to Audit Records	26
GC 9.12 Conflict of Interest.....	26

GC 9.13 Proprietary Rights/Confidentiality	27
GC 9.13.1 Confidential Information	27
GC 9.14 General Nondiscrimination Clause	27
GC 9.15 Amendment and Waiver.....	27
GC 9.15.1. Amendment	27
GC 9.15.2. Waiver	28
GC 9.16 Intentionally omitted	28
GC 9.18 Severability.....	28
GC 9.20 Third-Party Beneficiaries	28
GC 9.21 Assignment of Contract/Subcontractors.....	28
GC 9.22 Contingent Fee	29
GC 9.23 Rebates, Kickbacks, or other Unlawful Consideration	29
GC 9.24 Gratuities	30
GC 9.25 Independent Contractor	30
GC 9.26 Survival	30
SECTION 2: SPECIAL PROVISIONS	30
SP 1. Schedule	30
SP 1.1 Period of Performance and Delivery Schedule	30
SP 1.1.1 Period of Performance and DMU Procurement Schedule/Contract Milestones	31
SP 1.1.2 Progress Schedule.....	32
SP 1.1.3 Monthly Progress Report.....	33
SP 1.2 Liquidated Damages.....	33
SP 1.2.1 Liquidated Damages for Late Delivery	34
SP 1.2.2 Liquidated Damages: Warranty.....	35
SP 1.2.3 Mutual Waiver of Consequential Damages.....	37
SP 1.2.4 No Damages for Delays	37

SP 2. Payment.....	37
SP 2.1 Payment Terms/Procedures	37
SP 2.1.1 General	38
SP 2.1.2 Retention.....	38
SP 2.1.3 Use of Retained Funds	39
SP 2.2 Milestone Payment Schedule	39
SP 2.2.1 Contract Payment Schedule: Management, Engineering, Tooling, Testing and Mock-ups ¹	40
SP 2.2.2 Individual Vehicle Payments ²	41
SP 2.2.3 Contract Payment Schedule: Special Tools, Diagnostic Equipment, Spare Parts and Manuals ³	41
SP 2.3 Withholding of Payments by SBCTA	42
SP 2.4 Prompt Payments.....	42
SP 2.4.1 Subcontractor/Supplier Prompt Payment	42
SP 2.5 Units of Currency/Currency Adjustment.....	43
SP 2.6 Payment of Taxes	43
SP 2.7 Final Completion.....	43
SP 2.8 Final Payment and Claims.....	44
SP 3. Performance, Payment Security/Insurance.....	44
SP 3.1 Performance, Payment Security Requirements	44
SP 3.1.1 Performance Bond.....	44
SP 3.1.3	46
SP 3.2 Insurance	46
SP 3.2.1 Coverage.....	46
SP 3.2.1.1 Professional Liability.....	46
SP 3.2.1.2 Worker’s Compensation/Employer’s Liability Insurance.....	46

SP 3.2.1.3 Commercial General Liability Insurance	46
SP 3.2.1.4 Umbrella/Excess CGL Insurance	47
SP 3.2.1.5 Commercial Auto Insurance.....	48
SP 3.2.1.6 Pollution Liability.....	48
SP 3.2.2 General Provisions.....	48
SP 3.2.2.1 Qualifications of Insurance Carriers.....	48
SP 3.2.2.2 Additional Insurance Coverage	48
SP 3.2.2.3 Proof of Coverage.....	49
SP 3.2.2.4 Deductibles	49
SP 3.2.2.5 Contractor's and subcontractor' Insurance will be Primary.....	49
SP 3.2.2.7 Cancellation	50
SP 3.2.2.8 Enforcement	50
SP 3.2.2.9 No Waiver	51
SP 3.2.2.10 Subcontractor Insurance	51
SP 3.2.2.11 Higher limits.....	51
SP 3.2.2.12 Special Risks or Circumstances.....	51
SP 4. Shipping, Delivery and Acceptance	51
SP 4.1 Shipment Authorization.....	51
SP 4.2 Shipment.....	52
SP 4.3 Evidence of Delivery and Shipping Destination (DDP).....	52
SP 4.4 Unloading	53
SP 4.5 Acceptance Testing	53
SP 4.6 Delivery of Special Tools, Diagnostic Equipment, Spare Parts and Manuals.....	53
SP 4.7 Conditional Acceptance, Final Acceptance and Non-Acceptance	54
SP 4.7.1 Conditional Acceptance	54
SP 4.7.2 Final Acceptance	55

SP 4.7.3 Non-Acceptance and Repairs after Non-Acceptance	55
SP 5. Project Management.....	55
SP 5.1 Contractor’s Personnel	56
SP 5.1.1 Contractor’s Project Manager.....	56
SP 5.1.2 Other Key Personnel.....	56
SP 5.2 Subcontractors and Suppliers	56
SP 5.3 SBCTA Project Manager.....	56
SP 5.4 Project Meetings.....	57
SP 5.5 Pre-Award and Post-Delivery Buy America Certification	57
SP 5.6 Ownership and Use of SBCTA Documents	57
SP 5.7 Review of Drawings, Data and Designs	57
SP5.8 Ownership of Documents	57
SP 6. Options	58
SP 6.1 Options for Additional DMUs.....	58
SP 6.2 Options for Additional Non-Cab Cars.....	58
SP 6.3 Prices of Option DMUs (Including Escalation).....	58
SP 6.4 Milestone Payments for Option DMUs	58
SP 6.4.1. Option DMUs ¹	58
SP 6.5 Options for Additional Spare Parts, Tools, Materials, and Optional Vehicle Equipment	59
SP 6.6 Prices for Additional Spare Parts, Tools, Materials, and Optional Vehicle Equipment	60
SP 6.7 Milestone Payments for Additional Spare Parts, Tools and Materials and Optional Vehicle Equipment.....	60
SP 6.8 Assignability of Options.....	60
SP 7. Testing.....	60
SP 7.1 General	60
SP 7.2 Use of SBCTA’s Facilities	61

SP 7.2.1 Care of Premises.....	61
SP 8. Safety and Security Requirements	61
SP 8.1 Contractor Safety Training.....	61
SP 8.2 Safety Compliance	61
SP 9. Service and Parts	62
SP 9.1 Parts Availability Guarantee.....	62
SP 9.2 Interchangeability	63
SECTION 3: FEDERAL/STATE CLAUSES (FC).....	63
FC 1. Access to Records	63
FC 1.1 Local Governments	63
FC 1.2 State Governments	63
FC 2. Federal Funding, Incorporation of FTA Terms and Federal Changes	64
FC 3. Federal Energy Conservation Requirements.....	64
FC 4. Civil Rights Requirements.....	64
FC 5. No Government Obligation to Third Parties.....	65
FC 6. Program Fraud and False or Fraudulent Statements or Related Acts	66
FC 7. Suspension and Debarment.....	66
FC 8. Disadvantaged Business Enterprise (DBE)	67
FC 9. Clean Water Requirements	67
FC 10. Clean Air Requirements.....	67
FC 11. Compliance with Federal Lobbying Policy, Prohibition of Expending SBCTA, State or Federal Funds for Lobbying.....	68
FC 13. Pre-Award and Post-Delivery Audits	68
FC 14. Cargo Preference.....	69
FC 15. Fly America	69
FC 16. Contract Work Hours and Safety Standards Act	70

FC 17. ADA Access	70
FC 18. Recycled Products.....	71
FC 19. Drug Free Workplace.....	71
SECTION 4: TECHNICAL SPECIFICATION	71
SECTION 5: WARRANTY.....	72
WR 1. Basic Warranty Provisions	72
WR 1.1 Warranty Requirements.....	72
WR 1.1.1 Contractor Warranty.....	72
WR 1.1.2 General Warranty	72
WR 1.1.3 Carbody Structure	72
WR 1.1.4 Major Subsystems	72
WR 1.1.5 Extension of Warranty.....	73
WR 1.2 Voiding of Warranty.....	73
WR 1.3 Exceptions and Additions to Warranty.....	73
WR 1.3.1 Pass-Through Warranty.....	74
WR 1.3.2 Superior Warranty	74
WR 1.4 Fleet Defects.....	74
WR 1.4.1 Occurrence and Remedy	74
WR 1.5 Warranty of Spare Parts.....	75
WR 2. Repair Procedures.....	75
WR 2.1 Repair Performance	75
WR 2.2 Repairs by the Contractor	75
WR 2.3 Repairs by SBCTA.....	75
WR 2.3.1 Parts Used.....	75
WR 2.3.2 Contractor-Supplied Parts	76
WR 2.3.3 Defective Component Return.....	76

WR 2.3.4 Failure Analysis.....	76
WR 2.3.5 Reimbursement for Labor and Other Related Costs.....	76
WR 2.3.6 Reimbursement for Parts	76
WR 2.3.7 Reimbursement Requirements	76
WR 2.4 Warranty After Replacement/Repairs	77
WR 2.4.1 Warranty Processing Procedures.....	77
WR 2.5 Forms.....	78
WR 2.6 Return of Parts.....	78
WR 2.7 Timeframe	78
WR 2.8 Warranty Reimbursement.....	78
SECTION 6: QUALITY ASSURANCE	78
SECTION 7: SBCTA ARTICLES	79
ARTICLE 1. PROPRIETARY RIGHTS/CONFIDENTIALITY.....	79
ARTICLE 2. PRECEDENCE/CONFLICTING TERMS.....	79
ARTICLE 3. COMMUNICATIONS AND NOTICES	80
ARTICLE 4. ENTIRE DOCUMENT.....	80
ARTICLE 5. CONTRACT	80
ARTICLE 6. EFFECTIVE DATE.....	81
EXHIBIT A- “SCOPE OF WORK/TECHNICAL SPECIFICATION” – ADDED TO FINAL CONTRACT	1
EXHIBIT B—“APPROVED PRICING SCHEDULE” – ADDED TO FINAL CONTRACT.....	3

SECTION 1: GENERAL CONDITIONS (GC)

GC 1. Definitions

The following are definitions of special terms used in the Contract:

Addenda/Addendum: Written modifications issued by SBCTA to the RFP that modify the RFP.

Agency or SBCTA: San Bernardino County Transportation Authority, and any successor to its powers, duties, rights and liabilities by operation of law (SBCTA).

Agency Furnished Equipment: Material furnished by SBCTA to the Contractor for use under the Contract.

Allowance: An amount established in the Contract for inclusion in the Contract sum to cover the cost of prescribed items not specified in detail, with a provision that variations between such amount and the finally determined cost of the prescribed items which will be reflected in Change Orders appropriately adjusting the Contract sum.

Approved Equal or Equivalent: An item, material or method offered as a substitute for that designated in the Contract, for which approval in writing has been obtained from SBCTA. The burden of proof that a substitute is in fact equal shall rest with the Contractor.

Assignee: The person(s) or entity(ies) to whom the options as specified in the Contract have been legally transferred.

Authorized Representative: The person or firm authorized or empowered to act for, or on behalf of, SBCTA. The authority of any Authorized Representative may be limited as provided in the Contract or in any notice designating the Authorized Representative.

Authorized Signer: The person who is executing the Contract on behalf of the Contractor and who is authorized to bind the Contractor.

Award of the Contract: Notification to the Contractor of acceptance by the SBCTA Board of Directors of its Proposal.

Change: Any alteration in the Contract or the Work modifying the Scope of Work, price, equipment, materials, facilities, services, site, performance, schedule or other material provision of the Contract.

Change Order: A written document that alters the Scope of Work to be performed by the Contractor, changes the schedule of performance of the Work, increases or decreases the Total Contract Price, increases or decreases the Contract Time, or makes any other change to the Contract.

Claim: A written demand by the Contractor seeking (1) the payment of money in a sum certain; (2) an extension of Contract Time; (3) an adjustment of Contract terms; and/or (4) other relief arising under or relating to the Contract.

Component: Any element of any DMU or any other Equipment to be delivered under the Contract. May also be referred to in the Contract as a unit, part, product, module, subcomponent, system, subsystem, assembly, subassembly, software, firmware, structure or other term indicating a part or portion of the DMU or Equipment.

Conditional Acceptance: The status granted to a completely assembled DMU or Equipment, located at SBCTA or its vehicle acceptance facility that has successfully completed tests outlined in accordance with Technical Specification, and is ready to run in revenue service except for minor Defects that require corrective action but that will not materially affect revenue service operations. Conditional Acceptance requires that all documentation for the respective DMU or Equipment, including the Vehicle History Book, as indicated in Technical Specification, has been delivered to and accepted by SBCTA. SBCTA shall accept the documentation if the documentation is complete and appropriate. The scope of the documentation to be delivered at the Conditional Acceptance shall be defined and mutually agreed by the parties prior Conditional Acceptance.

Consultant: Any person, firm, partnership, corporation or other entity, or combination thereof under contract to SBCTA and performing design related services, including but not limited to, engineering, geotechnical investigations, design, project control, construction management, contract administration, surveying, and environmental assessment in support of the overall Project of which the Contract is a part.

Contract: This written agreement executed by SBCTA and the Contractor that sets forth the rights and obligations of the parties in connection with the Work, and includes the Contract Documents, all attachments and exhibits incorporated by attachment or reference, and any amendments thereto.

Contracting Officer: SBCTA's Authorized Representative who is authorized and empowered to execute Change Orders, and other agreements and documents on behalf of SBCTA. The Contracting Officer may delegate authority in writing to one or more Authorized Representatives.

Contract Documents: This Contract, the RFP, the Specifications, the Proposal, the RFP Forms, and all documents included in the Contract and made a part hereof, including attachments and exhibits incorporated either by attachment or by reference, and any amendments thereto.

Contract Time: The number of Days, or portion thereof, allowed for completion of the Work, including all authorized time extensions. The date specified in the Notice to Proceed (NTP) shall be the date on which the Contract Time begins, and the Scheduled Completion Date shall be the date the Contract Time ends.

Contractor: The individual, firm, partnership, corporation, or other entity or combination thereof entering into the Contract with SBCTA and primarily liable for acceptable performance of the Work. The Contractor is the successful Proposer to whom a Contract is awarded.

Contractor's Representative: The person designated by the Contractor to act on its behalf.

Critical Path Method (CPM) schedule: A schedule that includes the planned sequence of activities that comprise the Project, including a breakdown of all of the elements of the Work into individual tasks, the number of Days required to perform each task and their logical relationship. The CPM schedule includes the entire Contract Time from NTP to the Scheduled Completion Date.

Cure Notice: Written notice from SBCTA to the Contractor to cure a default or deficiency or to correct Work performed not in conformance with the Contract.

Days: Calendar days unless otherwise indicated. In computing any period of time established under the Contract, the day of the event from which the designated period of time begins to run shall not be included.

Defect/Defective: The condition of any part of the Work that (1) does not meet the Contract Documents requirements; (2) causes a DMU or a portion of the Work to cease operating or to operate in a degraded mode; (3) is changed or added without SBCTA's approval; or (4) inflicts damage on any portion of a DMU, Equipment, manuals, training, or the Work, prior to Final Acceptance of the Equipment or during the period of any Warranty.

Delivery: The time when a DMU is turned over to SBCTA at its vehicle acceptance facility, having completed all pre-delivery inspections and tests and ready for acceptance testing.

Diesel Multiple Unit (DMU): The single operating unit, which may consist of one or more sections, which is to be created pursuant to Contract Section 4: Technical Specification.

Dispute: A disagreement between the parties as to the merits, amount or remedy arising out of a Claim or asserted default.

Drawings: All drawings necessary or required for the prosecution of the Work.

Due Date: The time by which any document must be received by SBCTA or Contractor, as applicable.

Equipment: Any and all machinery, DMUs, systems, assemblies, subassemblies, products, material fittings, devices, appliances, fixtures, apparatus, supplies and parts used by the Contractor or provided by the Contractor to SBCTA pursuant to the Contract.

Execution of the Contract: The signing of the Contract by SBCTA's Authorized Representative and the Authorized Signer or Contractor's Representative.

Extended Warranty: A warranty that extends beyond the general warranty period for Components listed in Contract Section 5: Warranty.

Final Acceptance of a DMU: The declaration that the DMU has been completed in full accordance with Contract Section 4, Technical Specification, including all testing, approved engineering submittals, and Change Orders, which are scheduled to be completed prior to Final Acceptance, and all corrective actions identified at the Conditional Acceptance stage have been completed unless otherwise agreed by the parties, and all required documentation for the respective DMU has been received and approved by SBCTA.

Final Completion: The fulfillment of all of the Contractor's obligations under the Contract, or a specified portion thereof, and acceptance by SBCTA of all Work under the Contract, or a specified portion thereof, followed by the issuance of a Notice of Final Completion, or other appropriate document of acceptance, certifying that the Work, or portion thereof, has been fully completed in accordance with the Contract.

Final Payment: Payment made to the Contractor within thirty (30) Days of the later of (1) presentation of the Contractor's final invoice, and (2) issuance of Notice of Final Completion by SBCTA.

First Article Inspection (FAI): The comprehensive inspection and testing of the first production model of any component, system, subsystem, major assembly, subassembly, product, part, apparatus, article and other Material before it is assembled into a DMU.

Fleet: A collection of DMUs that is identical in configuration.

Fleet Defect: Cumulative failures of ten percent (10%) of the same components in the same or similar applications, with a minimum of three (3) failures of the same component where such items are covered by warranty.

Government: Any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than SBCTA.

Infrastructure Contractor: Contractor hired to make infrastructure improvements along RPRP.

Joint: Involving mutually the Contractor and SBCTA.

Material: Any product that is used in the creation of any component, system, subsystem, major assembly, subassembly, product, part, apparatus, for use on a DMU. (e.g. seat fabric)

Milestone Schedule: A summary level schedule which identifies the major milestones.

Notice: Communication in writing, unless otherwise specified, to provide or issue any information, warning, announcement, instruction, consent, approval, certificate or determination by any party to the Contract.

Notice of Intent to Claim: A written notice of a potential claim submitted by the Contractor to SBCTA within the time limits and under the circumstances specified in the Contract Documents.

Notice of Non-Acceptance: Notice issued by SBCTA that the elements do not meet the requirements of the Contract. It generally outlines outstanding issues and may request further information.

Notice to Proceed (NTP): Written authorization from SBCTA to the Contractor that establishes the date that the Contractor is to start work and the Period of Performance begins.

Notice of Termination: A written notice delivered by SBCTA to the Contractor terminating the Contract, either for convenience or for cause.

Open Items Report: A description of all defects, shipping damage and missing parts upon DMU arrival delivery at SBCTA's property.

Operator(s): The legal entity(ies) with whom SBCTA may, in its sole discretion, contract to operate and maintain the DMUs and Equipment, and to whom SBCTA may, in its sole discretion, assign, lease, or convey in whole or part the DMUs, Equipment, Options and SBCTA's rights and obligations under this Contract.

