

GOODS AND SERVICES SUPPLY AGREEMENT

UTA CONTRACT NO. 21-03455

SD 100/160 HVAC Overhaul Kits

THIS GOODS AND 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 MERAK NORTH AMERICA, LLC., (the “Contractor”).

RECITALS

WHEREAS, on August 25, 2021, UTA received competitive Bids to provide the replacement parts specifically for the overhaul of the two different ThermoKing HVAC units used by UTA. UTA’s SD 100 and 160 Light Rail Vehicles and (as applicable) all associated hardware, software, tools, installation services, commissioning and testing services, training, and documentation (the “Goods and Services”) according to the terms, conditions and specifications prepared by UTA in IFB 21-03455 (the “IFB”); and

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

WHEREAS, the SD 100/160 HVAC Overhaul kits IFB dated July 1, 2021, bid submitted by the Contractor in response to the IFB (“Contractor’s Bid) was deemed to be the most advantageous to UTA; and

WHEREAS, Contractor is willing to furnish 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**

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).

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 (as reasonably determined by UTA). Contractor shall deliver all Goods and perform all Services no later than December 8, 2023. This guaranteed 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 Bid including, without limitation, all federal certifications (as applicable);
3. UTA's IFB 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. UTA Contract including all attachments
2. UTA Terms and Conditions
3. UTA Solicitation Terms
4. Contractor's Bid or Proposal including proposed terms or conditions

Any contractor proposed term or condition 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 UTA.
- c. Within thirty (30) days after delivery, the Goods shall be subject to inspection, testing and acceptance by UTA, including any testing or commissioning process described in the specifications. During such thirty (30) day period, 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 be replaced, repaired or re-performed so as to conform to the Contract. If Contractor is unable or refuses to correct such Goods within a reasonable period of time from the date of receipt by Contractor of UTA's notice to defect, 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. If UTA has not expressly accepted or rejected the Goods within such thirty (30) day period, the Goods shall be deemed accepted by UTA. Neither UTA's inspection of the production processes, production progress, or deemed acceptance, (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.
- 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 submit invoices to UTA's Project Manager for processing and payment in accordance with Exhibit B Invoices shall be provided in the form specified by UTA. Reasonable supporting documentation including pricing data demonstrating Contractor's entitlement to the requested payment must be submitted with each invoice.
- b. UTA shall have the right to dispute (and withhold from payment) specific line items of each invoice to address non-conforming Goods or Services. Approval by UTA shall not be unreasonably withheld. Payment for all invoice amounts not specifically disputed by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

9. **WARRANTY OF GOODS AND SERVICES**

- a. Contractor warrants, for a period of two (2) years from the date that the Goods are delivered (the "Warranty Period"), 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 made a part of (or incorporated by reference into) the Contract. Contractor further warrants that during the Warranty Period all Goods and Services shall be of the quality 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 during the Warranty Period, Contractor shall at its own expense promptly repair, replace and/or re-perform any Goods or Services that are included in the scope of supply defined in Exhibit A and are defective or in any way fail to conform to the Contract requirements.
- d. If Contractor fails to promptly make any repair, replacement or re-performance as required herein, UTA may conduct the necessary remedial work at Contractor's expense. Contractor cannot void the warranty for repair, replacement or re-performance performed under these circumstances. Provided that such repair, replacement or re-performance is conducted in a reasonable manner and with workmanship and care consistent with industry standards, Contractor's documentation and this Contract, Contractor shall reimburse UTA for the cost of any warranty repair, replacement or re-performance self-performed by UTA.

All other warranties or conditions, express or implied, including without limitation, warranties of merchantability, non-infringement or fitness for a particular purpose are hereby disclaimed by contractor and its affiliates to the extent permitted by applicable law.

10. **OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT**

Any deliverables prepared or developed pursuant to the Contract including without limitation assembly and installation drawings, specifications, manuals, and reports, shall become the property of UTA, except for any pre-existing intellectual property associated therewith but not paid for under the contract, which shall remain the property of Contractor, when prepared, and, together with any documents or information furnished to Contractor and its employees or agents

by UTA hereunder, shall be delivered to UTA upon request, and, in any event, no later than termination or expiration of this Contract. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables is, includes or incorporates the intellectual property of Contractor, Contractor hereby grants UTA a fully paid, perpetual license to use such intellectual property solely for UTA's operation, maintenance, and replacement of UTA's assets. The scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's contractors, agent, officers, directors, employees, joint owners, affiliates and consultants.

