

GOODS AND SERVICES SUPPLY AGREEMENT

UTA CONTRACT #22-03660BM Head End Power (HEP) Training Module

THIS GOODS AND NON-PROFESSIONAL SERVICES SUPPLY AGREEMENT (“Contract”) is entered into and made effective as of the date of last signature below. (“Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and Wabtec Transportation Systems, LLC, a Delaware Corporation (the “Contractor”).

RECITALS

WHEREAS, on November 16, 2022, UTA approved a Sole Source request for this procurement. This procurement is for the Head End Power Training Module for the Commuter Rail Locomotives and all associated hardware, software, tools, installation services, commissioning and testing services, training and documentation (the “Goods and Services”) as expressly defined in Exhibit A (the “Work”); and

WHEREAS, UTA wishes to procure the Goods and Services according to the terms, conditions and specifications listed in the present Contract, including Exhibit A (as subsequently amended through negotiation by the parties); and

WHEREAS, the Budgetary HEP Training Module Proposal, date October 24, 2022, submitted by the Contractor in response to the SOLE SOURCE (“Contractor’s Proposal”) was deemed to be the most advantageous to UTA; and

WHEREAS, Contractor is willing to furnish the Goods and Services and/or the Work, and UTA is willing to purchase the Goods and Services, according to the terms, conditions and specifications of the Contract.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. GOOD AND SERVICES TO BE PROVIDED BY CONTRACTOR

- (a) Contractor hereby agrees to furnish and deliver the Goods and/or Services in accordance with the Contract as described in Exhibit A (Statement of Work or Services) (including performing any installation, testing commissioning and other Services described in the Contract), pursuant to 1(b) below.
- (b) For avoidance of doubt, this Contract and the sale of the Goods and Services are contingent upon Contractor’s commercially reasonable ability, to procure a CAT Tier 3 engine, and the associated availability and lead-time.

2. **TERM**

This Contract shall commence as of the Effective Date. The Contract shall remain in full force and effect until all Goods have been delivered and all Services have been performed in accordance with the Contract. Contractor shall complete manufacturing of all Goods and perform all Services no later than February 28, 2024, subject to 1(b) above. This estimated completion date may be extended if Contractor and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Contractor under the Contract shall at all times be subject to and conditioned upon the provisions of the Contract.

3. **COMPENSATION AND FEES**

UTA shall pay Contractor in accordance with the payment milestones or other terms described in Exhibit B. If Exhibit B does not specify any milestones or other payment provisions, then payment shall be invoiced after the Goods have been delivered and the Services have been performed. In no event shall advance payments be made.

4. **INCORPORATED DOCUMENTS**

- a. The following documents hereinafter listed in chronological order, with most recent document taking precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:
 1. The terms and conditions of this Goods and Services Supply Agreement (including any exhibits and attachments hereto).
 2. Contractor's Proposal dated October 24, 2022 including, without limitation, all federal certifications (as applicable);
 3. UTA's SOLE SOURCE including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Goods and Services;
- b. The above-referenced documents are made as fully a part of the Contract as if hereto attached or herein repeated. The Contract (including the documents listed above) constitute the complete contract between the parties.

5. **ORDER OF PRECEDENCE**

The Order of Precedence for this contract is as follows:

1. This UTA Contract #22-03660BM, including all attachments.
2. Contractor's Proposal including proposed terms or conditions.

Any contractor proposed term or condition, other than those listed above, which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

6. **LAWS AND REGULATIONS**

Contractor and any and all Goods and/or Services furnished under the Contract will comply fully with all applicable Federal and State laws and regulations, including those related to safety and

environmental protection. Contractor shall also comply with all applicable licensure and certification requirements.