Options: Additional DMUs, spare parts, tools, materials and optional vehicle Equipment, systems, and services as described in Contract Section 2, SP 6, Options.

Pass-Through Warranty: A warranty provided by the Contractor but administered directly with the component supplier.

Period of Performance: The total time period as set forth in the schedule for the Contractor to complete all or a designated portion of the Work under the Contract.

Pricing Schedule: Exhibit B to this Contract; A schedule of values furnished by the Contractor reflecting the portions of the Contract sum allotted for the various parts of the Work and used as the basis for reviewing the Contractor's applications for progress payments.

Progress Schedule: A diagram, graph or other pictorial or written schedule showing proposed and actual time or start and completion of the various elements of the Work.

Project Manager: The individual designated by SBCTA or the Contractor to manage the Contract on a day-to-day basis.

Proposer: The legal entity that responds to SBCTA's RFP.

Proposal: An offer submitted to SBCTA in response to SBCTA's RFP.

RPRP: Redlands Passenger Rail Project.

Request for Proposal (RFP): The document issued by SBCTA for soliciting proposals with respect to the Work to be performed under the Contract, and all addenda issued by SBCTA modifying, supplementing or clarifying the terms of the RFP.

Specifications: All things described, stated or referenced in Contract Exhibit A entitled Scope of Work/Technical Specification, Statement of Work, or any other description of the Work.

Subcontractor: Any person, firm, partnership, corporation or other entity, other than employees of the Contractor, that are hired by the Contractor to perform work and/or furnish labor, or labor and materials, directly on the DMU under the Contract.

Sub-supplier: Any manufacturer, company, or agency, providing components, material, Equipment or parts to a Supplier for inclusion on the DMU.

Submittal: Any written or graphic document or sample prepared by or for the Contractor that is required by the Contract to be submitted to SBCTA by the Contractor.

Superior Warranty: A warranty still in effect after all contractually required warranties have expired and administered directly between the Supplier and SBCTA.

Supplemental Agreement or Amendment: Mutually consented written agreement that modifies (but does not replace) the existing Contract.

Supplier: Any person, partnership, firm, corporation, joint venture, or any combination thereof, who provides material or Equipment, but not labor or services, to the Contractor and who is responsible to the Contractor by virtue of an agreement with the Contractor.

Technical Specification: Exhibit A to this Contract, which includes specific section numbers which are referenced as preceded by TS or TP.

Test Plan: A document detailing a systematic approach to testing the DMU systems, Equipment and/or components including both mechanical and/or software. The plan typically contains a detailed understanding of what the eventual workflow will be.

Total Contract Price: The total amount payable to the Contractor that includes any Options exercised and/or Change Orders made, during the Contract Period of Performance.

Total Option Contract Price: The total amount payable to the Contractor plus the price of any Change Orders after the initial Contract Period of Performance as a result of exercising any of the Options to the base contract.

Value Engineering Change Proposals (VECPs): An engineering cost and schedule proposal that studies the relative monetary benefits of various materials and manufacturing techniques, including the initial cost, maintenance cost, energy usage cost, replacement cost, and life expectancy of the DMUs.

Work: All designs, engineering, manufacturing, operations, materials, Equipment, parts and labor required: (1) to properly, timely and to the satisfaction of SBCTA provide the completed new DMUs, provide all other items of Work indicated or referenced in the Contract Documents, including all alterations, amendments or extensions thereto made by Change Order; (2) to successfully complete all required tests and all reliability periods; and (3) to remedy all Defects and complete all necessary repairs and modifications resulting from the tests, the reliability periods and warranties, as required by the Contract Documents. The Work is more fully described in Exhibit A, Scope of Work/Technical Specification.

All documents delivered by the Contractor shall be in English.

GC 2. Materials and Workmanship

The Contractor shall be responsible for all materials and workmanship in the construction of the DMU and all accessories used, whether the same are manufactured by the Contractor, Subcontractor or purchased from a Supplier. The Contractor shall provide and pay for all supervision, labor, materials, tools, equipment and machinery, water, electricity, fuel, heat, utilities, transportation, and other facilities and services, except for those specifically identified in the Contract as provided by SBCTA or others, necessary for the proper execution and completion of the Work by its own means and methods. This provision excludes any equipment leased or supplied by SBCTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the DMUs.

Unless specifically provided for in the Technical Specification, all materials and parts furnished by the Contractor shall be new and free from Defects.

GC 3. Conformance with Specifications and Drawings

Materials furnished and Work performed by the Contractor shall strictly conform to the requirements of the Technical Specification and the Contract Documents. The Contractor is responsible for ensuring that the quality of finished Work meets all aspects of the Contract Documents. Notwithstanding the provision of drawings, Technical Specification, or other data by SBCTA, the Contractor shall have the responsibility of supplying all parts and designs required to make the DMU complete and ready for service even though certain details are to be considered as industrial standard but such details may not be specifically mentioned as specified in Technical Specification, however for the avoidance of doubt any extension of the actual scope of Work as defined in the Technical Specification shall be treated pursuant to

Section 1, GC 8 Changes. Items installed by SBCTA shall not be the responsibility of the Contractor unless they are included in the Contract.

Omissions from the Technical Specification, or the inaccurate description of details of Work that are manifestly necessary to carry out the intent of the Technical Specification, or that are customarily performed, shall not relieve the Contractor from performing such omitted Work or inaccurately described details of the Work, and they shall be performed as if fully and correctly set forth and described.

GC 4. Inspection and Testing

GC 4.1 General

SBCTA's Authorized Representative shall at all reasonable times have safe access to the Work, the Contractor and the Contractor's Suppliers. The Contractor and its Suppliers (see hereinafter) shall furnish every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements of the Contract Documents. With respect to access to the facilities of Suppliers, SBCTA shall have access to the respective work and Contractor shall make reasonable efforts to obtain such access for SBCTA. The Parties shall mutually agree upon the timing of SBCTA's review of such Work, with such agreement not being unreasonably withheld by Contractor. All Work done shall be subject to SBCTA's Authorized Representative's inspection and approval, which approval is limited to the acceptance procedures as defined in Section 2, SP 4.7, in accordance with the approved Work products developed as a result of the Contract Documents.

The Contractor is responsible for a quality plan for the Work, including establishment of an inspection system, testing system, and maintenance records that document the inspection and quality control activities. The Contractor shall inspect all materials, supplies, and equipment that are to be used or incorporated in the Work. In addition, the Contractor shall conduct a continuous program satisfactory to SBCTA for all Work performed under the Contract. The Contractor shall have the primary responsibility for inspecting the Work. SBCTA's Authorized Representative may conduct an inspection to verify that the Contractor has performed its inspections properly and that they are following their QA Plan and Procedures. Any observation, verification, inspection, or approval of the Work by SBCTA shall not relieve the Contractor of any of its obligations to perform the Contract as prescribed, or constitute or imply acceptance by SBCTA. If, in the reasonable opinion of SBCTA's Authorized Representative, the Contractor fails to execute its responsibility for quality control and inspection on any part of the Work, then SBCTA may, at its option, conduct quality control and inspection activities in lieu of the Contractor at the Contractor's expense, with such expenses being reasonable. Such inspection shall not relieve the Contractor of its liability for Defective or unsuitable Work, as described in Section 1, GC 4.2, Defective Work. Work not meeting the requirements of the Contract shall be made acceptable, and unsuitable Work may be rejected, notwithstanding that payment for such Work may have been previously authorized and included in a progress payment. The Contractor shall cure such rejected Work within a

period of time mutually agreed to by the Parties, but if agreement cannot be reached on such time period, then Contractor shall commence the cure within seven (7) days and complete such cure within a reasonable period of time. A deduction may be made from related subsequent progress payments and withheld until such time as the correction of such unsuitable Work. The amount of the deduction will be set by SBCTA or its Authorized Representative and the amount should be in proportion to the value of the Defective Work and shall be mutually agreed upon by the parties.

GC 4.2 Defective Work

If SBCTA determines that materials, equipment, or workmanship proposed for or incorporated in the Work is Defective, then SBCTA shall, subject to Section 5, WR 1.2 have the right to reject such Work by giving the Contractor written Notice that such Work is Defective. SBCTA, at its option, shall require the Contractor, within a designated time period as set forth by SBCTA, to either (1) promptly repair, replace, or correct all Work not performed in accordance with the Contract at no cost to SBCTA; or (2) provide a suitable corrective action plan at no cost to SBCTA. If SBCTA accepts the corrective action plan, the Contractor shall implement the corrective action plan at no cost to SBCTA. If the corrective action plan as accepted by SBCTA does not remedy the Defective Work, then the Contractor shall remain responsible for remedying the Defective Work to SBCTA's satisfaction and at no additional cost to SBCTA. The Contractor shall also be responsible for repairing all property and Work damaged by the Contractor at no cost to SBCTA. If the Contractor fails to replace rejected materials or correct rejected Work within a reasonable period of time, SBCTA may, by contract, replace such rejected materials or Work, correct such materials or workmanship, and dispose of all rejected materials and Work so removed, charging the cost thereof to the Contractor, or SBCTA may terminate the Contractor's right to proceed in accordance with SBCTA's termination for Default provision in the Section 1, GC 9.5.2. Under no circumstances shall the Contractor be entitled to additional time or money for the correction of Defective Work or for the repair of damaged property.

SBCTA's inspection of the Work or right to reject Defective Work shall not relieve the Contractor of its full responsibility for performing the Work in full conformance with the Contract Documents. No failure or forbearance of SBCTA in notifying the Contractor of Defective Work shall relieve the Contractor of its Contract responsibility to ensure that the Work is performed in accordance with the Contract Documents.

GC 4.3 Risk of Loss

Risk of loss and property damage to the DMU shall pass to SBCTA upon the occurrence of all of the following: (1) arrival of the DMU at SBCTA's location as specified in Section SP 4.3; (2) joint inspection by the parties; and (3) completion and execution by the parties of the Vehicle Delivery Notice and Receipt. However, SBCTA shall not be responsible for, and the Contractor shall retain all risk of loss or damage due to, Equipment failure or failure due to design or workmanship deficiencies as well as all damage caused by Contractor's negligence

or willful misconduct. Transfer of risk of loss shall not be deemed to transfer title or to constitute conditional or final acceptance of the DMU.

GC 5. Title and Warranty of Title

Title to each DMU shall vest in SBCTA upon Conditional Acceptance. The title received by SBCTA shall be considered full legal title with rights to unconditional possession and ownership. The Contractor, shall, within five (5) Days after receipt of the notice of Conditional Acceptance with respect to any DMU, deliver to SBCTA a bill of sale or other instrument that shall be evidence that SBCTA has acquired full title to such DMU free and clear of all liens, claims, security interests, or encumbrances of any kind. With respect to third parties (including the Contractor), if it is required for the enforceability of such agreement as to retention of title that the Contract be recorded in a public register and/or that any other action be taken, SBCTA undertakes, at the request of the Contractor, to execute any and all necessary acts in this regard without delay.

GC 6. Intellectual Property

GC 6.1 Intellectual Property Indemnification

The Contractor shall indemnify, defend, and hold harmless SBCTA (and its officers, directors, agents, or employees) to the maximum amount permitted by law from and against any and all losses, damages or expenses (including attorneys' fees and related costs, whether or not litigation has commenced), whether direct, to the extent directly arising out of, relating to or in connection with any lawsuits that the ownership, possession, or use of any software, materials, Equipment, devices, processes, or other materials provided by the Contractor under this Contract infringes or violates the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party. In case any such software, materials, Equipment, devices, processes, or other materials, or any part thereof, is held to constitute an infringement and the use is enjoined, then the Contractor, at the Contractor's sole cost and expense, shall do one of the following, provided that Contractor has been reasonably promptly notified and has been granted the full right to defend itself:

- Secure for SBCTA the right to continue using the software, materials, Equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses.
- Replace such software, materials, Equipment, devices or processes with non-infringing software, materials, Equipment, devices or processes.
- Modify them so that they become non-infringing.
- Remove the enjoined software materials, Equipment, devices or processes and refund the sums paid for them without prejudice to any other rights of SBCTA.

If the amount of time necessary to proceed with one of these options is deemed excessive by SBCTA, then SBCTA may direct the Contractor to select another option or risk default.

GC 6.2 Intellectual Property Warranty

The Contractor represents and warrants that any use of the Work, or any part thereof, by SBCTA (or its officers, directors, agents, employees or transit users) will not infringe or violate the patent, copyright, trade-secret or other intellectual-property or proprietary rights of any third party.

The Contractor further represents and warrants that it has or will have all appropriate licenses, agreements or ownership rights pertaining to all patent, copyright, trade-secret or other intellectual-property or proprietary rights needed for the performance of its obligations under this Contract including without limitation that it will have all necessary rights to use patentable or copyrightable materials, Equipment, devices or processes not furnished by SBCTA used on or incorporated in the Work under the Contract. The Contractor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices or processes.

GC 6.3 Tooling Rights

If the Contractor decides to give up the production of DMUs purchased by SBCTA, then the Contractor, shall not sell, destroy or otherwise dispose of its rights to the use of, the unique castings, patterns and forming or extrusion dies after their use in the production of the DMUs without first offering them to SBCTA, with reasonable costs associated with the transfer to be borne by SBCTA, or, in the case of a proposed sale to another, without first offering them for sale to SBCTA at a fair market price. The Contractor shall be liable to SBCTA to the extent that the failure of the Contractor, to comply with Section 2, SP 9.1, Parts Availability Guarantee, causes SBCTA to incur costs to have the tooling replicated.

For purposes of this clause the terms “sell” and “sale” shall not include transfer of these assets to a successor corporation or other entity that assumes the business and obligations of any Contractor, Subcontractors, or Suppliers herein, including obligations arising under the Contract.

Upon Contractor’s offer of any of the materials described above and SBCTA’s refusal, the Contractor’s obligation under Section 2, SP 9.1, Parts Availability Guarantee, as it relates to the specific materials offered and refused, shall cease.

GC 7. Data Rights

GC 7.1 Proprietary Rights/Rights in Data

The Contractor grants to SBCTA on the Contractor’s behalf, and on behalf of its Subcontractors and Suppliers (for whom the Contractor represents and warrants that it has the power and authority to grant such sublicense), an irrevocable, perpetual, royalty free, nonexclusive license and sublicense (“technology license”) to use, itself or through its agents, for the approved purposes described in Section 1, GC 7.1.1, Uses, without recourse to the

original Contractor, Subcontractors, or Supplier all patented, copyrighted, and unpatented technology, know how, trade secrets, and other proprietary rights, and documentation thereof as defined in the Technical Specification (scope of documentation) (except manufacturing detailed drawings and software, which are separately defined at, and licensed pursuant to, Section 1, GC 7.1.2, Limits), that are included in the material and/or Equipment, including but not limited to all systems, subsystems, assemblies, subassemblies, components, interface systems, and controls that are necessary for the operation, maintenance, repair (as permitted by the Equipment design), or overhaul (as permitted by the Equipment design) of the material and/or Equipment, and for the manufacture of parts that are unavailable for purchase, as defined below, all of which shall be designated the "Licensed Technology." Any and all concepts, drawings, descriptions and other documents developed by the Contractor in relation to the DMUs, the material and/or the Equipment in question and relevant to, in particular without limitations, the design, manufacture, operation, maintenance, repair and overhaul of the DMUs, shall fully and exclusively remain the intellectual property of the Contractor and the Contractor shall have full ownership and unrestricted title to any and all industrial and intellectual property rights both with respect to any designs, drawings, specifications, notes and other works developed in the performance of the Contract, adaptations, modifications and changes to the DMU concept as well as to any rights to the related technical documentation.

GC 7.1.1. Uses

SBCTA's rights under this Technology License shall be limited to its use for the following:

1. Evaluation and qualification for the purposes of future material and/or Equipment procurements of systems, subsystems and components of subsystems on the material and/or Equipment to be delivered under the Contract;
2. Preparation of specifications for future DMU RFPs employing some or all of the Licensed Technology;
3. Maintenance and repair of the material and/or Equipment;
4. Overhaul of the material and/or Equipment; and
5. Manufacture of parts for the material and/or Equipment that become unavailable for purchase. The term "unavailable for purchase" means that a part is no longer being manufactured; or an inventory of the part in sufficient quantities to meet SBCTA's needs is not available for purchase; or because the Contractor or the respective supplier declares bankruptcy.

GC 7.1.2. Limits

SBCTA shall not have the right under this Technology License either to use the licensed technology to manufacture itself, or to have manufactured for it by a third party as a sub licensee of SBCTA, either the material and/or Equipment, systems, subsystems, or components thereof, except as specified in item 5, in Section 1, GC 7.1.1, Uses.

GC 7.2 Escrow Account

Prior to Final Acceptance of the first DMU, the Contractor shall provide SBCTA with a list of all software comprising proprietary works (“Proprietary Software”) and other proprietary material related to the design of major vehicle systems. The extent of this list shall be mutually agreed upon. Source code for the Proprietary Software and all related documentation required for the use, and any revisions or derivative works based on the Proprietary Software developed pursuant to the Contractor’s performance of the Contract (collectively, “Escrow Materials”) and other materials as agreed between the Contractor and SBCTA may be deposited in an escrow account with a third party. In this case, the related escrow materials shall immediately be obtainable and usable by SBCTA only if the Contractor or the respective Supplier declares bankruptcy.

The responsibility for the associated cost shall be negotiated between SBCTA and the Contractor once the full scope of Escrow Materials is defined.

Upon release of the Escrow Materials to SBCTA, the Contractor shall grant a non-exclusive license to allow SBCTA to utilize such information to maintain the DMUs. In the event that the Contractor no longer provides the information, SBCTA has the right to reverse engineer patented parts and software.

Upon release of the Escrow Materials to SBCTA, SBCTA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following data for its purposes: (1) any subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which the Contractor, Subcontractor or Supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract. To the extent as enforceable, the Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

GC 7.2.1. Software Escrow

The Contractor shall conduct a software escrow verification test for all escrowed items. Tests, at a minimum, shall verify that all software and developmental tools have been escrowed to compile, link, and generate the:

- a) Firmware,
- b) Object code,
- c) P-code,
- d) Executable code, or
- e) Whatever is required to run on the vehicle system or Portable Test Equipment (PTE) or other software-based system supplied by the Contractor or its Subcontractors.

GC 7.3 Access to Onboard Operational Data

SBCTA grants to the Contractor the right to inspect, examine, download, and otherwise obtain any information or data available from components provided by the Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable the Contractor to perform reliability maintenance analysis, corrective action and/or other engineering type Work for the DMU. This right expressly excludes access to information or data collected on any equipment not provided and installed by the Contractor.