11. **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 liabilities, 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 to the extent caused, or alleged to be caused, in whole or in part, by the negligent acts or omissions of Contractor or 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 negligence of UTA or the Indemnitees or any third party. The forgoing indemnity is the sole and exclusive remedy of UTA against Contractor and the sole and exclusive liability of Contractor to UTA for the cause of action giving rise to the indemnity obligation.

12. **INSURANCE REQUIREMENTS**

- a. Contractor and subcontractors shall procure and maintain until all of its obligations have been discharged (including satisfaction of all warranty periods under the Contract), insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
- b. The insurance requirements herein are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. UTA in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under the Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.
- c. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum

liability requirements provided that the coverage is written on a “following form” basis.

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

The policy shall be endorsed to include the following additional insured language: “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 the Contract.

Combined Single Limit (CSL)	\$2,000,000
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The policy shall be endorsed to include the following additional insured language: “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

Policy shall contain a waiver of subrogation against UTA.

d. The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where UTA is named as an additional insured, UTA shall be an additional insured to the full limits of liability purchased by the Contractor. Insurance limits indicated in the Contract are minimum limits. Larger limits may be indicated after the Contractor’s assessment of the exposure for the Contract; for its own protection and the protection of UTA.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- e. Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Utah and with an "A.M. Best" rating of not less than A-VII. UTA in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- f. Contractor shall furnish UTA with certificates of insurance (ACORD form or equivalent reasonably approved by UTA) as required by the Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- g. Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to UTA separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.
- h. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. UTA in no way warrants that the minimum 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.

13. **OTHER INDEMNITIES**

- a. Contractor shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all third party claims of any kind or nature whatsoever on account of the infringement of such third party's intellectual property rights by 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, 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 non-payment by Contractor for 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 a reasonable period of time 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 reasonable 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 a reasonable period of time after receiving from UTA written notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse UTA for all reasonable costs incurred and expenditures made by UTA to satisfy such claim.

- c. The forgoing indemnities are the sole and exclusive remedy of UTA against Contractor and the sole and exclusive liability of Contractor to UTA for the causes of action giving rise to the indemnity obligation.

14. **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.

15. **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).

16. **USE OF SUBCONTRACTORS**

- a. Contractor shall give advance written notification to UTA of any proposed subcontract exceeding \$100,000 (not indicated in Contractor's Bid) negotiated with respect to the Work. UTA shall have the right to approve all such subcontractors, such approval not to be withheld or delayed 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 in accordance with the agreement between Contractor and its subcontractor.
- d. Contractor shall be responsible for and direct all Work performed by subcontractors.
- e. Contractor agrees that all subcontracts shall comply with all applicable laws

17. **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 UTA and 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 Contractor's performance under this Contract. Contractor acknowledges that its Goods and Services might affect UTA's Environmental Management Systems obligations. A partial list of activities, products or Services deemed as have a potential EMS effect is available at the UTA website www.rideuta.com. Upon request by UTA, Contractor shall complete and return a *Contractor Activity Checklist*. 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. 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.

18. ASSIGNMENT OF CONTRACT

Contractor shall not assign any of its rights or responsibilities, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of UTA, except for any assignment to a parent, affiliate or subsidiary of Contractor which is the same legal entity as the contractor, and any attempted transfer in violation of this restriction shall be void.

20. SUSPENSION OF WORK

- a. UTA may, at any time, by written order to Contractor, require Contractor to suspend, delay, or interrupt, up to a maximum of 90 days, all or any part of the Work called for by this Contract. 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 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 a Suspension of Work Order is not canceled and the Work covered by such order is terminated for the convenience of UTA, reasonable costs incurred as a result of the Suspension of Work Order shall be considered in negotiating the termination settlement.
- d. 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

- a. **FOR CONVENIENCE**: UTA shall have the right to terminate the Contract at any time by providing written notice to Contractor. If the Contract is terminated for convenience, UTA shall pay Contractor: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subcontractor termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract.

Contractor shall promptly submit a termination claim to UTA. If Contractor has any property in its possession belonging to UTA, Contractor will account for the same, and dispose of it in the manner UTA directs.