7. **INSPECTION, DELIVERY AND TRANSFER OF TITLE**

- a. Upon UTA's request, UTA's representative shall be provided access to Contractor's facilities to obtain information on production progress and to make inspections during the manufacturing or assembly process. Contractor will make reasonable efforts to obtain, for UTA, access to subcontractor facilities for the purposes described above. If the specifications include pre-shipment inspection requirements, Goods shall not be shipped until UTA or its designee has inspected the Goods, and authorized Contractor to proceed with the shipment.
- b. Delivery of the Goods is a substantial and material consideration under the Contract. Unless otherwise specifically set forth in the pricing schedule: (i) Contractor shall be solely responsible for the delivery of the Goods FOB to the delivery point specified in the Contract (or otherwise designated by UTA) and all costs related thereto are included in the pricing; and (ii) Contractor shall retain all liabilities and risk of loss with respect to the Goods until the Goods are delivered to, and accepted by, UTA.
- c. After delivery, the Goods shall be subject to inspection, testing and acceptance by UTA, including any testing or commissioning process described in the specifications. UTA shall have the right to reject any Goods or Services that are defective or do not conform to the specifications or other Contract requirements. Goods or Services rejected shall, at the Contractor's discretion, be replaced, repaired or re-performed so as to conform to the Contract (and to UTA's reasonable satisfaction). If Contractor is unable or refuses to correct such Goods within a time deemed reasonable by UTA, but not less than thirty (30) days, then UTA may cancel the order in whole or in part. Any inspection and testing performed by UTA shall be solely for the benefit of UTA. Neither UTA's inspection of the production processes, production progress and/or Goods or Services (nor its failure to inspect) shall relieve Contractor of its obligations to fulfill the requirements of the Contract, or be construed as acceptance by UTA. In addition, it is the express understanding of the Parties that any examination, inspection and/or audit provided for under the Contract shall be conducted in such a way as to neither delay the Contractor's work unduly nor cause the Contractor to disclose any sensitive and/or confidential information, such as but not limited to personal information of the Contractor's employees, and any cost or margin information forming the basis for stated prices of Contractor's Goods and/or Services.
- d. Contractor warrants that title to all Goods covered by an invoice for payment will pass to UTA no later than the time of payment. Contractor further warrants that upon submittal of an invoice for payment, all Goods and/or Services for which invoices for payment have been previously issued and payments received from UTA shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor or any subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided equipment, materials, and labor related to the equipment and/or work for which payment is being requested.

8. **INVOICING PROCEDURES**

- a. Contractor shall invoice UTA after delivery of all Goods. Contractor shall submit invoices to ap@rideuta.com for processing and payment. In order to timely process invoices, Contractor shall include the following information on each invoice:
 - i. Contractor Name
 - ii. Unique Invoice Number
 - iii. PO Number
 - iv. Invoice Date
 - v. Detailed Description of Charges
 - vi. Total Dollar Amount Due
- b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address proven non-conforming Goods or Services. Approval by UTA shall not be unreasonably withheld. Payment for all invoice amounts not specifically disapproved by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

9. **WARRANTY OF GOODS AND SERVICES**

- a. Contractor warrants that all Goods (including hardware, firmware, and/or software products that it licenses) and Services shall conform to the specifications, drawings, standards, samples, and other descriptions contained in the Contract. Contractor further warrants that all Goods and Services shall be of the quality specified, or of the best grade if no quality is specified, and, unless otherwise provided in the Contract, will be new, and free from defects in design, materials and workmanship.
- b. Contractor warrants that all Goods and Services shall be in compliance with applicable federal, state, and local laws and regulations including, without limitation, those related to safety and environmental protection.
- c. At any time for a period of one (1) year from the date that all Goods have been delivered and all Services have been performed in accordance with the Contract (the “Warranty Period”, Contractor shall at its own expense and at its option promptly repair, replace and/or re-perform any Goods or Services that are defective or in any way fail to conform to the Contract requirements, provided such Goods and Services are that of the Contractor or provided by the Contractor to UTA.
- d. If Contractor fails to make any repair within thirty (30) days, replacement or re-performance as required herein, UTA may conduct the necessary remedial work at Contractor’s expense but at UTA’s sole risk, provided such expense is commercially reasonable. Provided that such repair, replacement or re-performance is conducted in a reasonable manner and with workmanship and care consistent with industry standards, Contractor shall reimburse UTA for the reasonable and substantiated cost of any warranty repair, replacement or re-performance self-performed by UTA.