GC 8. Changes

GC 8.1 Contractor Changes

If the Contractor chooses to propose changed Work, then the Contractor must submit a notice of proposed change to SBCTA for its prior written approval. The notice should describe the proposed change, identifying the Work that it proposes to change and stating the reasons for the change, including relevant circumstances, impacts on the schedule and estimated cost impacts.

Upon receipt of the Proposed Change Notice, SBCTA may choose to either reject the notice or to request the Contractor to submit a detailed Proposal within a specified time period. If SBCTA accepts the Proposed Change Notice, it may issue an Interim Change Notice specifying the Proposed Change and action that the Contractor should undertake. The Interim Change Notice may include a not-to-exceed amount for the Change based upon the Contractor's estimate. If SBCTA requests a Proposal, then the Contractor's Proposal shall set forth any changes to the total Contract Price, Contract Delivery Schedule or any technical requirements of the Contract.

Any Interim Change Notice issued by SBCTA must be formalized in a written Change Order approved by SBCTA. Oral Change Orders or Change Notices are not permitted. The Contractor shall 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 SBCTA's Authorized Representative. The Contractor shall perform the Work as altered. The Contractor shall proceed with Work ordered under this Section in a timely manner so as to avoid delay and minimize any increase in time required for performance of the Work but, in no event, shall the Contractor proceed with such Work without a fully executed Change Order or written order from SBCTA to so proceed. An inadvertent payment made by SBCTA for Work not specifically authorized in writing by SBCTA shall not be evidence or acknowledgment of SBCTA's liability.

Except as provided in this Section, no order, statement, or conduct of SBCTA shall be treated as a Change under this section or entitle the Contractor to an equitable adjustment. No bid by the Contractor for equitable adjustment shall be allowed if asserted after final payment under the Contract. In no event will the Contractor be entitled to compensation for loss of

anticipated profits or for consequential damages, resulting from Changes. In addition to SBCTA, the Contractor shall sign the Change Order documents to verify the terms and conditions established by the Change Order; however, failure or refusal of the Contractor to sign a Change Order will not relieve the Contractor of its obligation to execute the proposed Changes in accordance with this item and the other terms and provisions of the Contract. Each Change Order shall be specific and final as to prices and the extension of time, if any and no reservations or other provisions shall be made allowing for future additional money or time as a result of the particular Changes identified and compensated in the Change Order.

GC 8.2 SBCTA Changes

SBCTA may obtain Changes to the Contract by notifying the Contractor in writing. SBCTA may, until Final Completion, by written order designated as or indicated to be a Change Order, make Changes in the Work within the general scope of the Contract and such Changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract.

SBCTA may issue an Interim Change Notice specifying the Proposed Change and action that the Contractor should undertake. Upon receipt of the Interim Change Notice and as soon as reasonably possible but no later than thirty (30) Days, or a date agreed to by the parties, the Contractor shall submit to SBCTA's Authorized Representative a detailed price and schedule Proposal for the Change Work to be performed. The Contractor's Proposal shall set forth any modifications to the total Contract Price, Contract Delivery Schedule or any technical requirements of the Contract. This Proposal shall be accepted or modified by negotiations between the Contractor and SBCTA's Authorized Representative. At that time, a Change Order shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with Section 1, GC 9.10, Disputes. Regardless of any disputes, the Contractor shall proceed with the Work ordered.

Oral Change Orders are not permitted. The Contractor shall 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 SBCTA's Authorized Representative. The Contractor shall perform the Work as altered. The Contractor shall proceed with Work ordered under this Section in a timely manner so as to avoid delay and minimize any increase in time required for performance of the Work but, in no event, shall the Contractor proceed with such Work without a fully executed Change Order or written order from SBCTA to so proceed. An inadvertent payment made by SBCTA for work not specifically authorized in writing by SBCTA shall not be evidence or acknowledgment of SBCTA's liability.

Except as provided in this section, no order, statement, or conduct of SBCTA shall be treated as a Change under this section or entitle the Contractor to an equitable adjustment. No bid by the Contractor for equitable adjustment shall be allowed if asserted after final payment under the Contract. In no event will the Contractor be entitled to compensation for loss of anticipated profits or for consequential damages, resulting from Changes. In addition to

SBCTA, the Contractor shall sign the Change Order documents to verify the terms and conditions established by the Change Order; however, failure or refusal of the Contractor to sign a Change Order will not relieve the Contractor of its obligation to execute the proposed changes in accordance with this item and the other terms and provisions of the Contract. Each Change Order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular Changes identified and compensated in the Change Order.

GC 9. Legal Clauses

GC 9.1 Indemnification

a. Both Parties shall, to the extent permitted by law:

Indemnify, protect, defend and hold harmless each other, their Consultants, Operator and their respective representatives, officers, directors, shareholders, partners, Board Members, managers, employees, affiliates, and agents (collectively, the “Indemnitees”) from and against all claims, liabilities, damages, losses, injuries to person or property, death, liens, investigations, causes of action, administrative proceedings, suits, judgments, awards, costs, fees (including, but not limited to, attorneys’ fees and expert fees), and expenses, of any nature, kind or description, to the extent directly arising out of, caused by, resulting from, or sustained or incurred in connection with (in whole or in part), the Work performed hereunder, or any part thereof, or failure to comply with the Contract, ALWAYS PROVIDED THAT each party’s liability is proportionately reduced by comparative negligence to the extent that any indemnity claims are adjudicated by a court, which judgment is no longer subject to appeal, to have been caused by any negligent act or omission attributable, solely or in part, to Indemnitees. For purposes of GC 9, “SBCTA” includes the Operator, as defined in GC 1.

b. If any legal limitations now or hereafter in effect affect the validity or enforceability of the indemnification obligations under this Section 1, GC 9.1, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring the indemnification into conformity with the requirements of such limitations, and as so modified the indemnification obligations shall continue in full force and effect. The indemnification obligations under this Section 1, GC 9.1 shall not be limited to or by damages, compensation or benefits payable under insurance policies, workers’ compensation acts, disability benefit acts or other employee benefits acts. Each Party has the right to appoint defense counsel, at its own expense, to associate in the defense of any contested claim. Each Party will cooperate fully with the other Party in the defense of all claims. When defending against Indemnity Claims, each Party will retain counsel experienced in defending such claims and mutually agreeable to both Parties. Neither Party will unreasonably withhold, condition, or delay consent to counsel. The Parties will not settle any Indemnity Claims in a manner that would impose any expense, penalty, obligation, or limitation on the other Party without prior written consent.

GC 9.1.1. Joint or Concurrent Negligence

In case of joint or concurrent negligence of the parties giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

GC 9.1.2. Limitation of Liability

Contractor's maximum liability to SBCTA arising out of or in connection with the Contractor's performance under this Contract (including, but not limited to, liquidated damages payable under this Contract) shall not exceed fifty percent (50%) of the Contract Price Contractor's liability shall further be limited by the warranty term (duration). Liability arising from willful misconduct will not be capped.

GC 9.1.3. Intentionally Omitted

GC 9.1.4 Attorney's Fees

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This clause shall not apply to those costs and attorneys' fees arising under Section 1, GC.9.1 Indemnification.

GC 9.2. Suspension of Work

GC 9.2.1. General

SBCTA 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.

GC 9.2.2. Compliance

The Contractor shall 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. In preparation for and during suspensions of Work, the Contractor shall take every reasonable precaution to prevent damage to or deterioration of the Work subject to Section 1, GC 4.3. The Contractor shall repair or replace, at no cost to SBCTA, Work that is damaged or deteriorated during a Work suspension due to Contractor's failure to comply with this section in maintaining the Work. The Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the Notice of suspension, or upon written direction from SBCTA's Authorized Representative.

GC 9.2.3. ADJUSTMENTS

The Contractor shall be allowed an equitable adjustment in the total Contract Price (excluding profit) and/or an extension of the Contract time, to the extent that cost or delays are shown by

the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is 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 shall submit to SBCTA's Authorized Representative a detailed price and schedule Proposal for the suspension, delay or interruption.

GC 9.3 Notice of Labor Dispute

Whenever the Contractor or SBCTA has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, they shall immediately give written notice thereof to the other party, including all relevant information.

In addition, the Contractor agrees to insert the substance of this clause in any subcontract in which a labor dispute may delay the timely performance of the Contract.

GC 9.4 Force Majeure

If the Contractor is delayed on the critical path at any time during the progress of the Work by the neglect or failure of SBCTA or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by SBCTA subject to the following cumulative conditions:

- a) Acts of God; earthquake, unusually severe weather, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor due to a force majeure event described above, provided that:
 - The aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor and otherwise mitigate the impact of such events;
 - That the Contractor has taken reasonable precautions to prevent further delays owing to such causes; and
 - The Contractor has notified SBCTA in writing of the cause or causes of delay within 48 hours from the beginning of any such delay. Such delay shall not be the basis for a claim for additional compensation.
- b) The Contractor demonstrates that the completion of the Work and/or any affected deliveries will be actually and necessarily delayed;
- c) The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures, whether before or after the occurrence of the cause of delay; and
- d) The Contractor makes a written request and provides other information to SBCTA as described below.

None of the above shall relieve the Contractor of any liability for the payment of any liquidated damages owing from a failure to complete the Work by the time for completion that the Contractor is required to pay pursuant to Section 2, SP 1.2, Liquidated Damages for Late Delivery, for delays occurring prior to, or subsequent to the occurrence of an excusable delay.

SBCTA reserves the right to rescind or shorten any extension previously granted, if subsequently SBCTA determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, SBCTA will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

No extension or adjustment of time shall be granted unless (1) written notice of the delay is filed with SBCTA within five (5) Days after the commencement of the delay and (2) a written application stating in reasonable detail the causes, the effect to date, the probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with SBCTA within ten (10) Days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under the Contract. SBCTA shall make its determination within twenty (20) Days after receipt of the complete application.

GC 9.5 Termination

GC 9.5.1. Termination for Convenience

The performance of Work under the Contract may be terminated by SBCTA in accordance with this clause in whole, or in part, whenever SBCTA shall determine that such termination is in the best interest of SBCTA. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a Notice of Termination, and except as otherwise directed by SBCTA, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting any amounts due, if any, under this clause:

- a) Stop Work under the Contract on the date and to the extent specified in the Notice of Termination.
- b) 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.
- c) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination; assign to SBCTA in the manner, at the times, and to the extent directed by SBCTA, all of the right, title and interest of the

Contractor under the orders and subcontracts so terminated, in which case SBCTA shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- d) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of SBCTA, to the extent it may require, which approval or ratification shall be final for all the purposes of this clause.
- e) Transfer title to SBCTA against full payment for the DMUs for which SBCTA is acquiring title (including reasonable profit) and deliver in the manner, at the times, and to the extent, if any, directed by SBCTA, the fabricated or un-fabricated parts, Work in process, completed Work, supplies and other material produced as part of or acquired in connection with the performance of the Work terminated, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to SBCTA.
- f) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by SBCTA, any property of the types referred to above, provided, however, that the Contractor shall 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 SBCTA, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by SBCTA to the Contractor under the Contract or shall otherwise be credited to the price or cost of the Work covered by the Contract or paid in such other manner as SBCTA's Authorized Representative may direct.
- g) Complete performance of the part of the Work not terminated by the Notice of Termination.
- h) Take such action as may be necessary, or as SBCTA may direct, for the protection or preservation of the property related to the Contract that is in the possession of the Contractor and in which SBCTA has or may acquire an interest.

The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination, but no profit after the time of termination. The Contractor shall promptly submit its termination claim to SBCTA no later than six (6) months after Notice of Termination in the form and with the certification required by SBCTA. Settlement of claims by the Contractor under this termination for convenience clause shall be in accordance with the provisions set forth in Part 49 of the Federal Acquisition Regulations, in effect on the date of the Contract, and shall govern all costs claimed, agreed to, or determined under this Section (48 CFR Part 49) except that wherever the word "Government" appears, it shall be deleted and "SBCTA" shall be substituted in lieu thereof.

The Contractor shall have the right of appeal, under Section 1, GC 9.10, the Disputes clause, from any determination made by SBCTA under this Section, except that if the Contractor failed to submit the termination settlement bid within the time provided in this Section, and failed to request a time extension, there is no right of appeal. Such termination settlement bid is a condition precedent to recovery under this Section.

GC 9.5.2. Termination for Default

If the Contractor is in material default and the Contractor does not cure its material default within the time mutually agreed between the Parties, or if the Parties cannot agree upon such a time, then Contractor shall begin to cure within seven (7) days after the Cure Notice, SBCTA may, by written notice of default to the Contractor, terminate the whole or any part of the Contract affected by such material default if the Contractor is in material default for the following reasons (including but not limited to). The term “material default” for purposes of this clause includes any default at the occurrence of which a party cannot reasonably be expected to proceed with the Contract performance, including:

- a) Refusal or failure to commence the Work within the time required under the Contract;
- b) Refusal or failure to deliver the DMUs within the time specified in any approved extension;
- c) Refusal or failure to perform the relevant services to operate the DMUs within the time specified herein or any approved extension;
- d) Refusal or failure to correct any defect or error in the Work;
- e) Refusal or failure to make material progress under the approved Master Schedule;
- f) Refusal or failure to perform any of the other material terms of the Contract; or
- g) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary. If the Contractor does so, it agrees to furnish, by certified mail, written notification of the bankruptcy to SBCTA’s Authorized Representative; and this notification shall be furnished within five (5) Days of the initiation of the proceedings relating to bankruptcy filing, and shall include the date on which the bankruptcy petition was filed, and the identity of the court in which the bankruptcy petition was filed.

Prior to termination, a Cure Notice shall be issued by SBCTA. The Cure Notice shall identify the problems and deadlines that need to be met to remedy the problems to avoid termination for default. If the Contractor does not respond with an acceptable action plan to remedy the default or commence to remedy the default within a period of seven (7) Days (or such longer period as SBCTA may authorize in writing) after receipt of notice from SBCTA specifying such failure, SBCTA may issue a notice of termination for default. If the Contract is terminated in whole or in part for default, SBCTA may procure, upon such terms and in such manner as SBCTA may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to SBCTA for any excess costs for such similar supplies or services, and shall continue the performance of the Contract to the extent not terminated under the provisions of this clause.

Payment for completed supplies delivered to and accepted by SBCTA shall be at the Contract Price. SBCTA may withhold from amounts otherwise due the Contractor for such completed supplies such sum as SBCTA determines to be necessary to protect SBCTA against loss because of outstanding liens or claims of former lien holders.

If, after notice of termination of the Contract under this clause, it is determined for any reason that the Contractor was not in default under this clause, or that the default was excusable

under this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to termination for convenience of SBCTA. The rights and remedies of SBCTA in this clause are in addition to any other rights and remedies provided by law or under the Contract.

GC 9.6 Compliance with Laws and Regulations

The Contractor shall at all times during the Contract Time comply with all applicable laws, regulations, policies, procedures, and directives, relevant for the execution of this contract, including, without limitation, FTA regulations, policies, procedures, and directives, including those listed directly or by reference in the agreement between SBCTA and FTA or FTA grantee that funds any part of the Contract, as they may be amended or promulgated from time to time during the term of the Contract as well as those expressly noted in Section 3, Federal Clauses (collectively, the “Law”). The Contractor’s failure to so comply shall constitute a material breach of the Contract pursuant to Section 1, GC 9.5. The Contractor shall comply with all applicable laws and comply with the laws and regulations in effect at the time of contract signing at its sole cost and expense and without any increase in Contract Price or Contract Time on account of such compliance, regardless of whether such compliance would require additional labor, equipment, and/or materials not expressly provided for in the Contract (subject to Section 1, GC 9.7). The Contractor shall ensure that all Subcontractors and Suppliers comply with all laws referenced herein and include appropriate flow-down provisions in each of its lower-tier subcontracts as required by applicable laws, regulations, policies, and related administrative practices, whether or not required herein.

Prior to commencing any Work requiring a permit or similar authorization, the Contractor shall secure and pay for all necessary licenses, fees, inspections, permits, and similar authorizations from governmental authorities required to fulfill the Contract requirements and the Contractor’s obligations. Furthermore, the Contractor shall assist SBCTA in meeting the requirements of 49 CFR 238.111 (a) or (b) as further defined in Technical Specification, TS 21.6.4.9.2. All such fees and charges shall be paid for by the Contractor. The Contractor shall give all notices required for timely compliance with applicable federal, state, and local laws, ordinances, rules, regulations, and restrictions. Upon written request, the Contractor shall furnish SBCTA with satisfactory documentation evidencing compliance with the applicable requirements. The Contractor shall be liable for and shall pay all fines, assessments, and other costs resulting from the Contractor’s violation of any applicable federal, state, or local statute, regulation, ordinance, or other restriction.

GC 9.7 Changes of Law

Changes of Law or changes of the current interpretation of Law that become effective after the Proposal Due Date may result in Changes that affect price and Contract Delivery Schedule. If a price adjustment is indicated, either upward or downward, it shall be negotiated between SBCTA and the Contractor, and the Total Contract Price will be adjusted upward or

downward to reflect such changes of Law, and a written amendment to this Contract shall be executed by the Parties. Such price adjustment may be audited, where required.

GC 9.8 Governing Law and Venue

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

GC 9.9 Claims

It is an express condition precedent of Contractor's right to make a claim or to receive any recovery or relief under or in connection with the Contract to strictly comply with the terms of this Section.

GC 9.9.1. Notice of Intent to Claim

The Contractor shall give to SBCTA a written Notice of Intent to Claim within fifteen (15) Days after the parties have been unable to negotiate a pending change related to any act or event for which it intends to seek adjustment in the total Contract Price, Contract Time, terms or schedule. The notice shall set forth the basis of the Claim and an estimate of any costs and time impacts involved.

The written Notice of Intent to Claim shall set forth the following:

- a) The reasons the Contractor believes additional compensation and/or allowance of additional time may be due;
- b) The nature of the costs involved or time needed;
- c) The Contractor's plan for mitigating such cost and delay; and
- d) The Contractor's best estimate of the amount of potential claim and time extension, and basic facts supporting the amount and time claimed.

GC 9.9.2. Claim Submittal

The Contractor shall submit its Claim within thirty (30) Days after submitting the Notice of Intent to Claim. Every Claim, whether for damages, additional compensation, additional time, or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Contractor by his or her signature) of the Contractor, verifying the truth and accuracy of the Claim. Such verification shall be a condition precedent to the acceptability of any Claim asserted by the Contractor. Failure to strictly comply with the provisions in this Section shall constitute a waiver by the

Contractor of any right, equitable or otherwise, to bring any such Claim against SBCTA. The following must be provided with the Claim:

- a) Detailed factual statement of the Claim, with all necessary facts, events, locations and affected Work.
- b) Date of the event giving rise to the Claim; if there are continuing or multiple events, provide all dates necessary to support the Claim.
- c) Names of all persons who made any statements with respect to, or are knowledgeable of the facts and events giving rise to the Claim.
- d) Specific provisions of the Contract supporting the Claim, with a statement of supporting rationale.
- e) Identification of all documents including meeting minutes, transcriptions of oral communications, photographs, videos, tapes and other evidence supporting the Claim.
- f) Detailed analysis of a request for an extension of time.
- g) Detailed breakdown of request for additional compensation.