- 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, in which event Contractor shall be liable for all incremental costs so incurred by UTA;
 2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
 3. Except to the extent limited by the Contract, pursue other remedies available at law.
- c. **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) upon payment therefore, deliver to UTA all data, drawings and other deliverables, whether completed or in process. 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). All rights and remedies provided in this Article are cumulative and not exclusive. 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 Statement of Work or Specifications
 3. In the schedule or completion dates applicable to the Work.
- b. To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Contractor's cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Contractor whole with respect to the impacts of such change.
- c. A change in the Work described in subparagraphs 1 through 3 above may only be directed by

UTA through a written, Change Order or (alternatively) UTA's expressed, written authorization directing Contractor to proceed pending negotiation of a 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. For changes which are out of scope i.e. not included in subparagraphs 1 through 3 above, mutual agreement is required. The Contractor shall not be responsible for performance under any out-of-scope Change Order until it has been mutually agreed and executed by the parties hereto.

- 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.
- e. Contractor must provide notice of a "constructive" change and assert its right to an equitable adjustment under this Section within thirty (30) days after Contractor becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the "constructive" change. Contractor's failure to provide timely written notice as provided above shall constitute a waiver of Contractor's rights with respect to such claim.
- f. As soon as practicable, but in no event longer than 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 and records related to the performance, quality or management of the Contract and/or Contractor's compliance with the Contract. Records shall be retained by Contractor for a period of at least six (6) years, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-year period, such records shall be made available at all reasonable times during normal working hours, upon prior written notice to Contractor, for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. No copies of requested records shall be furnished to UTA or designated audit parties.

24. **FINDINGS CONFIDENTIAL**

- a. Any documents, reports, information, or other data and materials available to or prepared or assembled by Contractor or subcontractors, or UTA under this Contract are considered

confidential and shall not be made available to any person, organization, or entity without consent in writing from the other party.

b. It is hereby agreed that the following information is not considered to be confidential:

1. Information already in the public domain;
2. Information disclosed by a third party who is not under a confidentiality obligation;
3. Information developed by or in the custody of a party before entering into this Contract;
4. Information developed by a party through its work with other clients; and
5. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

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 Jolene Higgins, 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)287-1925.

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: Jolene Higgins
669 West 200 South
Salt Lake City, UT 84101
jhiggins@rideuta.com

If to Contractor:

Merak North America, LLC.

ATTN: Account Manager, Logan White
1 Arthur Peck Drive
Westminster, MD 21157
Logan.White@knorrbrake.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 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.
- b. 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.
- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. Except for an action for injunction or other interlocutory relief, no party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- d. 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, Kyle Stockley/Merak's Project Manager, Paul Virtz	Five calendar days
UTA's Director of Asset Management David Hancock/Merak's Director of Rail Services, Derek Hurst	Five calendar days
UTA's Contractor's Chief Service Development Officer Mary DeLoretto/Merak's Corporate Council, Jason Stansbury	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, then 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 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, the prevailing party shall be entitled to recover its reasonable 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**

Except for the obligation to pay amounts when due, neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war, pandemic and any other cause which are beyond that party's reasonable control.

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. **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.

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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:

MERAK NORTH AMERICA, LLC:

By _____
Mary DeLoretto
Interim Executive Director
Date: _____

DocuSigned by:
By Derek Hurst
F04797A40E0DB412...
Derek Hurst
Director, Rail Services
Date: 11/22/2021

By _____
David Hancock
Director of Asser Management
Date: _____

Approved as to Content and Form
DocuSigned by: _____ 11/19/2021

Mike Bell
Mike Bell
Assistant Attorney General

UTA Counsel

Reviewed & Recommended

DocuSigned by: _____ 11/19/2021

Kyle Stockley
49657239372242E...
Kyle Stockley
Rail Infrastructure Project Manager

