

Contract Index
Contract BDS02
Central Florida Commuter Rail Transit,
Diesel Electric Passenger Locomotives
Financial project No. 412994-6-53-02

1. Standard Written Agreement, Page 1 through 8
2. Exhibit "A", Scope of Services, Pages A-1 through A-3
3. Exhibit "B", Method of Compensation, Pages B-1 through B-7
4. Exhibit "B-1", Milestone Payment Requirements, Pages B-1.1 through B-1.12
5. Exhibit "C", Price Proposal form, Page C-1 through C-6
6. Exhibit "D", VEHICLE DESIGN CRITERIA, Remanufactured Diesel Electric Passenger Locomotives, Pages D-I through D-140
7. Exhibit "E" Federal Transportation Administration Requirements for Rolling Stock, Pages E-1 through E-16
8. Exhibit "F" Software Code Deposit Agreement, Pages F-1 through F-8
9. Exhibit "G", General Contract Conditions (PUR 1000), Pages G-1 through G-11
10. Exhibit "H", General Instructions to Respondents (PUR 1001) Pages H-1 through H-5
11. Exhibit I, Train Color Scheme Composite, 1 Page
12. Appendix "A" IOS 2010 Scenario Preliminary Train Schedules, Page 1
13. Appendix "B" LPA 2013 Scenario Preliminary Train Schedules, Page 1
14. Appendix "C" Full Build 2010 Scenario Preliminary Train Schedules, Page 1
15. Table 8, Full Build Estimated Station to Station Run Times, Page 1
16. Table 9, Operating Requirements for Commuter Rail Scenarios, Page 1
17. Insurance Certificate, 2 pages
18. Performance Bond, form 375-040-27, 1 Page

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STANDARD WRITTEN AGREEMENT

Agreement No.: BDS02

Financial Project I.D.: 412994-6-53-02

F.E.I.D. No: F232837369-001

Procurement No. ITN-DOT-08-09-5001-LOC

D.M.S. Catalog Class No.: 737-100

BY THIS AGREEMENT, made and entered into this 2nd day of May, 2011, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the "Department" and MotivePower, Inc. of 4600 Apple Street, Boise ID, 83716 duly authorized to conduct business in the State of Florida, hereinafter called "Vendor," hereby agree as follows:

1. SERVICES AND PERFORMANCE

- A. In connection with Central Florida Commuter Rail Transit Diesel Electric Passenger Locomotives the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibit "A," attached hereto and made a part hereof.
- B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).
- C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement exclusively at the cost of and exclusively for the benefit of the Department, as well as all data collected, together with summaries and charts derived there from exclusively at the cost of and exclusively for the benefit of the Department, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time exclusively at the cost of and exclusively for the benefit of the Department. As to all other intellectual property prepared, used or otherwise connected in any way with this Agreement, the Department shall have a perpetual, irrevocable, royalty free, non-exclusive license for the use thereof in connection with the commodities and services procured pursuant to this Agreement, which license shall be deemed assigned to any other entity to whom the commodities may hereafter be conveyed. Tracings, plans, specifications, maps, computer files, and reports that contain or are based on intellectual property that is owned by entities other than the Vendor or the Department shall not be deemed to be prepared or obtained under this Agreement exclusively at the cost of and exclusively for the benefit of the Department, and shall be used by the Department only pursuant to the license granted hereunder.
- D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.
- E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to this Agreement may request and be granted a conference.
- F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith. Reference herein to the Director shall mean the Director of Transportation Operations

2. TERM

A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through completion of all services required or _____, whichever occurs first. Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate):

Services shall commence _____ and shall be completed by _____ or date of termination, whichever occurs first.

Services shall commence upon written notice from the Department's Contract Manager and shall be completed by _____ or date of termination, whichever occurs first.

Other: See Exhibit "A" and Exhibit "B"

B. RENEWALS (Select appropriate box):

This Agreement may not be renewed.

- This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever period is longer. Renewals shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Any renewal or extension shall be in writing and shall be subject to the same terms and conditions set forth in this Agreement.