- e. The warranties and remedies are conditioned upon: (i) proper storage, installation, use, operation, and maintenance of the Goods; (ii) UTA keeping accurate and complete records of operation and maintenance during the Warranty Period and providing Contractor access to those records; and (iii) modification of Goods or Services only as authorized by Contractor in writing. Contractor's obligations under this Section 9 shall not apply to: (a) normal wear and tear; (b) any off the shelf consumer goods that may be incorporated into the Goods; (c) any Goods that is normally consumed in operation; (d) any Goods that has a normal life inherently shorter than the Warranty Period; (e) any Goods that has been subjected to any other kind of misuse or detrimental exposure, has been involved in an accident, or has been subject to an event of force majeure. In the event UTA uses non-Contractor parts or non-Contractor approved repairs, then any damage to, failure of, or performance degradation of the Goods or Services indirectly or directly resulting from the use of such parts or repairs, shall not be warranted by Contractor.
- f. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.
- g. . Nothing in this warranty will be construed to limit any rights or remedies UTA may otherwise have under the Contract.

10. **GENERAL INDEMNIFICATION**

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs (hereinafter referred to collectively as "claims") related to bodily injury, including death, or loss or damage to tangible or intangible property caused, in whole or in part, to the extent caused as the direct result of the Contractor's negligent act or omission, willful misconduct or strict liability or of any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of the failure of such Contractor to conform to federal, state, and local laws and regulations. If an employee of Contractor, a subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnitee, Contractor's indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers' compensation or disability acts. The indemnity obligations of Contractor shall not apply to the extent that claims arise out of the acts or omissions of UTA or the Indemnitees. Except for liability arising under this GENERAL INDEMNIFICATION CLAUSE, , the total liability of the Contractor, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of or related to this Contract, or its performance or breach, shall not exceed the price paid by UTA under this Contract for Goods and/or Services. In no circumstances shall the Contractor be liable for any special, indirect or consequential damages of any nature whatsoever.

11. **INSURANCE REQUIREMENTS**

Standard Insurance Requirements

The insurance requirements herein are requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Utah Transit Authority in no way warrants that the limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability of those Stated below. An excess liability policy or umbrella liability policy may be used to meet the liability requirements.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$4,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation

Statutory

Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
 - b. This requirement shall not apply when a contractor or subcontractor is exempt under UCA 34A-2-103, AND when such contractor or subcontractor executes the appropriate waiver form.
- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
- 1. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been provided by the Contractor to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. F.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the UTA Legal Services, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

12. OTHER INDEMNITIES

- a. Contractor shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all claims of any kind or nature whatsoever on account of infringement relating to Contractor's performance under the Contract. If notified promptly in writing and given authority, information and assistance, Contractor shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Contractor shall pay all damages and costs awarded therein against UTA due to such breach. In case any Good or Service is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under the Contract, Contractor shall, at its expense and through mutual agreement between UTA and Contractor, either procure for UTA any necessary intellectual property rights, or modify Contractor's Goods and Services such that the claimed infringement is eliminated.
- b. Contractor shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or claims made or filed against UTA on account of any Goods or Services furnished by subcontractors of any tier; and (ii) keep UTA property free and clear of all liens or claims arising in conjunction with any Goods or Services furnished under the Contract by Contractor or its subcontractors of any tier. If any lien arising out of the Contract is filed in conjunction with any Goods or Services furnished under the Contract, Contractor, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Contractor fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subcontractor, Contractor shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.
- c. Contractor will defend, indemnify and hold UTA, its officers, agents and employees harmless from liability of any kind or nature, arising from Contractor's use of any copyrighted or un-copyrighted composition, trade secret, patented or un-patented invention, article or appliance furnished or used in the performance of the Contract.
- d. This Section 13 shall not apply to and Contractor shall have no obligation or liability with respect to any patent infringement claim based upon: (i) any Goods that is manufactured, or Service performed, that is customized to UTA's design or specification; (ii) the combined use of any Goods or with any other apparatus or material; (iii) the use of any Goods or Service furnished hereunder to the extent that the infringement claim is based upon a modification to the Goods or Service that was made by UTA (or UTA's employees, agents, contractors or subcontractors); or (iv) the failure of UTA to implement any update provided by Contractor that would have prevented the claim. As to any Goods, Service

or use described in the preceding sentence, Contractor assumes no liability whatsoever for patent infringement or the unauthorized use of Goods or Services, including, without limitation, a breach of the provisions of the Contract.