Failure to submit sufficient detail to permit SBCTA to conduct a review of the Claim may result in rejection of the Claim.

Each Claim the Contractor submits for an adjustment that is related to a delay for any cause shall include the following:

- h) A time impact analysis and a revised schedule demonstrating how the delay is incorporated into the CPM Schedule; and
- i) Alternative proposal(s) and a revised CPM Schedule that demonstrate how the delay will be eliminated or mitigated.

The Contractor shall maintain cost records of all Work, which is the basis of any Claim, in the same manner as is required for Changed Work in Section 1, GC 8, Changes.

GC 9.9.3. Claims Process

Within thirty (30) Days after the receipt of the Claim, SBCTA shall either render a decision, provide an estimated date when a decision will be made, or request that the Contractor submit additional information and details to establish the facts and contentions involved in the Claim.

If SBCTA does not make a decision within thirty (30) Days after it receives all information required to evaluate the Claim, or within any extended period mutually agreed to in writing by the parties, the Claim shall be deemed rejected by SBCTA, and the Contractor shall be notified in writing.

If the Contractor fails to comply with any provision of this Section 1, GC 9.9, Claims, in the time and manner specified, it shall waive any relief that might otherwise be due with respect to such Claim.

SBCTA may at its discretion, unilaterally or in agreement with the Contractor, make payments or grant extensions of time on any part of a Claim it determines to have been substantiated to its satisfaction. If the Contractor agrees to a final payment or extension of time related to a certain, described portion of its Claim, such agreements shall constitute an unconditional release of SBCTA from any further obligations related to that described portion of the Claim.

If SBCTA finds the Claim to have merit, in whole or in part, then SBCTA and the Contractor will negotiate the terms of a Change Order in the Work in compliance with Section 1, GC 8, Changes. If the Contractor and SBCTA are unable to reach agreement on a Change Order, then SBCTA may issue a unilateral Change Order. The unilateral Change Order shall constitute a final decision by SBCTA.

If any Claim or portion thereof remains in dispute following a final decision by SBCTA, then the Contractor may pursue further resolution through Section 1, GC 9.10, Disputes.

Pending final resolution of a Claim, the Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of SBCTA.

If the Contractor disputes the decision of SBCTA set forth in this Section, it can commence a contract claim request as noted in Section 1, GC 9.10, Disputes.

GC 9.9.4. No Claims after Final Payment

In no event shall any Claims be made after Final Payment. Failure by the Contractor to submit Claims in a timely manner shall result in the Contractor's waiver of such Claims.

GC 9.10 Disputes

GC 9.10.1 Dispute Timeline

In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within ten (10) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONTRACTOR does not agree with the decision, then CONTRACTOR shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute within thirty (30) calendar days in a manner acceptable to CONTRACTOR, the parties agree to pursue mediation.. This includes, without limitation, controversies based upon breach of contract, modification, reformation, or rescission. The word controversy is meant to be broad and all encompassing. To the extent that anything in the Contract conflicts with Section 1, GC 9.10, Disputes, and such procedures which are incorporated herein, Section 1, GC 9.10, Disputes, shall control and there shall be no ambiguity related thereto.

GC 9.10.2 Proceeding with Work During Disputes

During resolution of the dispute, CONTRACTOR shall proceed with performance of non-disputed items of the Contract with due diligence.

GC 9.11 Maintenance of Records; Access by Agency; Right to Audit Records

The Contractor shall keep full and detailed project records and exercise such controls as may be necessary for proper business and financial management under the Contract. Contractor agrees to provide SBCTA, FTA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, the State of California or any of their duly authorized representatives access to any books, documents, papers and records payroll and other data that are directly pertinent to or relate to the Contract, Contract modifications or Change Orders for the Contract for the purpose of making audits, examinations, excerpts and transcriptions and conducting audits and inspections as long as directly related to the Work. Information solely meant for internal use, such as trade secrets and internal cost controlling sheets, shall not be disclosed.

The Contractor shall preserve the records related to the Contract and shall make them available for inspection or copying for a period of three (3) years after Final Completion, or for such longer period as may be required by any applicable Laws. All Contract related records related to financial matters will be maintained in accordance with generally accepted accounting principles and audit standards, consistently applied. If the audit results in a finding that an overcharge or error of any nature has occurred, SBCTA will adjust the Contractor's application(s) for payment or seek reimbursement for payments already made. To the extent reasonably possible, the Contractor shall endeavor to include in all of its subcontracts under the Contract a provision to the effect that the Subcontractor agrees that SBCTA, the U.S. Department of Transportation, the State of California and the Comptroller General of the United States, or any of their duly authorized representatives will, until the expiration of three (3) years after final payment is made under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor.

The requirements of this section are in addition to other audit, inspection and record-keeping provisions specified elsewhere in the Contract Documents.

GC 9.12 Conflict of Interest

Contractor agrees that it presently has no interest, financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Project. Contractor further agrees that in the performance of this Contract no person having any such interest shall be employed. Contractor is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to Contractor. Contractor

agrees that Contractor's staff, if any, designated by SBCTA's Executive Director as "Contractor" under the Political Reform Act shall timely file Statements of Economic Interest with the SBCTA Clerk of the Board.

GC 9.13 Proprietary Rights/Confidentiality

GC 9.13.1 Confidential Information

During the performance of the Work under the Contract, it may be necessary for either party (the "Discloser") to make confidential information available to the other party (the "Recipient"). The Recipient agrees to use all such information solely for the performance of the Work under the Contract and to hold all such information in confidence and not to disclose same to any third party without the prior written consent of the Discloser. Likewise, the Recipient agrees that all information developed in connection with the Work under the Contract shall be used solely for the performance of the Work under the Contract, and shall be held in confidence and not disclosed to any third party without the prior written consent of the Discloser.

This Confidentiality section shall survive the termination or expiration of the Contract.

Contractor shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.

All press releases or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by the Parties.

GC 9.14 General Nondiscrimination Clause

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, in connection with the performance of Work provided for under the Contract, the Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of people in any manner prohibited by federal, state or local laws.

GC 9.15 Amendment and Waiver

GC 9.15.1. Amendment

Any modification or amendment of any provisions of any of the Contract Documents shall be effective only if in writing, signed by Authorized Representatives of both SBCTA and the Contractor, and specifically referencing the Contract.

GC 9.15.2. Waiver

In the event that either party elects to waive its remedies for any breach by the other party of any covenant, term or condition of the Contract, such waiver shall not limit the waiving party's remedies for any succeeding breach of that or of any other term, covenant or condition of the Contract.

GC 9.16 Intentionally omitted

GC 9.17 Counterparts

The Contract may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

GC 9.18 Severability

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable Law. However, if any provision, or part of any provision, should be prohibited or invalid under applicable Law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract and shall be severed from the Contract and the validity and enforceability of the remaining portions, provisions, or parts shall remain unaffected.

GC 9.19 Binding Contract Criteria

The criteria specified in the Request for Proposal are binding Contract criteria.

GC 9.20 Third-Party Beneficiaries

No provisions of the Contract shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract. No contractual or beneficiary relationship between any Subcontractor or Supplier of any tier of the Contractor and SBCTA arises by virtue of the Contract. No contractual or beneficiary relationship between the federal government and the Contractor, its Subcontractors, Suppliers or other third parties arises by virtue of the Contract. No provision of the Contract shall be for the benefit of any party other than SBCTA and Contractor.

GC 9.21 Assignment of Contract/Subcontractors

9.21.1 Except as to the Operator, and as provided in Section 2, SP 6.0, Options and SP 6.8, Assignability of Options, neither party will assign nor subcontract its rights or obligations under the Contract without prior written permission of the other party, which permission shall

not be unreasonably withheld, nor will such assignment or subcontract be effective until approved in writing by the other party.

9.21.2 Contractor shall not subcontract performance of all or any portion of Work under this Contract, except to those subcontractors listed in the Contractor Proposal, without first notifying SBCTA, in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractor hereunder shall include all subcontracts at any tier.

9.21.3 Contractor agrees that any and all subcontractors of Contractor performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. Contractor shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, Contractor shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof, and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.

9.21.4 Approval by SBCTA of any Work to be subcontracted and the subcontractor to perform said Work will not relieve Contractor of any responsibility or liability in regard to the acceptable and complete performance of said Work. Any substitution of subcontractor must be approved in writing by SBCTA. Contractor shall have the sole responsibility for managing of their subcontractor, including resolution of any disputes between Contractor and its subcontractor.

GC 9.22 Contingent Fee

Contractor warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate the Contract without liability, pay only for the value of the Work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

GC 9.23 Rebates, Kickbacks, or other Unlawful Consideration

Contractor warrants that this Contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any SBCTA employee, Officer, Board Member or Contractor. For breach or violation of this warranty, SBCTA shall have the right in its discretion: to terminate the Contract without liability; to pay only for the value of the Work actually performed; or to deduct from the Contract price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

GC 9.24 Gratuities

Contractor, its employees, agents or representatives shall not offer or give to an officer, official or employee of SBCTA, gifts, entertainment, payments, loans or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

GC 9.25 Independent Contractor

Contractor is and shall be at all times an independent contractor. Accordingly, all Work provided by Contractor shall be done and performed by Contractor under the sole supervision, direction and control of Contractor. SBCTA shall rely on Contractor for results only, and shall have no right at any time to direct or supervise Contractor or Contractor's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by Contractor under this Contract, and all representatives of Contractor, shall be and remain the employees or agents of Contractor or of Contractor's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

GC 9.26 Survival

The following sections shall survive the nominal expiration or discharge of other Contract obligations, and SBCTA may obtain any remedy under law, Contract or equity to enforce the obligations of the Contractor that survive the manufacturing, Warranty and Final Payment periods:

- a) Section 1, GC 6.2 Intellectual Property Warranty
- b) Section 1, GC 7 Data Rights
- c) Section 1, GC 9.1 Indemnification
- d) Section 1, GC 9.8 Governing Law and Venue
- e) Section 1, GC 9.9 Claims
- f) Section 1, GC 9.10 Disputes
- g) Section 1, GC 9.11 Maintenance of Records; Access by Agency; Right to Audit Records
- h) Section 1, GC 9.13 Proprietary Rights / Confidentiality
- i) Section 2, SP 10.1 Parts Availability Guarantee
- j) Section 3, FC 1, Access to Records
- k) Sec. 7, Article 1

SECTION 2: SPECIAL PROVISIONS

SP 1. Schedule

SP 1.1 Period of Performance and Delivery Schedule

SP 1.1.1 Period of Performance and DMU Procurement Schedule/Contract Milestones

This Contract shall go into effect on the date of SBCTA's Execution of the Contract, and Contractor shall commence work after a written Notice to Proceed (NTP) is issued by SBCTA. The period of performance, excluding Warranty, begins on the date of issuance of the NTP through the date of issuance of the Notice of Final Completion (as defined in Section 2, SP 2.7, Final Completion). Contractor is advised that the Award of Contract is not binding on SBCTA until SBCTA's Execution of the Contract. Time is of the essence in the Contract. The Contractor shall proceed with performance of the Work under the Contract upon the effective date of the NTP, and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the milestone times set forth in the Contract. NTP is to be issued within thirty calendar days after SBCTA's receipt of all required evidence of insurance, bonds, and completion of the Pre-Award Buy America Certification.

All Work required under the Contract shall be completed on or before the milestones contained in this Section. Contract milestones are set forth below and shall be incorporated into the Progress Schedule and monthly schedule status updates.

Milestone	Time from Notice to Proceed (NTP) in Calendar Days (CD)
1. One DMU ready for Infrastructure Dynamic Testing ***	No later than 1005 CD after NTP and available to SBCTA No less than eight (8) hours per day through completion of Infrastructure testing and PTC certification
2. Conditional Acceptance of two (2) DMUs ***	No later than 1036 CD after NTP and available to SBCTA No less than eight (8) hours per day through completion of Infrastructure testing and PTC certification
3. Conditional Acceptance of last single (1) DMUs***	All DMUs shall be delivered to SBCTA meeting the criteria described in Sections SP 4.7.1 no later than 1096 CD after NTP
4. Contractual delivery of one-half of all Spare Parts	Shall be delivered no later than Conditional Acceptance date of DMU No. 1. Spare parts delivery shall not commence earlier than thirty (30) months after NTP.
5. Contractual delivery of remaining Spare Parts	No later than 1130 CD after NTP.

6. Completion of contractual training	No later than 1016 CD after NTP
7. Delivery of draft of all manuals pursuant to TP 22.4	No later than 822 CD after NTP
8. Contractual delivery of final manuals pursuant to TP 22.4	No later than 1096 CD after NTP
9. Contractual delivery of special tools and test equipment	Shall be delivered no later than Conditional Acceptance date of DMU No. 1
10. Contractual delivery of all as-built drawings	No later than 1205 CD after NTP
11. Conditional Acceptance of First Option DMU	No later than 560 CD after exercise of option
12. Conditional Acceptance of Second Option DMU	No later than 590 CD after exercise of option
13. Conditional Acceptance of Third Option DMU	No later than 620 CD after exercise of option
14. Contractual delivery of optional special tools and test equipment	No later than 560 days after exercise of option

***The Vehicle Contractor and the infrastructure contractor shall schedule and coordinate their testing requirements so as to not hinder either party's progress in timely completion of their respective work.

Within ninety (90) Days after NTP, the Contractor shall furnish to SBCTA for approval a detailed written Project CPM Schedule prepared in the latest version of MS Project. The Parties shall agree upon a final CPM Schedule for the performance of the Work ("Master Schedule").

SP 1.1.2 Progress Schedule

The Progress Schedule shall include a narrative introduction describing the approach to the project and schedule, fabrication, manufacturing and assembly plants and methods, shipping method, coding structure, other schedule systems used by the project and their relations to the CPM Schedule. Activities shall be discrete items of Work that must be accomplished under the Contract and that when complete, produce definable, recognizable entities or stages within the project. The Progress Schedule shall have all critical paths indicated, showing all major Work tasks, including the following:

- a) Payment milestones
- b) Contractor and Subcontractor/Supplier submittals including review cycles
- c) Design review meetings
- d) Drawing packages requiring approval
- e) Major off-site inspections and acceptance tests

- f) Major steps of carbody fabrication
- g) Major subsystem deliveries
- h) Assembly milestones
- i) All progress payments.

The Progress Schedule shall show the project milestones in Days, with the NTP as the starting date and project activities with duration shown in working days. The project milestones and activities shall be logically connected with NTP as a start date and Final Completion as an end date.

The CPM schedule report shall be time scaled, have a clearly marked critical path and include the following: activity identification number, activity description, original duration, remaining duration, percent complete, early and late start, total float, and activity area with bars.

SP 1.1.3 Monthly Progress Report

The Contractor shall prepare a progress report each month for SBCTA, starting with the first full month after NTP. The schedule update shall be due on the 10th day of the following month. At the kickoff meeting, the Contractor shall present for SBCTA's approval a Monthly Progress Report format. The Monthly Progress Report shall be based upon actual progress of the Work and shall include at a minimum:

- a) A summary of Work accomplished during the month, including actual completion dates and start dates;
- b) Description of any late schedule activities and workarounds needed to recoup schedule losses;
- c) Major Work activities planned for the following month, including estimated remaining durations for activities in progress and estimated start dates;
- d) Date and location for the forthcoming inspection and testing activities for the next three (3) months, with the updates, if there are any, easily identifiable;
- e) An updated engineering change status report and description of any delays due to changes;
- f) Status of all Contractor and Subcontractor drawings;
- g) An updated Progress Schedule;
- h) Status of correspondence; and
- i) Updated status on required Contract deliverables.

SP 1.2 Liquidated Damages

The Contractor shall complete the Work for each milestone in Section 2, SP 1.1.1, within the times specified in the Contract, or any approved extension. SBCTA will sustain significant damages as a result of the Contractor's failure to complete the Contract Milestones listed within the time periods stated in Section 2, SP 1.1, Period of Performance and Delivery Schedule. These damages may include, but are not necessarily limited to, the following:

- a) Delays in completion and operation of SBCTA's transit system.

- b) Increased costs of Contract Administration.
- c) Cost resulting from delays to interfacing Contractors.

If the Contractor fails to complete the Work for any milestone in Section 2, SP 1.1.1, within the times specified in the Contract, or any approved extension, Contractor shall pay to SBCTA, as liquidated damages (LDs), the sums set forth in Section 2, SP 1.2.1 as LDs for delay, for each Day of the delay in completion. LDs begin to accumulate on the first day each or any milestone stated in Section 2, SP 1.1.1 is not met, except that LDs for failure to meet the milestones for Conditional Acceptance of any of the DMUs begin to accumulate two months after their respective milestone dates.

Any LDs as per Section 2, SP 1.2.1 assessed shall be cumulative. The amounts for any LDs provided in the Contract are neither penalties nor forfeitures, but rather are calculated to compensate SBCTA for damages resulting from delays by the Contractor. SBCTA may deduct the sum of LDs from progress payments due or to become due under the Contract or bill the LDs to the Contractor upon prior written notification giving the right to the Contractor to raise concerns against such deduction. Should the amount of LDs exceed the amount owed to the Contractor on the Contract, the Contractor is required to pay those excess LDs to SBCTA.

The parties agree that LDs shall be the sole and exclusive remedy for the issue they address. If SBCTA terminates the Contractor's right to proceed in whole or in part, the resulting damages will consist of LDs until such reasonable time as may be required for completion of the Work covered by the termination. Notwithstanding any language in the Contract to the contrary, any remedy under the "Liquidated Damages" clause is not in any way a waiver of SBCTA's right to seek recovery under the Contract, including, but not limited to, Section 1, GC 9.1, Indemnification, Section 5, Warranty, or other provision of law or Contract, or for damages other than those that are expressly liquidated by the applicable LD provision. However, in any the case the aggregate amount of LDs under this Agreement shall not exceed fifty percent (50%) of the Contract Price.

SP 1.2.1 Liquidated Damages for Late Delivery

For the purpose of assessing any LDs due hereunder, LDs shall be assessed for each Day the Work is late in reaching the milestone date reflected herein. Because the actual amount of these damages is and will be difficult to accurately determine, the parties agree to the LDs specified below. These LDs are a reasonable estimate of potential damages to SBCTA which are uncertain at this time and may be uncertain when incurred.