C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this Agreement; provided the Department may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There shall be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Section 215.422(14), Florida Statutes.
- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted in accordance with Section 112.061, Florida Statutes, and Chapter 3 -Travel, Department's Disbursement Operations Manual, 350-030-400.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has forty five (45) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

- F. If a payment is not available within forty (40) days from the date the goods and services are received, inspected and approved, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering re-procurement costs from the Vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable Attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary here under, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

Notwithstanding any term or condition herein to the contrary, in no event shall either party be liable to the other for special, indirect, incidental, punitive or consequential damages, including, but not limited to, lost data or records (unless the contract or purchase order requires the contractor to back-up data or records,) lost profits, lost revenue, lost savings or lost opportunity, even if the other party has been advised that such damages are possible.

PAYMENT FOR CLAIMS: The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

Vendor's cumulative liability to the Department under this paragraph 4.A. shall be limited to 100% of the purchase price paid to the Vendor by the Department under this Agreement. The purchase price shall include any optional purchases if the Department elects to exercise the option

B. LIABILITY INSURANCE. (Select and complete as appropriate):

No general liability insurance is required.

Prior to Notice to Proceed the vendor shall submit to the Department the proof that following insurance policies are in place. Failure to provide the necessary Insurance will be considered a material default under this contract. The Vendor shall carry and keep in force during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with a combined bodily injury limits of at least \$500,000.00 per person and \$ 1,000,000.00 each occurrence, and property damage insurance of at least \$500,000.00 each occurrence, for the services to be rendered in accordance with this Agreement.

The Vendor shall have and maintain during the term of this Agreement, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to Chapter 675 Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording liability coverage for the professional services to be rendered in with this Agreement in the amount of \$ _____

C. WORKERS' COMPENSATION. The Vendor shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

D. PERFORMANCE AND PAYMENT BOND.

PROVISION FOR BONDS (PERFORMANCE, WARRANTY AND OPTIONS)

The Vendor shall supply to the Department the following bonds for the initial procurement:

(a) Within ten (10) calendar days of Notice to Proceed to this Agreement, a performance bond in the amount of \$4,000,000.00 ("Performance Bond"), provided by a surety authorized to do business in the State of Florida, on the Form included in the Agreement, which shall guarantee the prompt, faithful and efficient performance of the base procurement under this Agreement, including warranty provisions. A Rider for this Performance Bond shall be issued to reduce the amount to \$1,720,680.00 upon final acceptance of the last vehicle of the initial procurement. The Performance Bond shall expire at the end of the two-year warranty or the proper and final completion of all repairs, replacements, or payments under the two-year warranty, whichever is later. Failure to provide a properly executed performance bond within the time provided shall be a material default under this Agreement, time being of the essence in the delivery thereof.

The Vendor shall supply the Department the following bond and rider for each of the additional procurements for Optional Vehicles:

(b) Within ten (10) calendar days of the issuance of a purchase order for an additional order of Optional Vehicles under this Agreement, a Performance Bond in an amount equivalent to twenty-five (25%) of the Compensation of the Optional Vehicle procurement ("Option Performance Bond"), provided by a surety authorized to do business in the State of Florida, on the Form included in the Agreement, which shall guarantee the prompt, faithful and efficient performance of this additional procurement under this Agreement, including warranty provisions.. A Rider for this Option Performance Bond shall be issued to reduce the amount to ten percent (10%) of the Compensation of the Optional Vehicle procurement upon final acceptance of the last vehicle of this additional procurement. The Performance Bond shall expire at the end of the two-year warranty or the proper and final completion of all repairs, replacements, or payments under the two-year warranty, whichever is later. The notice to proceed for the additional order will not be issued until the properly executed performance bond is received by the Department. Failure to provide a properly executed performance bond within the time provided shall be a material default under this Agreement, time being of the essence in the delivery thereof.

E. CERTIFICATION. With respect to any insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department

certificates showing the required coverage to be in effect and showing the Department to be an additional certificate holder. Such policies shall provide that the insurance is not cancelable except upon thirty (30) days prior written notice to the Department.