13. **INDEPENDENT CONTRACTOR**

The parties agree that Contractor, in the carrying out of its duties hereunder, is an independent contractor and that neither Contractor nor any of its employees is or are agents, servants or employees of UTA. Neither Contractor nor any of Contractor's employees shall be eligible for any workers compensation insurance, pension, health coverage, or fringe benefits which apply to UTA's employees. Neither federal, state, nor local income tax nor payroll tax of any kind shall be withheld or paid by UTA on behalf of Contractor or the employees of Contractor. Contractor acknowledges that it shall be solely responsible for payment of all payrolls, income and other taxes generally applicable to independent contractors.

14. **STANDARD OF CARE.**

Contractor shall perform any Services to be provided under the Contract in a good and workmanlike manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated independent contractors (including, as applicable, professional standards of care).

15. **USE OF SUBCONTRACTORS**

- a. Contractor shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subcontractors, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subcontractor without the prior written approval of UTA.
- c. Contractor shall be solely responsible for making payments to subcontractors, and such payments shall be made within thirty (30) days after Contractor receives corresponding payments from UTA.
- d. Contractor shall be responsible for and direct all work performed by subcontractors.
- e. Contractor agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Contractor further agrees that all subcontracts shall comply with all applicable laws. For the avoidance of doubt, Subcontractor shall mean a party appointed by Contractor specifically for this Contract and that takes a substantial portion of the Contract's scope of work from Contractor. For the avoidance of doubt, Subcontractor shall not include Contractor's suppliers and/or vendors, including but not limited to vendors and/or suppliers of general suppliers of standard commercial supplies or raw materials.

16. **CONTRACTOR SAFETY COMPLIANCE**

UTA is an ISO 14001 for Environmental Management Systems, ISO 9001 Quality and Performance Management, and OSHAS 18001 safety systems Management Company.

Contractor, including its employees, subcontractors, authorized agents, and representatives, shall comply with all industry safety standards, NATE, OSHA, EPA and all other State and Federal regulations, rules and guidelines pertaining to safety, environmental Management and will be solely responsible for any fines, citations or penalties it may receive or cause UTA to receive pursuant to this Contract. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website www.rideuta.com. If UTA determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents, within a reasonable period of time, for which such effort shall be reimbursed by UTA. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA

17. **ASSIGNMENT OF CONTRACT**

Contractor shall not assign any of its rights or responsibilities, except for assignment within Wabtec Corporation, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of UTA, and any attempted transfer in violation of this restriction shall be void.

18. **ENVIRONMENTAL RESPONSIBILITY**

UTA is ISO 14001 Environmental Management System (EMS) certified. Contractor acknowledges that its Goods and/or Services might affect UTA's ability to maintain the obligation of the EMS. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website www.rideuta.com. If UTA determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents, within a reasonable period of time, for which such effort shall be reimbursed by UTA. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA.

20. **SUSPENSION OF WORK**

- a. UTA may, at any time, by written order to Contractor, require Contractor to suspend, delay, or interrupt all or any part of the work called for by this Contract, for a maximum period of thirty (30) days. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Upon receipt of such an order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of further costs allocable to the work covered by the order during the period of work stoppage.
- b. If a Suspension of Work Order issued under this Article is canceled, Contractor shall resume work as mutually agreed to in writing by the parties hereto.
- c. If the Suspension of work causes an increase in Contractor's cost or time to perform the work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Contractor for the additional costs or time, and modify this Contract by Change Order.

21. **TERMINATION**

In the event UTA is unable to continue the Contract as a result of state and/or federal appropriations issues that could not have not been mitigated by UTA, then

b. **FOR DEFAULT:** If Contractor (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subcontractors or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Contractor thirty (30) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Goods and Services using other contractors or UTA's own forces,
2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
3. .

c. FOR CONTRACTOR'S INABILITY TO PROCURE A CAT TIER 3 ENGINE

As stated under Section 1b. above, it is the express understanding of the Parties, and UTA agrees, that Contractor's performance under this Contract is subject to its ability to procure a CAT Tier 3 Engine from third party vendors and/or suppliers. In the event that Contractor is unable, despite reasonable efforts, to procure and secure the said CAT Tier 3 Engine by March 31st, 2023 or by a later date mutually agreed between the Parties, the present Contract shall automatically terminate without triggering any liability whatsoever for any Party. As a result, UTA shall not be entitled to claim against Contractor any kind of damages, indemnity or compensation whatsoever for the termination resulting from Contractor's inability to procure a CAT Tier 3 Engine.

d. CONTRACTOR'S POST TERMINATION OBLIGATIONS : Upon receipt of a termination notice as provided above, Contractor shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process, to be provided by Contractor to UTA as part of the Scope of Work. Contractor shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Contractor's final invoice, and shall invoice Contractor for any additional amounts payable by Contractor (to the extent termination damages exceed the invoice). If UTA terminates the Contract for any reason, Contractor shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Goods and Services furnished by Contractor prior to termination.