Milestone	Liquidated Damages (amount per Day)
1. One DMU ready for Infrastructure Dynamic	\$ 1,205.00
2. Conditional Acceptance of two (2) DMUs or option DMU	\$ 1,205.00 per day per DMU not accepted
3. Conditional Acceptance of last single (1) DMU	\$ 603.00 per day per DMU not accepted

4. Contractual delivery of one-half of all Spare Parts	\$ 226.00
5. Contractual delivery of remaining Spare Parts	\$ 226.00
6. Completion of contractual training	\$ 452.00
7. Delivery of draft of all manuals pursuant to TP 22.4	\$ 226.00
8. Contractual delivery of final manuals pursuant to TP 22.4	\$ 226.00
9. Contractual delivery of special tools and test equipment or optional special tools and test equipment	\$ 452.00
10. Contractual delivery of all as-built drawings	\$ 226.00

SBCTA reserves the right to waive the LDs for late completion where circumstances causing the late completion are clearly beyond the control or the fault of the Contractor or where it is in the interest of SBCTA to do so. In addition, SBCTA shall waive LDs resulting from delays caused by damages in transit (i.e. shipping) that are of a significant enough nature to preclude a DMU from either Conditional Acceptance or Final Acceptance. If the damage sustained is through no fault of the Contractor, then SBCTA, in its sole discretion, may waive the LDs for a reasonable period of time to enable the Contractor to undertake the repairs. All such waivers of LDs will be in writing from SBCTA to the Contractor and will specify the time by which the repairs must be completed.

For delays that do not materially affect revenue service operations, liquidated damages will not exceed three percent (3%) of the single DMU price and will not negate the warranties provided for in this Contract. The liquidated damages as defined in this clause shall be in full and final satisfaction, and in final settlement of any and all rights and claims which SBCTA may have arising from or related to such delays.

SP 1.2.2 Liquidated Damages: Warranty

In addition to Liquidated Damages, the Contractor will guarantee a minimum availability for the Passenger vehicle at 95%. SBCTA may make a financial assessment (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 Passenger vehicle could have been available during

the Measurement Period. This number is obtained by multiplying the number of days in the Measurement Period, times daily operation hours, times the number of Passenger vehicle that have been subject to this Agreement during the Measurement Period. Daily operation time shall be less than 18 hours.

UMT = total number of hours that the Passenger vehicle were in the maintenance location for unscheduled maintenance during the Measurement Period, plus, in the event of a Passenger vehicle failure which causes the annulment or cancellation of a train in revenue service, the transit time of the Passenger vehicle to the maintenance location. The transit time is limited to 4hours.

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 SBCTA will also calculate the AP based on the SBCTA'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 Passenger vehicle delivered after the Initial Delivery Passenger vehicle, and only after each such Passenger vehicle enters revenue service. A Passenger vehicle will be included in the fleet for purposes of computing any Availability Assessment beginning on the dates determined below:

- First Passenger vehicle delivered after the delivery of the Initial Delivery Passenger vehicle – 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 Passenger vehicle delivered after the delivery of the Initial Delivery Passenger vehicle (the **Second Passenger vehicle**) - the Measurement Period will begin on the first day of the month following 60 days after the first day of revenue service
- All other Passenger vehicle delivered after the Second Passenger vehicle - 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 Passenger vehicle

The Measurement Period (and therefore, any Availability Assessment) will apply to the aforementioned Passenger vehicle for a period of 24 months from the date such Passenger vehicle becomes subject to the Measurement Period as described immediately above. The AP described under this Section 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 as failures not resulting in a vehicle is cancelled from service.

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 Passenger vehicle 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 Passenger vehicle was annulled or cancelled due to the problem.
5. If a Passenger vehicle has a repeat failure that is the responsibility of the Contractor after a thorough analysis, the total time the train is not available for operation 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 FRA mandated inspections or complying with OEM recommended practices and 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. SBCTA's specified stand-alone equipment (PTC, LDVR, Radio, etc.) will not be counted.

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

SP 1.2.3 Mutual Waiver of Consequential Damages

Contractor and SBCTA waive any and all claims against each other for incidental, consequential, indirect, or special damages (including but not limited to loss of use, loss of income, lost profits, lost productivity and overhead, and even if the party in question knew or should have known of the possibility of such damages) related to any of the Milestone Work described in this section.

SP 1.2.4 No Damages for Delays

Unless otherwise specifically provided for by the Contract, the Contractor shall not be entitled to damages of any type resulting from hindrances, delays, or any other cause under the Contract except when the Work is stopped or suspended by a written order by SBCTA or by intentional interference by SBCTA which is not permitted under the Contract.

SP 2. Payment

SP 2.1 Payment Terms/Procedures

SP 2.1.1 General

SBCTA shall pay and the Contractor shall accept the amounts set forth in the Pricing Schedule attached to this Contract as Exhibit "B" as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including but not limited to all labor, Equipment and material required, overhead, travel, expenses, storage and shipping, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs.

The total amount payable by SBCTA under this Contract shall not exceed the amount shown in the Pricing Schedule Thirty-One Million Four Hundred Five Thousand Seventy-Seven Dollars \$31,405,077 subject to the provisions of GC 8.

Contractor shall not commence performance of Work or services until this Contract has been approved and executed by SBCTA and a NTP has been issued by SBCTA.

The Contractor shall submit invoices to SBCTA according to the milestone payment schedule set forth in Section 2, SP 2.2, Milestone Payment Schedule. SBCTA will make payments as the Work proceeds on the invoices submitted, and each invoice may include any number and combination of milestone payments that are payable that period. Invoices need not be based on sequential milestones. The Contractor shall certify on each invoice that the total costs invoiced do not exceed the total milestone payment allowed.

Each invoice shall be electronically submitted in a format approved by SBCTA and shall include the following:

- a) Contract number
- b) Milestone(s) invoiced
- c) Model and serial number of the DMU invoiced
- d) Unit and total prices by milestone number
- e) A statement that Contractor has fully performed the Work invoiced pursuant to this Contract, that all information included with the invoice is true and correct, and that all payments to and claims of Contractor and its suppliers for Work during the period will be satisfied upon the making of such payment.
- f) Total invoice amount, including the funds to be retained by SBCTA. Invoices shall be submitted electronically to the following address:

ACCOUNTS PAYABLE DEPARTMENT

Email: ap@sanbag.ca.gov

Payment shall be made to the Contractor within thirty (30) Days of receipt of an accurate and correct invoice. The determination of whether the invoice is accurate and correct will be made solely by SBCTA.

SP 2.1.2 Retention

Intentionally deleted.

SP 2.1.3 Use of Retained Funds

Intentionally deleted.

SP 2.2 Milestone Payment Schedule

Title to material included in any Contract payment request shall pass to SBCTA upon full payment by SBCTA of the respective material (for the transfer of title regarding DMUs see Section 1, GC 5). Said title shall be free of all encumbrances. However, such transfer of title shall not relieve Contractor of its responsibility for the furnishing, installation, fabrication or inclusion of said materials as a deliverable element of DMUs procured in accordance with the requirements of the Contract.

SP 2.2.1 Contract Payment Schedule: Management, Engineering, Tooling, Testing and Mock-ups¹

Payment No.	Base Contract Price	% of Item	Milestone Description
1	Item 1	10%	Delivery of production schedule
2	Item 1	20%	<p>Delivery of copies of subcontracts for systems engineering, if applicable.</p> <p>Approval by SBCTA of engineering, drawing submittal schedules, and approval of the first schedule for the full term of the project, including vehicle.</p> <p>Approval by SBCTA of general DMU arrangement drawings.</p> <p>Approval by SBCTA of Contractor input to the System Safety Program Plan.</p>
3	Item 1	5%	Delivery of copies of subcontracts for carbody and articulation, propulsion, braking, truck frame, door controls, air conditioning, and user education, including all manuals.
4	Item 1	10%	Approval by SBCTA of preliminary design review as outlined in Technical Specification, TP 20.24.10.
5	Item 1	15%	Approval by SBCTA of final design review as outlined in Technical Specification, TP 20.24.10. (Refer to document 301.000 CER 3)
6	Item 1	10%	Approval by SBCTA of carbody and truck stress analysis and structural test.
7	Item 1	10%	Completion and approval by SBCTA of all car-level design qualification tests as defined in 301.002 – Approach to Testing.
8	Item 1	10%	Completion and approval by SBCTA of all subsystem First Article Inspections (FAIs).
9	Item 1	10%	Approval by SBCTA of Contractor input to Preliminary Hazard Log.

1. Payment is expressed in percentage of Total Contract Price for management, engineering, tooling, testing and mock-ups. “Approval” means specific written approval for that Milestone by SBCTA.

SP 2.2.2 Individual Vehicle Payments²

Payment No.	Base Contract Price Schedule Reference	% of Item	Milestone Description
A	Item 2	10%	Delivery of production schedule
B	Item 2	30%	Successful completion of each DMU unit carbody
C	Item 2	30%	Release for shipment of each DMU to SBCTA per Section SP 4, Shipping, Delivery and Acceptance and successful completion of carbody water test.
D	Item 2	20%	Conditional Acceptance of each DMU by SBCTA.
E	Item 2	10%	Final Acceptance of each DMU by SBCTA.

2. Payment is expressed in percentage of individual DMU Unit Price. “Successful completion “means specific written approval for that Milestone by SBCTA.

SP 2.2.3 Contract Payment Schedule: Special Tools, Diagnostic Equipment, Spare Parts and Manuals³

Payment No.	Base Contract Price Schedule Reference	% of Item	Milestone Description
1.	Item 5	100%	Special tools; upon delivery to SBCTA.
2.	Item 6	100%	Diagnostic and bench test equipment; upon delivery to SBCTA.
3.	Item 3	50%	Approval by SBCTA of all operating and maintenance training program lesson plans and student guides.
4.	Item 3	50%	Completion of operating and maintenance training program.
5.	Item 4	40%	Manuals; upon delivery and approval by SBCTA of draft operating, maintenance and parts manuals.

6.	Item 4	60%	Manuals; upon delivery and approval by SBCTA of final operating, maintenance and parts manuals.
7.	Item 7	100%	Spare parts; delivery as defined in Section 2, SP 1.1, Period of Performance and Delivery Schedule

3. Payment is expressed in percentage of Total Contract Price for training, manuals and spare parts.

SP 2.3 Withholding of Payments by SBCTA

SBCTA may withhold all or part of a payment to the extent deemed necessary to protect SBCTA from loss because of:

- a) Pursuant to Section 1, GC 4 and Section 2, SP 4.7, defective Work or Work not performed in accordance with the Contract which is not remedied;
- b) Any sums expended by SBCTA in performing any of Contractor's Work under the Contract which Contractor has failed to perform as per Section 5, Warranty; and
- c) Liquidated damages as per Section 2, SP 1.2.

SP 2.4 Prompt Payments

SP 2.4.1 Subcontractor/Supplier Prompt Payment

CONTRACTOR agrees to promptly pay each supplier for the satisfactory completion of all Work performed under supplier's contract, no later than ten (10) calendar days from the receipt of payment from SBCTA unless it is agreed otherwise in the subcontracts. CONTRACTOR also agrees to return any retainage payments to each supplier within ten (10) calendar days after the supplier work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only good cause following written approval by SBCTA. SBCTA reserves the right to request documentation from CONTRACTOR showing invoiced work has been completed and payment has been made to its supplier. SBCTA also reserves the right, at its own sole discretion, to issue joint checks to CONTRACTOR and any supplier(s), which shall constitute payment to CONTRACTOR in compliance with the terms of this Contract. This clause applies to both DBE and non-DBE suppliers. Failure to comply with this clause Section SP 2.4 or delay in payment without prior written approval from SBCTA will constitute non-compliance, which may result in appropriate administrative sanctions, including but not limited to a penalty of two (2%) of the invoice amount due per month for every month that payment is not made.

SP 2.5 Units of Currency/Currency Adjustment

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

There shall be no adjustments to Total Contract Price for currency fluctuations through the term of the Contract, except for option car orders as described in Section 2, SP 6.3, Prices of Option DMUs (Including Escalation).

SP 2.6 Payment of Taxes

Except to the extent expressly provided elsewhere in this Contract. CONTRACTOR shall pay when due, and the compensation set forth herein shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) other governmental fees and taxes or charges of whatever nature applicable to enable it to conduct business.

All non-taxable charges, if any, including all labor and shipping costs, shall be clearly separated from other charges on all invoices presented by the Contractor for payment. The Contractor shall purchase all tax-exempt items free of California sales and use tax, for resale, under its valid California sales tax permit, and it shall not pass, and SBCTA shall not be responsible for, any sales or use tax cost or expense as part of the Contract Price, Contractor's overhead and profit, or otherwise. In similar fashion, the Contractor shall require its suppliers to enter into separated subcontracts and contractually require the suppliers to purchase all tax-exempt items tax-free for resale. Such suppliers shall not pass on any sales or use tax cost or expense to Contractor or SBCTA. The Contractor shall pay and bear the full economic responsibility for any applicable federal or state taxes imposed on its operations or performance under the Contract.

SP 2.7 Final Completion

The Contractor shall complete and shall deliver to SBCTA all designated portions of the Work according to the Master Schedule and according to Technical Specification and all parts and requirements within the number of Days set forth in the Contract Milestones as defined in Section 2, SP 1.1.1, Period of Performance. For the avoidance of doubt, the reliability program according to Technical Specification, TP 20.6 shall not be completed at Final Completion. If Changes are scheduled to be completed later than the original Final Completion date, Final Completion shall be rescheduled accordingly.

When all the Work has been performed and delivered in the quantities designated, the Work will be inspected by SBCTA's Authorized Representative. Such inspection shall be performed step by step once the related portion of the Work has been completed. The Contractor shall correct any Deficiencies in the Work and any Work rejected by SBCTA and such Work shall be re-inspected by SBCTA's Authorized Representative. If the Work according to Technical Specification has been completed in all aspects, all documents have

been submitted, and all training has been completed, all in accordance with the Contract Milestones as defined in Section 2, SP 1.1.1, then SBCTA will issue a Notice of Final Completion and make payment in accordance with the payment provisions.

SP 2.8 Final Payment and Claims

Before applying for Final Payment, the Contractor shall complete all Work according to Section 2, SP 2.7, Final Completion.

Within thirty (30) Days after the date of Notice of Final Completion issued by SBCTA, the Contractor shall prepare and present to SBCTA's Authorized Representative a proposed final invoice in writing. The Proposed Final Invoice shall show the proposed total amount of compensation under the Contract, including therein an itemization of said amount segregated as to Contract item quantities, and other bases for payment. It shall also show all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the Contract, together with any and all potential Claims that have not yet been resolved or a statement that no Claims will be filed. All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. No Claim for which a Notice of Potential Claim is required will be considered unless the Contractor has strictly complied with the notice provisions in Section 1, GC 9.9, Claims.

SP 3. Performance, Payment Security/Insurance

SP 3.1 Performance, Payment Security Requirements

SP 3.1.1 Performance Bond

Contractor shall furnish, at its own expense, performance guarantees ("Performance Bonds") in the form of one (1) of the following:

- a) A letter of credit in a form approved by SBCTA. The security should be an irrevocable letter of credit issued by a bank, approved by SBCTA, with an underlying rating of A- or better by Standard & Poor's or A 3 or better by Moody's Investor Service.
- b) A performance bond from a surety, approved by SBCTA, duly licensed to do business in the State of California having a financial rating from A.M. Best Company of "A VIII" or better.

When options in the Contract are exercised, SBCTA will require a performance guarantee equal to ten percent (10%) of the total Option Contract Price for any options exercised.

In the case that a security guarantor becomes insolvent, its license is revoked or suspended, or its rating is downgraded, the Contractor shall notify SBCTA promptly and shall substitute other and sufficient performance security. If the Contractor fails to do so, such failure may be an event of default at the sole discretion of SBCTA.

In accordance with the Payment Schedule (Clause SP 2.2) the following Performance Bonds shall be provided:

One (1) Performance Bond (“Bond for non-recurring costs”) is related to payments no. 1 through 5 of the Contract Payment Schedule: Management, Engineering, Tooling, Testing, Mock-up:

- Once payment milestone no. 1 becomes due; Bond for non-recurring costs shall be issued in the amount of the payment milestone no. 1.
- Once payment milestone no. 2 becomes due; the amount of Bond for non-recurring costs shall be increased step-by-step by the pro rata amount of the milestones no. 2 through no. 9.
- Bond for non-recurring costs shall be valid until Conditional Acceptance of the first DMU has been completed.

Three (3) Bonds (“DMU Bonds”) are related to payments no. A through C of the Individual Vehicle Payment Schedule:

- Once payment milestone no. A becomes due; DMU Bond no. 1 shall be issued in the amount of the payment milestone no. A.
- Once payment milestone no. B becomes due; amount of Bond for DMU no. 1 shall be increased by the amount of the milestone no. B.
- Once payment milestone no. C becomes due; amount of Bond for DMU no. 1 shall be increased by the amount of the milestone no. C.
- Once Conditional Acceptance Amount of the first DMU has been completed, amount of Bond for DMU no. 1 shall be decreased to the amount of 5% of the DMU price.
- Bond for DMU no. 1 shall be valid until the end of the general warranty period of two (2) years of the first DMU.
- The DMU bonds for the subsequent two (2) vehicles shall be issued, increased and reduced according to the aforementioned scheme.

Each Bond shall be delivered to SBCTA within ten (10) Days after the related payment milestone invoice has been submitted. Once the amount of a Bond is increased or decreased, the Contractor shall deliver a corresponding amendment to the corresponding Bond within ten (10) Days after the related payment milestone invoice has been submitted.

j) Intentionally Deleted

SP 3.1.3 The Performance Bonds shall be delivered to SBCTA within ten (10) Days after the related payment milestone invoice has been submitted. Once the amount of a Performance Bond is increased or decreased, the Contractor shall deliver a corresponding amendment to the corresponding Bond within ten (10) Days after the related payment milestone invoice has been submitted.

SP 3.2 Insurance

SP 3.2.1 Coverage

Prior to commencing the Work, at all times during the performance of the Work and for such additional periods as required herein, Contractor shall, at Contractor's sole expense, procure and maintain insurance coverage with the following minimum requirements, and shall require all subcontractors of every tier performing any of the Work to procure and maintain such insurance specified below.