5. COMPLIANCE WITH LAWS

- A. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written consent.
- C. The Vendor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
 - (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
 - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
 - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
- G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Nationality Act. If the Vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.

- I. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the Department. Notwithstanding the foregoing, the Department will provide the Vendor with an opportunity to cure before terminating for unsatisfactory performance as provided in Rule 60A-1.006(3), F.A.C."
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor

7. ASSIGNMENT AND SUBCONTRACTS

- A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of the Department.

- B. Select the appropriate box:

- The following provision is not applicable to this Agreement:
- The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned.

- The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in Sections 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned.

The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc.(PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises
12425 - 28th Street, North
St. Petersburg, FL 33716-1826
(800)643-8459

This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all its subcontracts under this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Forms PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made a part of this Agreement.

I. E- VERIFY

Vendor/Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. All persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
2. All persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Department.

J. Time is of the essence as to each and every obligation under this Agreement.

K. The following attachments are incorporated and made a part of this agreement:

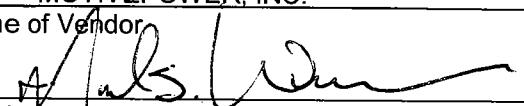
- Exhibit "A", Scope of Services, Pages A-1 through A-3
- Exhibit "B" Method of Compensation, Pages B-1 through B-7
- Exhibit "B-1", Payout Schedule Milestone Detail, Pages B-1.1 through B-1.12
- Exhibit "C" Price Proposal, Pages C-1 through C-6
- Exhibit "D" SunRail Remanufactured Locomotive Contract Design Criteria, Pages D-1 through D-140
- Exhibit "E" Federal Transportation Administration (FTA) Terms and Conditions, Pages E-1 through E-16
- Exhibit "F" Software Code Deposit Agreement, Pages F-1 through F-8
- Exhibit "G", General Contract Conditions (PUR 1000), Pages G-1 through G-11
- Exhibit "H", General Instructions to Respondents (PUR 1001) Pages H-1 through H-5
- Exhibit "I" Train Color Scheme Composite
- Appendix A, IOS 2010 Scenario Preliminary Train Schedules, Page 1
- Appendix "B" LPA 2013 Scenario Preliminary Train Schedules, Page 1
- Appendix "C" Full Build 2016 Scenario Preliminary Train Schedules, Page 1
- Schedule Tables 8 and 9, 1 Page each
- Insurance Certificate, 2 Pages
- Performance Bond, 1 Page

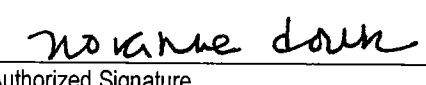
L. Other Provisions:

In case of conflict the contract documents shall have the following order of precedence:

- Exhibit "E" FTA Terms and Conditions
- Exhibit "D" SunRail Remanufactured Locomotive Contract Design Criteria
- Exhibit "A" Scope of Services
- Exhibit "B" Method of Compensation
- Standard Written Agreement
- Invitation to Negotiate No: ITN-DOT-08-09-5001-LOC and Addenda
- Exhibit "F" Software Code Deposit Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

MOTIVEPOWER, INC.
 Name of Vendor
 BY: 
 Authorized Signature
Mark S. Warner
 (Print/Type)
 Title: Vice President & General Manager

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
 BY: 
 Authorized Signature
Navanne Downs
 (Print/Type)
 Title: District 5 Secretary

FOR DEPARTMENT USE ONLY

Approved: 
 Procurement

LEGAL REVIEW: 

Exhibit "A"
Scope of Services
Contract BDS02
Central Florida Commuter Rail Transit Diesel Electric Passenger Locomotives
Financial Project Number 412994-6-53-02

I. Introduction

This Exhibit "A" describes the performance required of the Vendor under this Agreement.