22. **CHANGES**

- a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:

1. In the Scope of Services;
2. In the method or manner of performance of the Work; or
3. In the schedule or completion dates applicable to the Work.

Upon receipt of a Change Order, Contractor shall promptly submit to UTA a report indicating (a) the technical feasibility of such changes, and, where applicable, (b) a quotation stipulating the estimated price for the implementation of the required changes, and (c) the revised delivery date of the Goods and/or Service, as modified. If UTA and Contractor reach agreement on the proposal after good faith negotiation, , it shall inform Contractor in writing and Contractor shall proceed with the said changes.

- b. A change in the Work may only be directed by UTA through a written Change Order. Any changes to this Contract undertaken by Contractor without such written authority shall be at Contractor's sole risk. Contractor shall not be entitled to rely on any other manner or method of direction.
- c. Contractor may, as it deems necessary and/or from time to time, make engineering or specification changes with respect to the Goods and Services. If the engineering or specification change does not constitute a material change in form, fit or function, Contractor is authorized to deliver the Goods and Services, as changed or modified, with notice to UTA. If the engineering or specification change constitutes a material change in form, fit or function, Contractor must first receive concurrence from UTA and, if applicable, the parties shall negotiate an equitable adjustment in the price and delivery of the Goods and Services. Contractor shall proceed with work unaffected by the proposed change order during completion of such negotiation.
- d. Contractor shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of "constructive" changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; or (ii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Contractor based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for "constructive" changes in Work, Contractor must give UTA's Project Manager or designee written notice stating:
 1. The date, circumstances, and source of the change; and
 2. That Contractor regards the identified item as a change in Work giving rise to an adjustment in this Contract.

Contractor must provide notice of a "constructive" change and assert its right to an equitable adjustment under this Section within ten (10) days after Contractor becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the "constructive" change.

- e. In the event of any engineering or specification change required due to a change in applicable laws, rules and/or regulation that results in increased cost, expense, liability or risk to Contractor, Contractor shall be entitled to reasonable adjustments in price and delivery timing of the Goods and Services to compensate and accommodate Contractor for such increased obligations. In the event the parties fail

to mutually agree to such reasonable adjustments, either party may pursue resolution pursuant to the dispute resolution process set forth in Section 30.

f. Changes in applicable laws, rules and regulations resulting in increased cost, expense, liability or risk to Contractor shall only be implemented subject to the Parties negotiating an adjustment in price and delivery of the Products and Services to compensate Contractor for such increased obligations. Contractor's performance obligations with respect to the Products and Services affected by such changes shall be suspended for a period of time equal to the time necessary for the Parties to mutually agree to such price and delivery adjustment. In the event the Parties fail to agree to such equitable adjustment, either Party may pursue resolution pursuant to the dispute resolution process set forth in Section 30.

g. As soon as commercially practicable, but in no event longer than thirty (30) days after providing notice, Contractor must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work. Equitable adjustments will be made via Change Order. Any dispute regarding the Contractor's entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 20 of this Contract.

23. **INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS**

Contractor shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of the Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Contractor shall also retain other books and records related to the performance, quality or management of the Contract and/or Contractor's compliance with the Contract. During this six-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration, provided cost and margin information shall not be provided for audit or inspection. provided such information is a) held by UTA as strictly confidential commercial information of Contractor, b) accessed to and used by those with a need to know for the exclusive purpose of except for correcting any amounts improperly charged pursuant to the Contract's pricing structure, and c) not subject to further disclosure, and not to be used for any other purpose. Copies of requested records shall be furnished to UTA or designated audit parties upon request.

24. **FINDINGS CONFIDENTIAL**

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Contractor under this Contract are considered confidential and shall not be made available to any person, organization, or entity by either party without consent in writing from the disclosing party ("Disclosing Party").