SP 3.2.1.1 Professional Liability

Intentionally Omitted

SP 3.2.1.2 Worker's Compensation/Employer's Liability Insurance

The policies must include the following:

- a) Coverage A. Statutory Benefits
- b) Coverage B. Employer's Liability
- c) Bodily Injury by accident - \$1,000,000 per accident
- d) Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by Contractor or any subcontractor of any tier. All subcontractors of any tier performing any portion of the Work for Contractor shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of Contractor and all parties named as Indemnitees below. SBCTA and Contractor must be certificate holders and must be provided at least thirty (30) days advance notice of cancellation, unless the cancellation is for non-payment, then at least ten (10) days advance notice of cancellation shall be provided. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

SP 3.2.1.3 Commercial General Liability Insurance

The policy must include the following:

- a) \$10,000,000 per occurrence limit/\$10,000,000 in the aggregate for property damage or bodily injury

- b) \$1,000,000 per occurrence limit/\$2,000,000 in the aggregate for personal injury and advertising injury
- c) \$10,000,000 annual aggregate for products/completed operations coverage. Contractor shall maintain products and completed operations coverage for 10 years following the acceptance of Work or until all applicable statutes of limitations expire, whichever length of time is longer. Coverage is to be on an “occurrence” form. “Claims made” and “modified occurrence” forms are not acceptable.
- d) An endorsement stating that any aggregate limits apply on a “per project” and on a “per location” basis.
- e) The project name must be indicated under “Description of Operations/Locations.”
- f) The policy shall be endorsed to provide: “This insurance will be primary and noncontributory with any other insurance of the additional insureds.”

All commercial general liability insurance policies shall also include premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage; severability of interests (full separation of insureds); contractual liability coverage (including coverage to the maximum extent possible for the indemnifications contained in this Contract); broad form property damage coverage (including completed operations); and a duty to defend in addition to (without reducing) the limits of the policy(ies). All subcontractors of any tier performing any portion of the Work for Contractor shall also obtain and maintain the commercial general liability insurance coverage with limits not less than:

- a) Each occurrence limit: \$1,000,000
- b) General aggregate limit: \$2,000,000
- c) Personal injury and advertising limit \$1,000,000
- d) Products-completed operations aggregate limit \$2,000,000

All subcontractors’ and sub-subcontractors’ deductibles or self-insured retentions must be acceptable to SBCTA’s Risk Manager.

SP 3.2.1.4 Umbrella/Excess CGL Insurance

The policy must include the following:

- a) \$5,000,000 umbrella or excess liability for any project with a Contract value of \$25,000,000 or less.
- b) Combined total for Commercial General Liability and Excess Liability limits of \$25,000,000 will be required for projects with a Contract value in excess of \$25,000,000.
- c) The umbrella or excess policy shall follow form over the Contractor’s primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
- d) The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
- e) The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

SP 3.2.1.5 Commercial Auto Insurance

The policy must include the following:

- a) Auto Liability limits of not less than \$5,000,000 each accident
- b) Combined Bodily Injury and Property Damage Liability insurance
- c) Coverage must include owned autos, hired or non-owned autos

The commercial automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent acceptable to SBCTA and shall include, without limitation, contractual liability coverage and additional insured status for the Additional Insureds named below. Contractor waives all rights of subrogation against the Additional Insureds named below, for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance required herein. All subcontractors of any tier performing any portion of the Work for Contractor shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with the same waiver of subrogation in favor of all parties named as Additional Insureds below, and Contractor.

SP 3.2.1.6 Pollution Liability

The policy must include the following if it is determined by SBCTA's Risk Manager to be in SBCTA's best interests to require such policy:

- a) \$2,000,000 per claim or occurrence limits/\$4,000,000 in the aggregate
- b) If the services involve mold identification / remediation, the policy shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

SP 3.2.2 General Provisions

SP 3.2.2.1 Qualifications of Insurance Carriers

All policies written by insurance carriers shall be authorized and admitted to do business in the state of California with a current A.M. Best rating of A:VIII or better. Professional Liability and Contractor's Pollution Liability policies may be from non-admitted carriers provided they are authorized and licensed in the state of California and meet the current A.M. Best rating of A:VIII or better.

SP 3.2.2.2 Additional Insurance Coverage

All policies, except those for Workers' Compensation and Professional Liability insurance, shall name San Bernardino Associated Governments, San Bernardino County Transportation Authority, Southern California Regional Rail Authority (SCRRA), Operator, and their officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or

operations performed by or on behalf of the Contractor under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.

SP 3.2.2.3 Proof of Coverage

Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, Contractor shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.

SP 3.2.2.4 Deductibles

Regardless of the allowance of exclusions or deductibles by SBCTA, Contractor shall be responsible for any deductible amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Section 2, SP 3.2. Contractor will pay, and shall require its subcontractor to pay, all deductibles, self-insured retentions, co-pay obligations, premiums and any other sums due under the insurance required in this Section 2, SP 3.2. All deductibles and self-insured retentions will be in amounts acceptable to SBCTA's Risk Manager. Contractor will advise SBCTA in writing as to the amounts of any deductible or self-insured retention, or as to any increase in any insurance deductible or self-insured retention under any insurance required above. There will be no deductibles in excess of \$250,000 per occurrence, loss or claim under the insurance required of Contractor or any subcontractor. SBCTA will have the right, but not the obligation, to pay any deductible or self-insured retention due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due Contractor. The policies shall not provide that any deductible, self-insured retention or other payment required under the policy can be paid only by the named insured, and not by an additional insured.

SP 3.2.2.5 Contractor's and subcontractor' Insurance will be Primary

All policies required to be maintained by the Contractor or any subcontractor with the exception of Professional Liability and Worker's Compensation shall be endorsed to be primary coverage, and any coverage carried by any of the Additional Insureds named herein shall be excess and non-contributory. Further, none of Contractor's or subcontractors'

pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

SP 3.2.2.6 Waiver of Subrogation Rights

To the fullest extent permitted by law, Contractor hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other Contractor, subcontractor or sub-subcontractor performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, Contractor shall require similar written express waivers and insurance clauses from each of its subcontractor of every tier. Contractor shall require all of the policies and coverages required in this Section 2, SP 3.2 to waive all rights of subrogation against the Additional Insureds. Such insurance and coverages provided shall not prohibit Contractor from waiving the right of subrogation prior to a loss or claim.

SP 3.2.2.7 Cancellation

If any insurance company elects to cancel or non-renew coverage for any reason, Contractor will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, Contractor will provide SBCTA ten (10) days prior written notice. In any event, Contractor will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which Contractor receives within one business day after Contractor receives it by submitting it to SBCTA at procurement@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

SP 3.2.2.8 Enforcement

SBCTA may take any steps as are necessary to assure Contractor's compliance with its insurance obligations as identified within this Section 2, SP 3.2. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the Contractor fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the Contractor or withhold such expense from amounts owed Contractor, or terminate this Contract. The insurance required or provided shall in no way limit or relieve Contractor of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve Contractor, or any Subcontractor of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.

SP 3.2.2.9 No Waiver

Failure of SBCTA to enforce in a timely manner any of the provisions of this Section 2, SP 3.2 shall not act as a waiver to enforcement of any of these provisions at a later date.

SP 3.2.2.10 Subcontractor Insurance

Insurance required of the Contractor shall be also provided by Subcontractor or by Contractor on behalf of all subcontractors to cover their services performed under this Contract. Contractor may reduce the amounts of insurance limits provided by subcontractors to be proportionate to the amount of the subcontractor's contract and the level of liability exposure for the specific type of work performed by the subcontractor. Contractor shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to Subcontractor.

SP 3.2.2.11 Higher limits

If Contractor maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

SP 3.2.2.12 Special Risks or Circumstances

SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SP 4. Shipping, Delivery and Acceptance

SP 4.1 Shipment Authorization

Each DMU shipped from the Contractor's plant to SBCTA shall be complete according to the Master Schedule and in compliance with all the provisions of the Contract, except as may be noted below. Prior to shipment of each DMU, the Contractor shall obtain a shipping release signed by SBCTA's Authorized Representative. The shipping release shall certify that the DMU is complete according to the Master Schedule, has passed all pre-shipment tests described in Technical Specification, complies with approved Contractor drawings and samples, is accompanied by an up-to-date Vehicle History Book, and other agreed-upon conditions for shipping. To accommodate any and all tests that may be necessary, the Contractor shall provide a minimum of ten (10) Days' notice to SBCTA's Authorized Representative prior to each shipment. SBCTA's Authorized Representative may permit shipment of a DMU with minor Defects or open items approved by SBCTA's Authorized Representative, in writing, that will not affect testing and can easily be corrected after

shipment. All known Defects and open items shall be submitted by the Contractor with the request for shipping release. The shipping release shall not be construed nor inferred to constitute DMU acceptance by SBCTA, nor is it a waiver of any rights of SBCTA under the Contract.

SP 4.2 Shipment

All shipments shall be packaged and packed in a manner to ensure the integrity of product during transportation, handling and temporary storage. Due regard shall be given to protection from loss and pilferage, physical damage, and the effect of the elements and environmental conditions. SBCTA reserves the right to review and approve a shipping plan.

During shipment, each DMU shall be equipped with an impact recorder provided by the Contractor and approved by SBCTA. The recorder shall record all handling impacts. All records shall become the property of SBCTA and shall be appended to the Vehicle History Book.

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

The Contractor shall assume full responsibility for determining the haul routes to be utilized and confirming that the jurisdiction through which its haul routes will pass will permit the hauling operations with respect to laden weights, type of vehicle, frequency and dimension of loads, required traffic control, and hours of operation. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor.

SP 4.3 Evidence of Delivery and Shipping Destination (DDP)

Delivery of the DMUs shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the point of destination as specified below. Contractor is responsible for all delivery costs, including risk of loss, to SBCTA's final destination on board the carrier's conveyance to the location specified below.

Delivery of DMU(s) shall be evidenced by signed receipt by SBCTA's Authorized Representative at the following point of delivery:

Inland Empire Maintenance Facility (IEMF)
958 West 3rd Street, San Bernardino, CA 92417.

A receipt signed by SBCTA's Authorized Representative upon delivery of the DMU does not constitute SBCTA's acceptance of either the condition of the DMU or its conformance with

the terms of the Contract. Risk of loss for the DMU shall pass to SBCTA at the time of delivery. Title to material shall not pass to SBCTA until written acceptance thereof.

Delivery of all other Contract deliverables shall be DDP. Contractor is responsible for all delivery costs, including risk of loss, to SBCTA's final destination on board the carrier's conveyance to the location specified below.

Delivery of all other Contract deliverables shall be evidenced by signed receipt by SBCTA's Authorized Representative, at the following point of delivery:

Inland Empire Maintenance Facility (IEMF)
958 West 3rd Street, San Bernardino, CA 92417.

SP 4.4 Unloading

The Contractor shall be responsible for the unloading of DMUs, test equipment and spare parts at the designated delivery point as instructed by SBCTA.

Within two Days after arrival at SBCTA's facility, each DMU shall be examined jointly by Authorized Representatives of SBCTA and the Contractor for shipping damage. SBCTA then will issue a Vehicle Delivery Notice and Receipt to the Contractor, acknowledging receipt of the DMU and describing any missing parts or visible damage that may have occurred during shipment.

SP 4.5 Acceptance Testing

SBCTA will conduct acceptance tests on each delivered DMU. These tests shall be completed according to the Master Schedule and shall be conducted in accordance with approved written Test Plans consistent with Technical Specification (but excluding TP 20.6 and omissions by SBCTA or the FRA related to TP 21.6.4.9.2). Acceptance tests on the first DMU shall be conducted once the dynamic type test program is completed according to the Master Schedule. The purpose of these tests is to identify Defects that have become apparent between the time of DMU release and delivery to SBCTA. The acceptance tests shall include visual inspection and DMU operations. No acceptance test shall apply criteria that are different from the criteria consistent with the Technical Specification.

SBCTA shall record details of all Defects it sees on the appropriate test forms and shall notify the Contractor of acceptance or non-acceptance of each DMU after completion of the tests. The Defects detected during these tests shall be repaired according to procedures defined in Section 2, SP 4.7.3, Non-Acceptance and Repairs after Non-Acceptance.

SP 4.6 Delivery of Special Tools, Diagnostic Equipment, Spare Parts and Manuals

Spare parts shall be of production configuration and successfully tested. Delivery shall be completed in accordance with the Milestone Schedule.

Acceptance of spare parts will be deemed to have occurred after delivery, successful completion of SBCTA's receiving inspection, relevant functional testing, and written notification of Acceptance by SBCTA's Authorized Representative.

Delivery of special tools and diagnostic equipment shall be completed in accordance with the Milestone Schedule.

Delivery of manuals shall be made in two (2) stages with interim deliverables likely to be required to ensure that manuals remain up to date with DMU production and delivery. The initial delivery of draft manuals is shown in the Milestone Schedule and shall consist of full sets of all manuals in the quantities indicated. The final delivery shall consist of the complete updated manuals and the electronic media in the quantities indicated. Acceptance of the manuals will be deemed to have occurred after delivery of the final manuals in the quantities indicated and upon written notification of acceptance by SBCTA's Authorized Representative.

SBCTA reserves the right to refuse delivery of DMUs if spare parts, special tools, test equipment or manuals are not delivered in accordance with the Milestone Schedule.

SP 4.7 Conditional Acceptance, Final Acceptance and Non-Acceptance

SP 4.7.1 Conditional Acceptance

Conditional Acceptance of a DMU is defined as a completely assembled DMU on SBCTA's property subject to the provisions outlined below. The DMU shall have all requirements successfully tested consistent with Technical Specification, TP 21, Vehicle and Systems Testing, according to the Master Schedule, and be ready to run in revenue service except for Defects that require corrective action but will not materially affect revenue service operations. Parties shall mutually agree on a reasonable rectification plan, having regard to the time required for the rectification of such Defects. SBCTA may make a deduction from subsequent progress payment and may withhold until such time as the correction of such Defect. The amount of deduction must be proportional to the Defect and shall be mutually agreed by the parties. Conditional Acceptance requires that all documentation for the respective DMU, including the Vehicle History Book, per Technical Specification TP 20.26, Vehicle History Books has been delivered to and accepted by SBCTA. SBCTA shall accept the documentation if it is complete and appropriate. The scope of the documentation to be delivered at the Conditional Acceptance shall be defined and mutually agreed by the parties prior Conditional Acceptance.

The Contractor shall submit a corrective action program and schedule for each Conditionally Accepted DMU for SBCTA's approval. If the Contractor fails to complete the program in accordance with the approved schedule, then repairs to the DMUs may be made in accordance with the procedures outlined in Section 5, WR 2, Repair Procedures.

SBCTA will issue to the Contractor a DMU Conditional Acceptance form and Certificate of Title, for Contractor execution, for each DMU when the DMU meets the conditions specified in this section.

SP 4.7.2 Final Acceptance

SBCTA will issue a DMU Final Acceptance to the Contractor for each DMU when the following have been achieved:

- a) The DMU has been completed in full accordance with Technical Specification, including all testing (but excluding TP 20.6), according to the Master Schedule, approved engineering submittals, and Change Orders, which are scheduled to be completed prior to Final Acceptance;
- b) The DMU has had all items of corrective action identified at the Conditional Acceptance stage completed; and
- c) All required documentation for the DMU has been received and approved by SBCTA. SBCTA shall accept the documentation if it is complete and appropriate. The scope of the documentation to be delivered at the Conditional Acceptance shall be defined and mutually agreed by the parties prior Conditional Acceptance.

SP 4.7.3 Non-Acceptance and Repairs after Non-Acceptance

If a DMU fails any inspection or test, SBCTA shall provide the Contractor with Notice of Non-Acceptance. Such notice shall be effective until the Contractor corrects the Defects and SBCTA accepts the DMU after retest and inspection, unless the Parties agree upon Conditional Acceptance pursuant to Section 2, SP 4.7.1.

- a) Responsibility: The Contractor, or its Authorized Representative, shall at all times be responsible for correction of the Deficiencies.
- b) Work by SBCTA: The Contractor may request SBCTA to perform limited Work related to correction of Deficiencies. Such Work shall be subject to full reimbursement of SBCTA's costs by the Contractor and will be undertaken at SBCTA's sole discretion. Even if SBCTA agrees to perform such limited Work, it shall remain the sole obligation of the Contractor to ensure proper correction of the Deficiencies. SBCTA's responsibility will be strictly limited to competently performing the limited Work designated by the Contractor in accordance with the Contractor's instructions.
- c) Time for correction: If a DMU is delivered but not Accepted because of a Defect, then SBCTA shall issue a Notice of Non-Acceptance, and the Contractor shall have seven (7) Days to correct the Defect or to request, in writing, a request for an extension of time including a definition of the problem, solution, and a time line to correct the Defect. Any extension of time, if granted by SBCTA, shall not automatically waive any LDs associated with a late delivery of vehicles

SP 5. Project Management

SP 5.1 Contractor's Personnel

SP 5.1.1 Contractor's Project Manager

During performance of the Contract, the Contractor shall assign a competent Project Manager who shall have full authority to act on behalf of the Contractor and all of the Contractor's Subcontractors/Suppliers at all tiers in all matters within the scope of the Contract, including execution of change orders. The Project Manager shall have experience acceptable to SBCTA. The Project Manager must be thoroughly familiar with all procedures involved in DMU production.

With NTP, the candidate submitted with the Proposer's Proposal shall become the Contractor's Project Manager. If for any reason, and at any time, the candidate submitted by the Contractor is not acceptable to SBCTA, or becomes unacceptable, the issue will be referred to the Contractor's senior management and shall be removed if reasonable cause is shown by SBCTA. If the Contractor wishes to replace its Project Manager at any time during the performance of the Contract, it first shall submit the résumé of its new candidate to SBCTA for SBCTA's approval and shall not make the substitution without SBCTA's written approval.

SP 5.1.2 Other Key Personnel

SBCTA may also identify during performance of the Contract other key personnel, who will be subject to the same requirements and restrictions as set forth above for the Project Manager.

SP 5.2 Subcontractors and Suppliers

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

Any new, additional or substituted major subsystem Suppliers proposed to be used by the Contractor after the award shall be subject to SBCTA's prior written approval. No increase in the Contract Price(s) shall be allowed for any such substitution.

The Contractor shall not make any substitution for any major subsystem Supplier or for any person or for any organization that has been previously accepted by SBCTA as part of the Contract unless and until requested to do so by SBCTA and/or unless such substitution is expressly approved by SBCTA in writing. A major subsystem Supplier is defined as an individual or organization that supplies the major subsystems of the DMU as defined in the Technical Specification (e.g., carbody, HVAC).

SP 5.3 SBCTA Project Manager

SBCTA's Project Manager shall be the formal contact between SBCTA and the Contractor. SBCTA's Project Manager shall be responsible for, on behalf of SBCTA, all matters relating to the Contract, except changes to the Contract that involve price or time. The Contractor shall not

rely on representations or orders of any other SBCTA representative, unless so authorized by SBCTA's Project Manager.