UTA Project Code: SGR040

Exhibit A

Scope of Work

1. Overhaul of HVAC Units

- a. General - UTA has in operation 23 SD100 and 17 SD160 Siemens light rail vehicles (LRVs) outfitted with ThermoKing unitized HVAC units utilizing R-407C refrigerant. Each LRV is provided with two roof-mounted units. Contractor shall overhaul HVAC units including replacement parts.
- b. HVAC overhaul scope of work to include the cleaning, disassembly, refurbishment, repair (as necessary) and testing of the HVAC units. The Contractor will be provided with a maximum of 4 HVAC units at any one time. To the extent possible, shipments to and from UTA will be in sets of 2 HVAC units. The overhaul procedure shall be as specified in section e of the IFB. UTA personnel shall be responsible for the removal and installation of the HVAC units and any associated components from the vehicles. All mounting hardware and fasteners shall also be sourced and fitted by UTA except as otherwise specified. Shipping costs to and from UTA's facility shall be the responsibility of the Contractor. See Section j of the IFB for additional information.
- c. Overhaul Activities - On receipt, each HVAC shall undergo a thorough inspection and testing process to ascertain the condition of the unit prior to the commencement of any overhaul activities. APTA-RT-VIM-RP-04-02 shall be used as a guide for the receiving inspection. The Contractor shall perform a functional test of the unit to confirm proper operation prior to beginning any disassembly work. It is the responsibility of the Contractor to change any defective item that is required, whether or not the part is listed in the OEM manuals.
 - 1) Any out of scope work identified shall be brought to the attention of UTA before any remedial work is undertaken.
 - 2) All additional costs of repair or replacement not included in the midlife overhaul scope must be approved by UTA in writing on a case-by-case basis.
- i. During the overhaul process all parts shall be inspected for cracks, breaks and any obvious physical damage.
 - 1) Inspect all wires and terminals for any obvious physical damage. If found, replace defective wire or terminals.
 - 2) Inspect hinges and latches for bends or wear. If found, replace defective hinge or latch.
 - 3) Inspect for missing or damaged decals and replace as required.
 - 4) Report any other damage to UTA for disposition.
- ii. All gaskets, sealing compounds, o-rings, and other elastomeric components shall be replaced with new.
- iii. The Contractor shall reassemble the HVAC unit in accordance with the OEM procedures.

- d. Testing and Final Inspection - The Contractor shall ensure that the refurbished HVAC unit is functioning and operating properly, was inspected, measured, repaired, and painted according to the procedures mutually agreed upon with UTA. The Contractor shall utilize a test set-up for the HVAC unit simulating operation as if installed on the vehicle.
 - 1) Operation of the unit shall include all phases of heating and cooling.
 - 2) Simulated signals shall be generated using an HVAC portable test unit.
 - i. Each overhauled unit shall be operated for one hour cycling through all heating and cooling modes as a burn-in test prior to shipment.
 - ii. Each overhauled HVAC unit must bear a stamp or tag identifying the overhaul date.
- e. Documentation - Prior to the commencement of work the Contractor shall submit the following documentation in a UTA approved format:
 - 1) Project Schedule NTP + 30 days
 - 2) Quality Assurance Plan NTP + 30 days
 - 3) Receiving Inspection and Test Procedures NTP + 30 days
 - 4) First Article Inspection Plan NTP + 60 days
 - 5) Pre-shipment Inspection and Test Procedures NTP + 60 days
 - 6) Shipping preparation and securement procedures NTP + 60 days
 - 7) Detailed work procedures NTP + 30 days
 - 8) Inspection and Test Reports 5 days prior to Shipment to UTA
 - i. A Quality Control Log Sheet for each HVAC unit overhauled. The sheets must be used to record all inspection and test data and must accompany the HVAC unit from receipt through return to UTA.
 - 1) At a minimum, the log sheet must include the serial number of the HVAC unit, test and inspection procedures and results, dates on which the inspection or test was conducted, and identification of the individual responsible for the work.
 - 2) The sheet must reserve space for the inspector/tester to enter comments for clarification or unusual conditions.
- f. Quality Requirements - The Contractor shall include the Option work in the Quality Assurance plan described in Section h of the IFB. Upon prior written notice to Contractor, UTA shall have the right, during normal business hours, to inspect the Contractor's repair shop and any repaired HVAC before it is returned to UTA. UTA shall also have the right to witness any repairs performed on the unit assembly. The Contractor shall notify UTA when repair work will be performed, and when the first unit assembly is ready and available for First Article Inspection. Sufficient notice shall be provided to allow UTA to be present for the inspections. The Contractor shall successfully complete a quality inspection and functional test each unit before the unit is returned to UTA.

Exhibit B

Price

Overhaul of HVAC Units including parts	QTY	Firm Fixed Price (each)	Extended Firm Fixed Price
SD100	46	\$19,975.00	\$918,850.00
SD160	34	\$19,975.00	\$679,150.00

Contractor shall invoice UTA when each completed HVAC unit is received by UTA

All shipping costs included in the price above.