- a. It is hereby agreed that the following information is not considered to be confidential: Information that (a) is or becomes generally available to the public other than from disclosure by the receiving party (“Receiving Party”), its representatives or its Affiliates; (b) is or becomes available to the Receiving Party or its representatives or affiliates on a non- confidential basis from a source other than the Disclosing Party when the source is not, to the best of the Receiving Party’s knowledge, subject to a confidentiality obligation with respect to such information; (c) is independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (d) is required to be disclosed by law, a valid legal process or a government agency; or (e) is approved for disclosure in writing by an authorized representative of the Disclosing Party.
- c. Receiving Party may disclose confidential information in response to a subpoena from a court, arbitration panel, or government or administrative body if it both promptly provides disclosing party with written notice of the discovery request such that the disclosing party is able to seek a protective order or other appropriate remedy and cooperates with the disclosing party to obtain the protective order or other remedy; in the event that the protective order or other remedy is not obtained, the receiving party shall use commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. Notwithstanding, the Parties acknowledge that as an instrumentality of the State of Utah, UTA is obligated to abide by the disclosure requirements of the Utah Government Records Management Act.

25. **PUBLIC INFORMATION.**

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor’s response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

26. **PROJECT MANAGER**

UTA's Project Manager for the Contract is Kyle Stockley, or designee. All questions and correspondence relating to the technical aspects of the Contract should be directed to UTA's Project Manager at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-3048.

27. **CONTRACT ADMINISTRATOR**

UTA's Contract Administrator for the Contract is Brian Motes, or designee. All questions and correspondence relating to the contractual aspects of the Contract should be directed to UTA’s Grants & Contracts Administrator at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-3059.

28. **CONFLICT OF INTEREST**

Contractor represents that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of UTA to secure favorable treatment with

respect to being awarded the Contract. No member, officer, or employee of UTA during their tenure or one year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

29. NOTICES OR DEMANDS

a. Any and all notices, demands or other communications required hereunder to be given by one party to the other shall be given in writing and may be electronically delivered, personally delivered, mailed by US Mail, postage prepaid, or sent by overnight courier service and addressed to such party as follows:

If to UTA:

Utah Transit Authority
 ATTN: Vicki Woodward
 669 West 200 South
 Salt Lake City, UT 84101
vwoodward@rideuta.com

If to Contractor:

Wabtec Company
 ATTN: Jake Jacobsen
 30 Isabella Street
 Pittsburgh, PA 15212
jjacobsen@wabtec.com

b. Either party may change the address at which such party desires to receive written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

30. CLAIMS/DISPUTE RESOLUTION

- a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract.
- b. Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 20. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- c. Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
- d. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- e. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
UTA's Project Manager/Contractor's Project Manager	Five calendar days
UTA's Director/Contractor Equivalent	Five calendar days
UTA's Chief Officer/Contractor Equivalent	Five calendar days

Unless otherwise directed by UTA's Project Manager, Contractor shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, than either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

31. **GOVERNING LAW**

The validity, interpretation and performance of the Contract shall be governed by the laws of the State of Utah without regard to its law on the conflict of laws. Any dispute arising out of the Contract that cannot be solved to the mutual agreement of the parties shall be brought in a state or federal court of competent jurisdiction in Salt Lake County, State of Utah. Contractor consents to the jurisdiction of such courts.

32. **COSTS AND ATTORNEY FEES.**

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, each party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

33. **SEVERABILITY**

Any provision of the Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Contract.

34. **AMENDMENTS**

Any amendment to the Contract must be in writing and executed by the authorized representatives of each party.

35. **FORCE MAJEURE**

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God, epidemic, pandemic, compliance with mandatory health mandates, strikes and/or war which are beyond that party's reasonable control. Either party may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

36. **NO THIRD-PARTY BENEFICIARIES**

The parties enter into the Contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of the Contract.

37. **ENTIRE AGREEMENT**

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto.

38. **COUNTERPARTS**

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

39. **NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

40. **SALES TAX EXEMPT**

Purchases of certain materials are exempt from Utah sales tax. UTA will provide a sales tax exemption certificate to Contractor upon request. UTA will not pay Contractor for sales taxes for exempt purchases, and such taxes should not be included in Contractor's Application for Payment.

41. **UTAH ANTI-BOYCOTT OF ISRAEL ACT**

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

42. **SURVIVAL**

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 7, 9, 10, 11, 12, 13, 15, 17, 18, 19, 21, 23, 24, 25, 30, 31, 32, and 40.