SP 5.4 Project Meetings

SBCTA's Project Manager will schedule and preside over pre-production, periodic and special meetings throughout the progress of the Work. Agendas for the meetings may include, but are not necessarily limited to, discussions of in-plant observations, problems, conflicts, production schedules, delivery schedules, Supplier fabrication, quality standards, design review, Contract modifications, and any other topics that SBCTA's Project Manager determines to be relevant to the project. The location for project meetings will be mutually agreed upon by SBCTA and the Contractor.

SP 5.5 Pre-Award and Post-Delivery Buy America Certification

SBCTA is required by 49 CFR 663 to certify to FTA that a pre-award and post-delivery audit has been performed and that compliance with Buy America requirements has been verified. The post-delivery review must be completed before a DMU title is transferred to SBCTA, or before a DMU is placed into revenue service, whichever is first. The review period begins at the Award of the Contract and ends before title transfer or use in service.

The Contractor shall provide cost information of sufficient detail to allow an auditor to determine that federal Buy America requirements are met. The cost information shall be submitted by the Contractor and by the Contractor's Subcontractors and Suppliers directly to a representative designated by SBCTA. The cost information, subject to state law, will be kept confidential to the greatest reasonable extent legally possible.

SP 5.6 Ownership and Use of SBCTA Documents

All drawings, specifications, and copies thereof furnished by SBCTA shall remain the property of SBCTA. They are to be used only with respect to the Contract. With the exception of one (1) Contract set for each party to the Contract, those documents are to be returned (or suitably accounted for) to SBCTA upon request at the completion of the Work.

SP 5.7 Review of Drawings, Data and Designs

All reviews of drawings, data and designs outlined in Technical Specification, TS 20, shall be completed by the Contractor and SBCTA within thirty (30) Days of the date of receipt by SBCTA.

SP5.8 Ownership of Documents

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by Contractor under this Contract shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

SP 6. Options

SP 6.1 Options for Additional DMUs

The Contractor hereby grants SBCTA and SBCTA's Assignee options ("Options") to purchase up to three (3) additional DMUs ("Option DMUs"). The Options may be exercised as single or multiple vehicles. The Options shall be valid for a period of seven (7) years from the effective date of the Contract. There shall be no minimum order quantity for any Option exercised prior to the baseline scheduled delivery date of the middle DMU in the base order. Any Option exercised after the baseline scheduled delivery date of the middle DMU in the base order shall be subject to a minimum order quantity agreed to by the Contractor and SBCTA/Assignee. SBCTA may exercise or assign some or all of the Options for additional DMUs at its sole and absolute discretion. SBCTA or SBCTA's Assignee and the Contractor will mutually establish the schedule for the Options milestone payments per Section 2, SP 6.4, Milestone Payments for Option DMUs. Absent a mutual agreement of such schedule within thirty (30) Days, SBCTA or SBCTA's Assignee will establish the schedule within sixty (60) Days.

SP 6.2 Options for Additional Non-Cab Cars

Intentionally deleted.

SP 6.3 Prices of Option DMUs (Including Escalation)

The price for each Option order shall be subject to a one-time adjustment (either up or down) at the time each Option is awarded based on a mutually agreeable escalation rate not to exceed 3% per year. No adjustment will be made if the Option is exercised within one (1) year of Award of the Contract.

SP 6.4 Milestone Payments for Option DMUs

Milestone payments for the Option DMUs and associated deliverables will be made upon satisfactory completion and acceptance of each Milestone in accordance with the milestone allocation percentages listed below:

SP 6.4.1. Option DMUs¹

Payment No.	Base Contract Pricing Schedule Reference	% of Item	Milestone Description
A	Item 2	10%	Delivery of production schedule
B	Item 2	30%	Successful completion of each DMU unit carbody
C	Item 2	30%	Release for shipment of each DMU to SBCTA per Section SP 4, Shipping, Delivery and Acceptance and successful completion of carbody water test.
D	Item 2	20%	Conditional Acceptance of each DMU by SBCTA.
E	Item 2	10%	Final Acceptance of each DMU by SBCTA.

1. Payment is expressed in percentage of individual Option DMU unit price.
“Successful completion “means specific written approval for that Milestone by SBCTA”.

SP 6.5 Options for Additional Spare Parts, Tools, Materials, and Optional Vehicle Equipment

At the option of SBCTA, the Contractor shall provide additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications to be used for the base DMU order, and optional vehicle equipment as outlined in Technical Specification, 20.0. The pricing for the additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications shall be as set forth in CER 5: Pricing Schedules. Additional spare parts, special tools, and diagnostic test equipment may be identified during the design of the DMU. The Contractor shall provide a listing of the additional recommended spare parts, special tools, and diagnostic test equipment when the design of the first DMU is completed. Prior to start of production of the DMUs, the Contractor shall inform SBCTA about the items that need to be ordered by a certain deadline and inform about such deadlines.

SBCTA shall order additional quantities of these items by written notice to the Contractor. An Option to order additional items to be delivered with the base DMU order may be exercised at any time by SBCTA up to a date specified and mutually agreed between the Contractor and SBCTA, with such approval not being unreasonably withheld by Contractor. The notice shall specify the quantity of additional materials being ordered. SBCTA may place one (1) or more such orders for additional materials, or none. The optional vehicle equipment shall be ordered upon the placement of the order of the base DMUs or any of the Option DMUs.

Additional items ordered under this provision shall be delivered not more than eighteen (18) months after the exercising of any Option order. Any optional vehicle equipment shall be delivered and commissioned along with the vehicle to which it applies.

Delivery schedule for the additional spare parts, special tools and diagnostic test equipment being ordered as a part of the base DMU Contract or as a part of an Option DMU order shall be as mutually agreed upon by the Contractor and SBCTA. SBCTA's Assignee shall have the same rights as specified above for the items described.

SP 6.6 Prices for Additional Spare Parts, Tools, Materials, and Optional Vehicle Equipment

Prices of any Option additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog, publications, and optional vehicle equipment as outlined in the Technical Specification shall be at the prices set forth in the Pricing Schedule CER-5 and such prices will be subject to the same Economic Price Adjustment (EPA) provisions set forth in Section 2, SP 6.3, Prices of Option DMUs (Including Escalation).

SP 6.7 Milestone Payments for Additional Spare Parts, Tools and Materials and Optional Vehicle Equipment

Payments for optional additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications shall be made in accordance with the milestone payment terms in the base order. Payment for optional vehicle equipment shall be made in accordance with the milestone payment terms in the base order for the delivery and acceptance of each DMU.

SP 6.8 Assignability of Options

If SBCTA does not exercise all the Option(s) as listed in Section 2, SP 6.1, Options for Additional DMUs, and Section 2, SP 6.5, Additional Spare Parts, Tools, Materials, and Optional Vehicle Equipment, then SBCTA reserves the right to assign the Option(s) to other public transportation agencies, in its sole discretion.

SP 7. Testing

SP 7.1 General

The Contractor shall prepare an Inspection and Test Plan ("Test Plan") consistent with Technical Specification for review by the SBCTA's Project Manager. The Test Plan shall be forwarded to the SBCTA's Project Manager as soon as practicable. Such review of the Test Plan by the SBCTA's Project Manager does not in any way relieve the Contractor of responsibility for the adequacy of the inspection and testing of the Work in accordance with the Contract Documents.

SP 7.2 Use of SBCTA's Facilities

The Contractor shall furnish all personnel, supplies and tools for DMU commissioning at SBCTA's facilities. The Contractor shall also furnish all equipment and other requirements for the DMU pre-delivery not made available to the Contractor by SBCTA.

SBCTA shall make DMU operating personnel and access to yard and mainline tracks of SBCTA's commuter rail system available for the Contractor's post-shipment DMU testing as specified in the Test Plan. The Contractor shall provide SBCTA's Project Manager with a minimum of three (3) Days' notice of the scheduled date and time of each DMU post-shipment test, so that SBCTA's Project Manager or designee may witness each such test.

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

SP 7.2.1 Care of Premises

At all times the Contractor shall maintain its premises on SBCTA's property in a neat and orderly condition. Upon completion of the Work, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus materials and rubbish of every kind from the site of the Contractor's Work on SBCTA's property.

SP 8. Safety and Security Requirements

SP 8.1 Contractor Safety Training

All Contractor and Subcontractor/Supplier personnel and/or their technical representatives or assistants performing onsite Work, inspection or testing shall have successfully completed all required safety training courses administered by SBCTA.

SP 8.2 Safety Compliance

The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the State of California and Federal Railroad Administration as well as the SBCTA System Safety Program Plan and OSHA requirements. The Contractor shall flow down all these requirements to any Subcontractor/Supplier performing Work under the Contract. Should charges of violation of any of the above be issued to the Contractor in the course of the Work, a copy of each charge shall be immediately forwarded to SBCTA's Authorized Representative along with a plan to correct the violation.

The Contractor shall follow the SCRRA timetable and Special Instructions and The General Code of Operating Rules (GCOR), SBCTA operational rules, Standard Operating Procedures, and daily general track bulletins.

Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and shall take all necessary actions to prevent damage injury, or loss to:

- k) All employees on the Work and other persons who may be affected thereby; and
- l) All the Work and all equipment and materials to be incorporated therein, whether in storage on or off SBCTA's property.

SBCTA retains the right, but does not have the responsibility, to consent to and conduct on-site inspections pursuant to federal, state and municipal government occupational safety and health law requirements. This includes, but is not limited to, all accidents, investigations, general schedule, complaints and follow-up safety and health inspections conducted by federal, state, local government and SBCTA safety and environmental health officials.

Upon the failure of the Contractor to comply with any of the requirements in this Section 2, SP 8, SBCTA's Authorized Representative shall have the authority to stop any and all operations of the Contractor affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made subject to a Claim or extension of time or increase in compensation.

SP 9. Service and Parts

SP 9.1 Parts Availability Guarantee

The Contractor agrees to cooperate in good faith with SBCTA to provide information about the spare parts, software, and all equipment necessary to maintain and repair the DMUs supplied under the Contract. Contractor shall supply a list of OEM Part Numbers for such parts, software, and all equipment necessary to maintain and repair the DMUs.

If spare parts, software, and all equipment necessary to maintain and repair the DMUs supplied become unavailable, the Contractor shall provide appropriate and compatible solutions for such parts or equipment during a period of five (5) years after Conditional Acceptance of the three DMUs.

In the event the Contractor does not supply such spare parts, software, and all equipment necessary to maintain and repair the DMUs supplied under the Contract which the Contractor manufactures itself (i.e. the car body and truck frame) in accordance with the conditions of this Agreement due to insolvency, the Contractor hereby grants a license and permission to SBCTA free of charge and without imposing additional terms and conditions on SBCTA, and shall have third parties, free of charge, enabled to produce such spare parts which the Contractor manufactures itself (i.e. the car body and truck frame) for the purpose of the maintenance and the operation of the DMUs on the basis of all up to date and necessary information if and to the extent such data and information is already existing and available.

Subject to applicable insolvency laws, Contractor shall immediately provide SBCTA with all such information upon SBCTA's request. Contractor will use reasonable effort that also its Suppliers and sub-suppliers grant such license and permission.

SP 9.2 Interchangeability

Unless otherwise agreed, all units and components procured under the Contract, whether provided by Suppliers or manufactured by the Contractor shall be compatible in design, manufacture, and installation to ensure interchangeability among DMUs in this procurement.

In the event that the Contractor is unable to comply with the interchangeability requirement, the Contractor must notify SBCTA and obtain SBCTA's prior written approval, including any change in pricing.

SBCTA shall review proposed product changes on a case-by-case basis and shall have the right to require extended warranties (subject to mutual agreement) to ensure that product changes perform at least as well as the originally supplied products.

SECTION 3: FEDERAL/STATE CLAUSES (FC)

FC 1. Access to Records

The Contractor agrees to maintain all books, records, accounts and reports required under the Contract for a period of not less than three (3) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain same until SBCTA, 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.

The following access to records requirements also apply to the Contract as appropriate to the funding of the Contract.

FC 1.1 Local Governments

Contractor agrees to provide SBCTA, 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 that are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

FC 1.2 State Governments

In accordance with 49 CFR 633.15, Contractor agrees to provide SBCTA and the FTA Administrator or his or her authorized representatives, including any Project Management Oversight (PMO) contractor and staff, access to the Contractor's records and Work site pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000. 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.

FC 2. Federal Funding, Incorporation of FTA Terms and Federal Changes

The preceding provisions include, in part, certain standard terms and conditions required by the Department of Transportation (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 Contract. The Contractor shall not perform any act, fail to perform any act or refuse to comply with any of SBCTA's requests that would cause SBCTA to be in violation of the FTA terms and conditions.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives as they may be amended or promulgated from time to time during the term of the Contract. The Contractor's failure to so comply shall constitute a material breach of the Contract.

FC 3. Federal Energy Conservation Requirements

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

FC 4. Civil Rights Requirements

The following requirements apply to the underlying Contract:

- a) **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 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.

- b) **Equal Employment Opportunity:** The following Equal Employment Opportunity (EEO) requirements apply to the underlying Contract:
- c) **Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 USC § 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, religion, sex, sexual orientation, gender identity, national origin, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay 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.
- d) **Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §§ 623 and Federal transit law at 49 USC § 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.
- e) **Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- f) 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.

FC 5. No Government Obligation to Third Parties

SBCTA and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or Award of the Contract, absent the express written consent by the Federal government, the Federal government is not a party to the Contract and shall not be subject to any obligations or liabilities to SBCTA, Contractor, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract.

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/Supplier who will be subject to its provisions.

FC 6. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR 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 the 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.

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 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal government deems appropriate.

The Contractor agrees to include the above two (2) 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/Supplier who will be subject to the provisions.

FC 7. Suspension and Debarment

The Contract is a covered transaction for purposes of 2 CFR Part 1200 and 2 CFR Part 180. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935.

The Contractor is required to comply with 2 CFR Part 180, Subpart C, and must include the requirement to comply with 2 CFR Part 180, Subpart C, in any lower-tier covered transaction it enters into.

Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by SBCTA. If it is later determined that the Contractor knowingly rendered an

erroneous certification, then in addition to remedies available to SBCTA, 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 2 CFR Part 180 Subpart C, throughout the period of the Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FC 8. Disadvantaged Business Enterprise (DBE)

The Contract is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

The Contractor shall maintain compliance with 49 CFR Part 26 throughout the period of Contract performance.

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as SBCTA deems appropriate. Each subcontract the Contractor signs with a Subcontractor/Supplier must include the assurance in this paragraph (see 49 CFR 26.13(b)).

FC 9. Clean Water Requirements

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC Sections 1251 *et seq.* The Contractor agrees to report each violation to SBCTA and understands and agrees that SBCTA will, in turn, report each violation as required to ensure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

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.

FC 10. Clean Air Requirements

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

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.

FC 11. Compliance with Federal Lobbying Policy, Prohibition of Expending SBCTA, State or Federal Funds for Lobbying

FC 11.1 Contractor certifies, to the best of his or her knowledge and belief, that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract, the making of any state or federal grant, the making of any state or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, or loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for making lobbying contacts to, influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

FC 11.2. Penalties This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. sec. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

FC 11.3. Sub-Contractor shall require that the language of this Section 3, FC11, be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

FC 12. Buy America

The Contractor shall comply with 49 USC §5323(j), (l), and (m), FTA's "Buy America" regulations at 49 CFR Part 661 and any amendments thereto, and any implementing guidance issued by FTA. This requirement extends to all materials and products acquired under this Contract, including base procurement, any options and spare parts.

FC 13. Pre-Award and Post-Delivery Audits

The Contractor agrees to comply with 49 USC § 5323(j), (l), and (m) and FTA's implementing regulation at 49 CFR Part 663 and 49 CFR Part 661 to submit the following certifications:

- a) **Buy America requirements:** Before Execution of the Contract by SBCTA, Contractor shall complete and submit to SBCTA with its Proposal a declaration certifying either compliance or noncompliance with Buy America. Before Execution of the Contract to

Contractor, who has certified compliance with Buy America, Contractor shall submit documentation that lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, whether for the DMUs or any required spare parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

- b) **Solicitation specification requirements:** Before Execution of the Contract, Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- c) **Post-delivery audit requirement:** A post-delivery review of the first serial DMU will be completed before title is transferred to SBCTA or before it is placed into revenue service. The Contractor agrees to provide the information requested by SBCTA to allow SBCTA to complete the post-delivery audit. SBCTA may not accept DMUs if the post-delivery audit cannot be completed to verify the Contractor's compliance with the Buy America requirements in effect at the time of the contract execution or the execution of the option (s) for additional DMUs.

FC 14. Cargo Preference

The Contractor agrees to the following:

- a) To use privately owned U.S.-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for U.S.-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 loading for shipments originating outside the United States, a legible copy of a rated, "onboard" 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 FTA recipient (through the Contractor in the case of a Subcontractor's/Supplier's bill of lading.)
- c) To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

FC 15. Fly America

The Contractor agrees to comply with 49 USC Section 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 sub-recipients 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.

FC 16. Contract Work Hours and Safety Standards Act

- a) **Overtime requirements:** No Contractor or Subcontractors/Suppliers contracting for any part of the Contract Work 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 Work to work in excess of forty (40) hours in such work week unless such laborer or mechanic 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 forty (40) hours in such work week.
- b) **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the clause set forth in Paragraph 1 of this Section 3, FC 16, the Contractor and any Subcontractors/Suppliers responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractors/Suppliers shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Paragraph 1 of this Section 3, FC 16, in the sum of ten dollars (\$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 the clause set forth in Paragraph 1 of this Section 3, FC 16.
- c) **Withholding for unpaid wages and liquidated damages:** SBCTA 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 work performed by the Contractor or Subcontractors/Suppliers under any such contract or any other Federal Contract with the same Contractor, or any other federally assisted contract subject to the contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractors/Suppliers for unpaid wages and liquidated damages as provided in the clause set forth in Paragraph 2 of Section 3, FC 16.
- d) **Subcontracts:** The Contractor or Subcontractors/Suppliers shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of Section 3, FC 16 and also a clause requiring the Subcontractors/Suppliers to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any Subcontractors/Suppliers or lower-tier Subcontractors/Suppliers with the clauses set forth in paragraphs 1 through 4 of this Section 3, FC 16.

FC 17. ADA Access

The Contractor and any of its Subcontractors/Suppliers under the Contract agree 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; 49 USC § 5301(d); and the following regulations and any amendments thereto:

- a) DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
- b) DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
- c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, “American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;
- d) Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local 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) General Services Administration regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;
- g) Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
- h) Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, Subpart F;
- i) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
- j) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194; and any implementing requirements FTA may issue.

FC 18. Recycled Products

Contractor shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. sec. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. Contractor agrees to include this requirement in all of its subcontracts.