II. Description of Goods and Services

The goods and services to be provided are described as follows:

a. Locomotives

Vendor shall design, produce, test, deliver and warrant up to 20 Diesel Electric Passenger Locomotives ("Locomotives"). The Locomotives shall be MotivePower, Inc.'s remanufactured GP40WH Tier 0+ Locomotives or comparable new (MP39PH-3C) Environmental Protection Agency (EPA) rated Tier 3 locomotives. Each Locomotive shall be single ended, four-axle units, capable of bi-directional operation as push pull commuter train or longer consist with other Locomotives. All Locomotives shall be able to operate and be fully functional in a consist (Train Set) of up to six (6) cars. One end of the Locomotive shall have a fully-equipped operating cab. Operating controls and performance shall be equal in both directions. The Locomotives shall comply with the Design Criteria contained in Exhibit "D" Remanufactured Diesel Electric Passenger Locomotives.

b. Spare Parts

The Department may purchase spare parts during the term of this Agreement from Table 2 attached to Exhibit "B" at the prices specified therein. There is no minimum or maximum on the number of orders or on the quantity of spare parts that may be purchased. Spare parts shall be purchased through the issuance of a Department standard purchase order. Spare parts pricing as shown in Table 2 of Exhibit "B" Method of Compensation shall be valid for orders placed through December 31, 2012.

c. Training and Manuals

The Department's Operations and Maintenance Contractor will provide the train crews for acceptance testing of the Locomotives. Vendor will provide, as part of the purchase price for the Locomotives, training for these train crews sufficient to allow the crews to safely and completely operate the Locomotives during the testing. The training will be provided at the site of the acceptance testing at a time selected by Vendor. Vendor shall provide reasonable advance notice to the Department of the time for training. Vendor shall deliver manuals that fully describe all operation and maintenance procedures and contain "As-Built" drawings and specifications with each Locomotive in accordance with Exhibit "D".

III. Delivery

Vendor shall not commence work under this Agreement prior to the Department's issuance of a Notice to Proceed. The Department will issue a Notice to Proceed for the initial purchase. Additional purchases shall be authorized by purchase order as set forth herein. It is currently anticipated that the Notice to Proceed for the initial purchase will be issued on or about June 1, 2011. In the event the Department actually issues such Notice to Proceed for the initial purchase subsequent to June 1, 2011, the Vendor's remedy, in addition to the provisions provided in Exhibit B,

Section 2.0, will be an adjustment of the delivery schedule based on the actual date of issuance as provided in the chart in subsection III below. Under no circumstances shall the Department have any liability, nor shall Vendor have any claim, or cause of action whatsoever for any monetary compensation, damages, or other relief of any nature or kind if a Notice to Proceed for the initial purchase is never issued by the Department.

The Locomotives shall be delivered to the Vehicle Storage and Maintenance Facility (the "VSMF"). Spare parts shall be delivered to the location and within the time specified on the purchase order. The first seven (7) Locomotives shall be delivered in accordance with the below Vehicle Delivery Schedule. Locomotives shall not be delivered prior to November 1, 2012, unless the parties agree otherwise. The Department has until five (5) years from the date of the execution of this Agreement to order up to an additional thirteen (13) Locomotives in one or more orders. Orders shall be placed using the Department's standard purchase order form. For each such order of additional Locomotives, Vendor shall have no less than twelve (12) months to deliver the first Locomotive under the additional order. The remaining Locomotives under the additional order shall be delivered as specified in the purchase order, provided that Vendor shall not be required to deliver the remaining vehicles under the additional order more frequently than at two (2) week intervals. Vendor shall coordinate with the Department's Design/Build Firm, who is responsible for building the Vehicle Storage and Maintenance Facility for storage and security of the Locomotives, regarding schedule and method of delivery for the Locomotives. The Department's Chief Operating Officer (COO) will assist in the coordination between the Vendor and the Design/Build Firm. Vendor shall also coordinate with the Department's Operations and Maintenance Contractor and the Chief Operating Officer regarding testing and acceptance of all Locomotives. Testing and acceptance is specified in Exhibit "D".