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed by officers duly authorized to execute the same as of the date of last signature below.

UTAH TRANSIT AUTHORITY:

WABTEC CORPORATION:

By:
Jay Fox
Executive Director

Date:

DocuSigned by:
By: *Robert Mulvin*
Robert Mulvin
E851C94807C142F...
VP - Services
Fed ID#83-0543909

Date: 5/4/2023

By:
Mary DeLoretto
Chief Service Development Officer

Approved as to Content and Form by

DocuSigned by:
Mike Bell
70E33A415BA44F6...
Mike Bell, AAG State of Utah

Date: 5/3/2023

Reviewed & Recommended by

Date:

Kyle Stockley
Project Manager

Exhibit A

Wabtec will deliver the HEP CIP to UTA Salt Lake City, Utah, USA.

The HEP will be mounted to a structure that is representative of the locomotive.

The major assemblies within the HEP:

- a. 2024401 HEP Skid Equipped
- b. 2030007 HEP Contactor Cabinet
- c. 2032613 HEP Relay Cabinet Equipped
- d. 2024412 HEP Hatch Arrangement

The HEP cooling hatch will be representative of the locomotive, with approximately two feet of additional height and sufficiently supported.

The HEP wiring will be representative of the locomotive wiring schematic and compartment lighting.

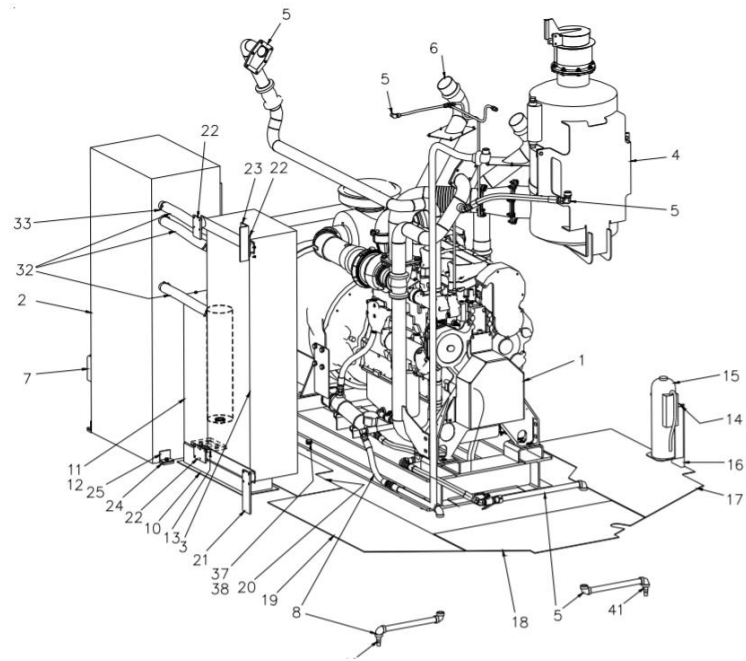
The HEP will consist of the necessary provisions to allow connection of the HEP to an external load box.