FC 19. Drug Free Workplace

Contractor agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 *et seq.* and 49 CFR Part 219.

SECTION 4: TECHNICAL SPECIFICATION

All references in this Contract to the Technical Specification (TS), Technical Provisions (TP) or Scope of Work shall mean “DMU Passenger Vehicles Technical Specification (Scope of Work)” attached to this Contract as Exhibit A and incorporated herein by this reference.

SECTION 5: WARRANTY

WR 1. Basic Warranty Provisions

WR 1.1 Warranty Requirements

WR 1.1.1 Contractor Warranty

For purposes of this Section 5, Warranty, SBCTA shall mean SBCTA, SBCTA's Assignee or Operator. Warranties in this Contract are in addition to any statutory remedies or warranties imposed on Contractor, and DMUs shall mean DMUs and Additional DMUs. Consistent with this requirement, Contractor warrants and guarantees to SBCTA as the original procuring Agency, Operator, and to SBCTA's Assignee of the Options, each complete DMU and specific subsystems and components as follows.

WR 1.1.2 General Warranty

Contractor warrants that the Work, and any portion thereof performed pursuant to the Contract, shall be of the quality specified, or of the best grade if no quality is specified, and shall conform to the Contract Documents and other descriptions set forth in the Contract. The complete DMU shall be warranted to be free from Defects and Related Defects for two (2) years unless specified below. The warranty period shall begin with Conditional Acceptance except for parts and systems on the vehicle that require corrective action on the open items list on the Vehicle Conditional Acceptance and Inspection form. Any Conditional Acceptance for revenue service does not relieve the Contractor of the liability to correct Defects as required by the Contract. The warranty is based on regular operation of the DMU under the operating conditions prevailing in SBCTA's locale. Contractor's warranty shall apply regardless of any lesser period of warranty provided by the manufacturer of Materials furnished by Contractor.

WR 1.1.3 Carbody Structure

The carbody structure as defined in Section 4, TP 3, Carbody Exterior, is warranted to be free from Defects and Related Defects for five (5) years. The Warranty period shall begin with Conditional Acceptance.

WR 1.1.4 Major Subsystems

The following major subsystems shall be warranted to be free from Defects and Related Defects for the period shown below, with the Warranty period beginning upon the date of Conditional Acceptance, and all others are covered by the General Warranty provision:

- a) Truck structural parts (frame and bolster): five (5) years
- b) Axles: five (5) years

- c) Drive train (traction motors, gear box and high- and low-speed couplings, and associated truck mounted components): five (5) years.

WR 1.1.5 Extension of Warranty

If, during the warranty period, repairs or modifications on any DMU are made necessary by Defective design, materials or workmanship, written notice from SBCTA must be given to the Contractor. If repairs are not completed within ten (10) Days of the notice, the warranty period will be suspended until such time that the repairs are fully completed and the warranty will be extended for that component on a day-for-day basis. If the repairs are not completed within sixty (60) Days, resulting in the DMU being unavailable for revenue service, liquidated damages will commence in accordance with Section 2, SP 1.2, Liquidated Damages: Warranty, and will accrue on a day-for-day basis starting at Day 61 that the DMU is unavailable.

WR 1.2 Voiding of Warranty

The Warranty shall not apply to the failure of any part or component of the DMU that directly results from misuse, negligence, infrastructure deficiencies, accident or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The Warranty also shall be void if SBCTA fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor's maintenance manuals and if that omission caused the part or component failure. In any event the warranty shall not cover defects or discrepancies caused by third parties, vandalism, or force majeure events. SBCTA shall maintain documentation, auditable by the Contractor, verifying service activities in substantial conformance with the Contractor's maintenance manuals.

WR 1.3 Exceptions and Additions to Warranty

The warranty shall not apply to the following items:

- a) Scheduled maintenance items;
- b) Normal wear-out items;
- c) Items furnished by SBCTA; and
- d) Interior and exterior finishes, hoses, fittings and fabric due to normal wear and tear.

If SBCTA requires the use of a specific product and has rejected the Contractor's request for an alternate product, then the warranty offered by the Supplier for that product shall be the only warranty provided to SBCTA. This product will not be eligible under Section 5, WR 1.4, Fleet Defects.

The Contractor shall not be required to provide warranty information for any warranty that is less than or equal to the warranty periods listed under Section 5, WR 1.1, Warranty Requirements.

WR 1.3.1 Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wishes to transfer this responsibility to the Suppliers, or to others, the Contractor shall request this waiver. The Contractor shall state in writing that SBCTA's warranty reimbursements will not be impacted in accordance with Section 5, WR 2.3.5, Reimbursement for Labor and Other Related Costs, Section 5, WR 2.3.6, Reimbursement for Parts, and Section 5, WR 2.3.7, Reimbursement Requirements. Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified. If the Contractor requests such a waiver in writing, then the Contractor also shall state in writing any exceptions as relates to the cost incurred in transport of vehicles and/or components associated with such a pass-through warranty. Approval of the waiver request shall be at the sole discretion of SBCTA.

WR 1.3.2 Superior Warranty

The Contractor shall pass on to SBCTA any warranty offered by a Supplier that is superior to that required herein. The Contractor shall provide a list to SBCTA noting the conditions and limitations of the superior warranty not later than the start of production of the first DMU. The Contractor shall not be required to administer the superior warranty except through mutual agreement between the parties.

WR 1.4 Fleet Defects

WR 1.4.1 Occurrence and Remedy

A Fleet Defect is defined as cumulative failures of ten percent (10%) of the same components in the same or similar application, with a minimum of three (3) failures of the same component where such items are covered by warranty. A Fleet Defect shall apply only to the warranty period in Section 5, WR 1.1.2, General Warranty, Section 5, WR 1.1.3, Carbody Structure, Section 5, WR 1.1.4, Major Subsystems, and Section 5, WR 1.1.5, Extension of Warranty. When a Fleet Defect is declared, the remaining Warranty on that component stops. The Warranty period does not restart until the Fleet Defect is corrected.

For the purpose of Fleet Defects, each Option order shall be treated as a separate DMU fleet. In addition, should there be a change in a major component within either the base order or an Option order, the DMUs containing the new major component shall become a separate DMU fleet for the purposes of Fleet Defects.

Contractor shall correct a Fleet Defect under the warranty provisions defined in Section 5, WR 2, Repair Procedures. After correcting the Defect, SBCTA and Contractor shall mutually agree to and Contractor shall promptly undertake and complete a Work program reasonably designed to prevent the occurrence of the same Defect in all other DMUs and spare parts purchased under the Contract. Where the specific Defect can be solely attributed to particular identifiable part(s), the Work program shall include redesign and/or replacement of only the defectively designed and/or manufactured part(s). In all other cases, the Work program shall

include inspection and/or correction of all of the DMUs in the fleet via a mutually agreed-to arrangement.

A Fleet Defect may be declared by SBCTA if there is a safety-critical Defect (i.e. a Defect requiring SBCTA to withdraw the DMU from revenue service) on as few as one (1) DMU, which results from a failure of the Contractor.

WR 1.5 Warranty of Spare Parts

For any spare parts delivered to SBCTA in accordance with the Contract, the Contractor warrants the spare parts to be free of defects in material and workmanship for twelve (12) months from acceptance of the spare part. In the event of defect or failure of the spare part, the Contractor shall make and implement any modifications, repairs, adjustments and/or replacements determined to be necessary by the Contractor to correct the defective part. In the event of such modifications, repairs, adjustments and/or replacements of a part by the Contractor only, the remaining warranty period shall apply.

WR 2. Repair Procedures

WR 2.1 Repair Performance

The Contractor is responsible for all Warranty-covered repair Work. SBCTA may perform such Work if the Contractor has failed to perform his obligations to begin the repair work within a time mutually agreed upon by the Parties and proceed with reasonable diligence, but if agreement upon such time cannot be reached, then SBCTA may perform such Work after ten (10) Days written notice. Such Work shall be reimbursed by the Contractor.

WR 2.2 Repairs by the Contractor

If SBCTA detects a Defect within the Warranty periods, it shall, within five (5) Days, notify the Contractor's Representative. The Contractor or its Contractor's Representative shall, if requested, begin Work on Warranty-covered repairs within five (5) Days after receiving notification of a defect from SBCTA. SBCTA shall make the DMU available to the Contractor to complete repairs. The Contractor may use parts available from SBCTA's stock if deemed in its best interests.

The Contractor shall provide at its own expense all spare parts and tools required to complete repairs.

WR 2.3 Repairs by SBCTA

WR 2.3.1 Parts Used

If SBCTA performs the warranty-covered repairs, it shall correct or repair the Defect and any related Defects utilizing parts supplied by the Contractor specifically for this repair. At its

sole discretion, SBCTA may use Contractor-specified parts available from its own stock if deemed in its best interests.

WR 2.3.2 Contractor-Supplied Parts

SBCTA may require that the Contractor supply parts for warranty-covered repairs being performed by others. Those parts may be remanufactured but shall have the same form, fit, function and warranty. The parts shall be shipped prepaid to SBCTA from any source selected by the Contractor within ten (10) Days of receipt of the request for said parts and shall not be subject to a handling charge from SBCTA.

WR 2.3.3 Defective Component Return

The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The freight costs for this action shall be paid by the Contractor. Materials should be returned in accordance with the procedures outlined in Section 5, WR 2.4.1, Warranty Processing Procedures.

WR 2.3.4 Failure Analysis

The Contractor shall, upon specific request of SBCTA, provide a failure analysis of Fleet Defect- or safety-related parts, or major components, removed from DMUs under the terms of the warranty, that could affect fleet operation. Such reports detailing the results of the failure analysis shall be delivered to SBCTA within thirty (30) Days of the receipt of failed parts.

WR 2.3.5 Reimbursement for Labor and Other Related Costs

SBCTA shall be reimbursed by the Contractor for labor performed related to Section 5: Warranty. The amount shall be determined by SBCTA for a qualified mechanic at the current straight time wage rate per hour, which includes fringe benefits and overhead adjusted for SBCTA's most recently published rate in effect at the time the Work is performed, plus the cost of retrieving the DMU if such action was necessary. These wage and fringe benefit rates shall not exceed the rates in effect in SBCTA's maintenance facility at the time the Defect correction is made.

WR 2.3.6 Reimbursement for Parts

SBCTA shall be reimbursed by the Contractor for defective parts and for parts that must be replaced to correct the Defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable, plus fifteen percent (15%) handling costs. Handling costs shall not be paid if the part is supplied by Contractor and shipped to SBCTA.

WR 2.3.7 Reimbursement Requirements

The Contractor shall respond to SBCTA's request for warranty reimbursement with an accept/reject decision including necessary failure analysis no later than thirty (30) Days after SBCTA submits the request and defective part(s), when requested. Reimbursement for all accepted requests shall occur no later than sixty (60) Days from the date of acceptance of a valid request. SBCTA may dispute rejected requests or requests for which the Contractor did not reimburse the full amount. The parties agree to review disputed warranty requests during the following ninety (90) Day period to reach an equitable decision to permit the disputed request to be resolved and closed. The parties also agree to review all requests at least once every ninety (90) Days throughout the entire warranty period to ensure that open requests are being tracked and properly dispositioned.

WR 2.4 Warranty After Replacement/Repairs

If any component, unit or subsystem is repaired, rebuilt or replaced by the Contractor, or by SBCTA with the concurrence of the Contractor, then the component, unit or subsystem shall have the longer of a one-time one (1) year additional warranty from the replacement or repair of the component, unit or subsystem, or the remainder of the unexpired warranty period of the original item. Repairs shall not be warranted if the Contractor-provided or authorized parts are not used for the repair, unless the Contractor has failed to respond within five (5) Days, in accordance with Section 5, WR 2.2, Repairs by the Contractor.

If an item is declared to be a Fleet Defect, then the Warranty stops with the declaration of the Fleet Defect. Once the Fleet Defect is corrected, the item(s) shall have the longer of a one-time one (1) year or the remaining time of the original Warranty. This remaining Warranty period shall begin on the repair/replacement date for corrected items on each DMU if the repairs are completed by the Contractor, or on the date the Contractor provides all parts to SBCTA.

WR 2.4.1 Warranty Processing Procedures

The following list represents requirements by the Contractor to SBCTA for processing requests for warranty reimbursement. One (1) failure per DMU per request is allowed.

- a) DMU vehicle number;
- b) Section of car (A, B or C section);
- c) Vehicle mileage at time of repair;
- d) Date of failure/repair;
- e) Acceptance/in-service date;
- f) Repair order number;
- g) Contractor part number and description;
- h) Component serial number;
- i) Description of failure; and
- j) All costs associated with each failure/repair (invoices may be required for third-party costs):
 - DMU retrieval;
 - Road calls;

- Labor;
- Materials;
- Rented equipment;
- Parts;
- Handling; and
- Troubleshooting time.

WR 2.5 Forms

SBCTA's forms will be accepted by the Contractor if all of the above information is included. Electronic submittal may be used if available between the Contractor and SBCTA.

WR 2.6 Return of Parts

When returning Defective parts to the Contractor, SBCTA shall tag each part with the following:

- a) DMU vehicle number;
- b) Section of car (A, B or C section);
- c) Date of failure/repair;
- d) Repair order number;
- e) Return material authorization number (RMA);
- f) Part number; and
- g) Part serial number (if available).

WR 2.7 Timeframe

Each Warranty reimbursement request must be submitted no more than thirty (30) Days from the date of failure and/or repair, whichever is later. All Defective parts must be returned to the Contractor, when requested, not more than forty-five (45) Days from date of repair. The Contractor agrees to hold and preserve the Defective part as evidence if any dispute exists between SBCTA and Contractor concerning whether the part is Defective and whether warranty work was required. In this circumstance, the Contractor shall make the part available for testing by SBCTA, shall notify SBCTA before any destructive testing is performed on the part and shall allow SBCTA to observe such destructive testing.

WR 2.8 Warranty Reimbursement

Reimbursements are to be transmitted to the following address:

San Bernardino County Transportation Authority
 Director of Transit
 1170 West 3rd Street, 2nd Floor
 San Bernardino, CA 92410

SECTION 6: QUALITY ASSURANCE

The Contractor shall establish and maintain a quality assurance program as specified in Section 4, Technical Specification, TS 20.8, Quality Assurance Plan. The Contractor's quality assurance program shall ensure compliance with the requirements of the Contract, and should any portion of the Work be subcontracted, shall include provisions ensuring compliance by Subcontractors and Suppliers. The Contractor shall ensure that all Subcontractors and Suppliers maintain a formal, documented quality assurance program. SBCTA reserves the right to verify the quality assurance program of the Contractor, Subcontractor or Supplier.

SECTION 7: SBCTA ARTICLES

ARTICLE 1. PROPRIETARY RIGHTS/CONFIDENTIALITY

1.1 During the performance of the Work under the Contract, it may be necessary for either party (the "Discloser") to make confidential information available to the other party (the "Recipient"). The Recipient agrees to use all such information solely for the performance of the Work under the Contract and to hold all such information in confidence and not to disclose same to any third party without the prior written consent of the Discloser. Likewise, the Recipient agrees that all information developed in connection with the Work under the Contract shall be used solely for the performance of the Work under the Contract, and shall be held in confidence and not disclosed to any third party without the prior written consent of the Discloser.

1.2 This Confidentiality section shall survive the termination or expiration of the Contract.

1.3 CONTRACTOR shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.

1.4 All press releases or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by the Parties.

ARTICLE 2. PRECEDENCE/CONFLICTING TERMS

2.1 The following order of precedence shall apply: first, the Contract Sections; second,, Exhibits A. Scope of Work/Technical Specification including document 301.000a - 521'356 - CER 3 Form for Proposal Deviation and B. Price Proposal; third, SBCTA's Request For Proposals; and last, Contractor's Proposal. In the event of a conflict between the Contract Sections and the Scope of Work/Technical Specification, the Contract Sections will prevail.

2.2 In the event of an express conflict between any of the Contract Documents, Contractor shall notify SBCTA in writing of the conflict within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 3. COMMUNICATIONS AND NOTICES

Routine communications between the parties may be transmitted electronically. Formal notifications will be sent by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax during regular business hours; (b) the first business day following delivery by fax when made not during regular business hours; or (c) the fourth business day following deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. Contractor shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To Contractor	To SBCTA
Stadler US Inc	1170 W. 3rd Street, 2nd Floor
900 North 500 West, Salt Lake City, UT 84116	San Bernardino, CA 92410-1715
Attn: Michael Franz	Attn: Justin Fornelli
Project Manager	cc: Procurement Manager
Phone: (385) 239 9784	Phone: (909) 884-8276

ARTICLE 4. ENTIRE DOCUMENT

- 4.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.
- 4.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and Contractor hereby stipulates that it has not relied, and will not rely, on same.
- 4.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 5. CONTRACT

Contractor and SBCTA, hereby agree that this Contract consisting of the Contract Sections, Exhibits A & B, attached hereto and incorporated herein, the RFP, and Contractor's Proposal, constitutes the entire agreement which is made and concluded in duplicate between the two Parties. Both of these Parties for and in consideration of the payments to be made, conditions

mentioned, and Work to be performed, each agree to diligently perform in accordance with the terms and conditions of this Contract as evidenced by the signatures below.

ARTICLE 6. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

-----SIGNATURES ON FOLLOWING PAGE-----

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year written below.

CONTRACTOR

SBCTA

By: _____
Martin Ritter
CEO Stadler US Inc.

By: _____
Raymond W. Wolfe
Executive Director

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Procurement Manager

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**EXHIBIT A- “SCOPE OF WORK/TECHNICAL SPECIFICATON” – ADDED TO
FINAL CONTRACT**

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EXHIBIT B—“APPROVED PRICING SCHEDULE” – ADDED TO FINAL CONTRACT

CER 5: PRICING SCHEDULES

Base Contract San Bernardino Associated Governments SBCTA DMU: RFP 16-1001531 <p style="text-align: center;">All prices are to be in U.S. dollars.</p>				
No.	Quantity	Item	Unit Price	Extended Price
1	N/A	Management, engineering, tooling, testing and mock-ups		4,112,000
2	3	New Diesel Multiple Units (DMUs)	7,449,000	22,347,000
3	N/A	Training		684,000
4	N/A	Operations, maintenance and parts manuals		845,000
SUBTOTAL				27,988,000
5	N/A	Special tools		291,970
6	N/A	Test equipment		98,978
7	N/A	Spare Parts		3,026,129
8	N/A	Alternate Proposal Section 19		N/A
9	N/A	Alternate Proposal Section 20		N/A
10	N/A	Alternate Proposal Section 21		N/A
TOTAL BASE CONTRACT				31,405,077

Signature _____

June 27, 2017 _____

Date