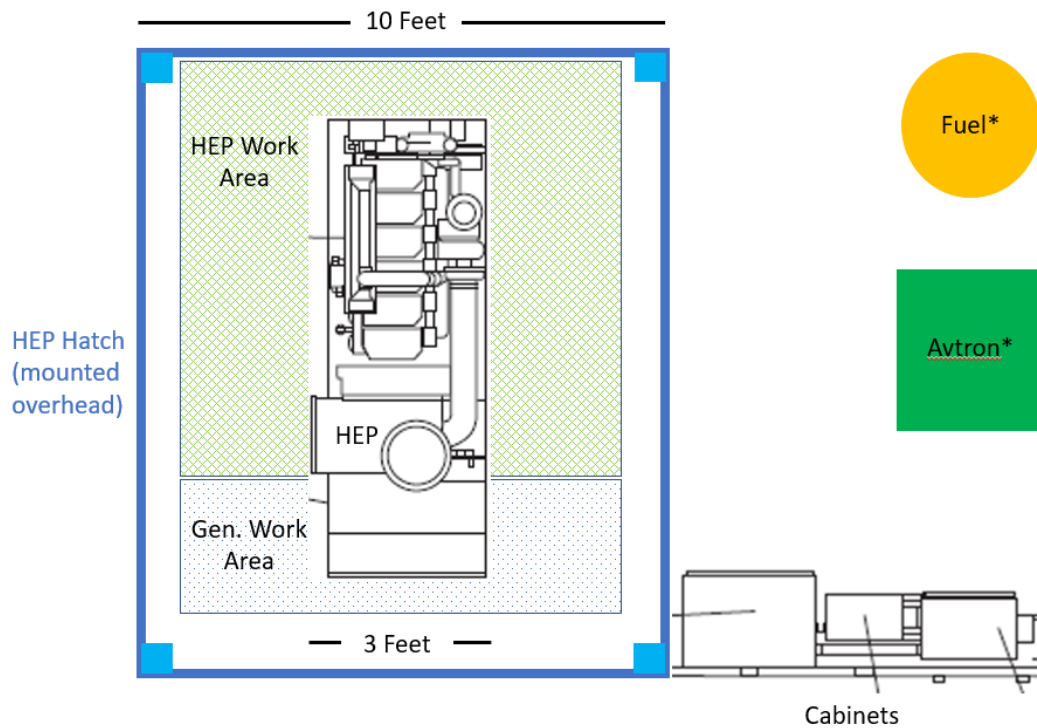
The HEP subcomponents that make up the assembly can be lifted from overhead or forklift as operations deems appropriate.

Part 1 – HEP Training Module Project Specific Information

1.01 Overview

- A. UTA currently operates 18 Motive Power Incorporated (MPI) MP36PH-3C locomotives on its FrontRunner commuter rail system. UTA is looking to retain a Contractor to provide all labor and materials necessary to construct a HEP training module that is representative of the actual HEP systems installed in these MP36PH-3C locomotives.
- B. The HEP training module shall utilize the same materials as that of the locomotive and be constructed such that it mimics the actual HEP compartment of the locomotive as much as practical.





(Proposed Layout)

1.02 General

1. This specification covers the scope of work and material requirements for the construction of a HEP training module. This training module shall be a fully functioning replica of the HEP system as installed on the MP36PH-3C locomotive.
2. The Contractor shall be responsible for the acquisition of all materials required for the completion of the HEP training module.
 - a. All materials shall be new.
3. All work performed on the HEP training module shall be in accordance with all the Contractor's Quality Assurance Manuals.
4. The Contractor shall be responsible for all shipping expenses. UTA will help to provide the unloading at the Salt Lake City, Utah facility during regular business days and hours.

1.03 Scope of Work

1) The following prescriptive requirements shall be included in the Contractors work procedures.

1. The HEP skid shall be mounted to a structure that mimics the underframe of the locomotive and sufficiently supports the weight of the components mounted to it.
 - a. Provisions shall be included for the complete draining of all fluids from the engine and cooling systems.
2. The following part numbers should be used to assemble the major assemblies within the HEP training module:

2024401	HEP Skid Equipped
2030007	HEP Contactor Cabinet
2032613	HEP Relay Cabinet Equipped
2024412	HEP Hatch Arrangement
3. The HEP cooling hatch shall be the same configuration as on the locomotive and sufficiently supported at all four corners to carry the weight and support of the HEP cooling hatch.
 - a. Cross bracing may be utilized to stiffen the structure if needed.
 - b. The walls shall be left open rather than the composite panels used on the locomotive.
4. All wiring shall comply with the appropriate wiring schematic of the UTA locomotives and be the same type and size as on the locomotive.
5. HEP training module shall have compartment lighting the same as on the locomotive.
6. Provision shall be made on one of the exterior walls to allow connection of the HEP generator to an external load box for system loading simulations.
7. Provisions to lift the HEP training module from both overhead and utilizing a forklift from the frame shall be incorporated.

Exhibit B

FEE FOR GOODS SERVICES AND PAYMENT SCHEDULE

The contract will be for a Not to Exceed (NTE) price amount of \$847,175.00. The entire amount due shall be invoiced after delivery and acceptance of the HEP Training Module. Contractor shall be reimbursed for reasonable and allowable costs, overhead and profit on a time and materials basis up to the NTE amount. Supporting documentation for all invoiced amounts shall be provided and approved by the UTA Project Manager.

Payment terms: 30 days after day of invoice. Invoicing will occur when the HEP Training Module is completed, and title will transfer upon UTA receiving the Module at UTA facility in Utah.