Vehicle Delivery Schedule – Remanufactured Locomotives		
Locomotives	Delivery Period Begin	Delivery Period End = Vehicle Delivery begin date plus
#1 FAI	Notice to Proceed plus 18 months (547 Days)	20 Days
#1	FAI plus 20 days	40 Days
#2	Vehicle #1 plus 40 days	14 Days
#3	Vehicle #2 plus 14 days	14 days
#4	Vehicle #3 plus 14 days	14 days
#5	Vehicle #4 plus 14 days	14 days
#6	Vehicle #5 plus 14 days	14 days
#7	Vehicle #6 plus 14 days	14 days
• Days are Calendar days		

IV. Risk of Loss

Title to the Locomotives will pass upon delivery of the Locomotive to the Vehicle Storage and Maintenance Facility in accordance with Florida Statute 672.401. Risk of loss for the commodities delivered to the Vehicle Storage and Maintenance Facility under this Agreement shall pass to the Department at the time that title to the commodities transfers to the Department. When the Department rejects a commodity, the Vendor shall remove it within ten days after rejection. After rejection, the risk of loss of the rejected commodity shall revert to the Vendor. The rejected commodity not removed by the Vendor within ten days shall be deemed abandoned by the Vendor, and the Department shall have the

right to dispose of it as its own property. The Vendor shall reimburse the Department for costs and expenses incurred in storing or effecting removal or disposition of the rejected commodity.

V. Liquidated Damages

The Vendor acknowledges that failure to deliver vehicles by the end of the Delivery Period stated in the Vehicle Delivery Schedule, may cause the Department to incur damages that, at present are, and upon the occurrence of the failure to so timely perform may be, difficult to determine. Therefore, in the event the Vendor fails to timely perform in accordance with the vehicle delivery schedule, and the Department does not terminate this Agreement, the Department may exercise the remedy of liquidated damages against the Vendor, in the amount of \$450.00 per day for each calendar day after the applicable delivery period end date that the Vendor fails to provide each vehicle. The Parties agree that if the Department allows the Vendor to continue to perform after the expiration of the time allowed, that the Department's action shall in no way act as a waiver on the part of the Department of the liquidated damages due under this contract. The Vendor shall pay said sum to the Department not as a penalty, but as liquidated damages. The Department has the right to apply, as payment on such liquidated damages, any money the Department owes the Vendor. Vendor's cumulative liability to the Department for liquidated damages under this paragraph shall be limited to 10% of the purchase price paid to the Vendor by the Department under this Agreement. The purchase price shall include any optional purchases if the Department elects to exercise the option. Collection of liquidated damages payable under this paragraph shall be the Department's sole and exclusive remedy for events of delay covered by this paragraph.

VI. Additional Terms and Conditions

The Department of Management Services form PUR 1000, General Contract Conditions, is attached hereto and by this reference made a part hereof; provided, however, that the following paragraphs do not apply: 4, 5, 11, 12, 13, 15, 19, 20, 22, 23, 25, 26, 27, 29, 31, 35, 40, 41, and 42. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in this Agreement. That substance located elsewhere continues to apply regardless of this exception paragraph. Provided further, in paragraph 14 of PUR 1000, the reference to section 287.057(23), Florida Statutes (2002) is replaced by section 287.057(22), Florida Statutes.

The Department of Management Services form PUR 1001, General Instructions to respondents, is attached hereto and by this reference made a part hereof; provided, however, that the following paragraphs do not apply: 3, 4, 5, 12, 13, 14, 19, 20 and 21. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in this Agreement. That substance located elsewhere continues to apply regardless of this exception paragraph.

Exhibit "B"
Method of Compensation
Contract BDS02
Central Florida Commuter Rail Transit Diesel Electric Passenger Locomotives
Financial Project ID No. 412994-6-53-02

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the Vendor for the services defined in Exhibit "A" Scope of Services, and Exhibit "D" SunRail Remanufactured Locomotive Vehicle Design Criteria and the method by which payments will be made.

2.0 COMPENSATION

For satisfactory completion of the Initial Procurement as defined in Exhibit "A" Scope of Services and Exhibit "D" SunRail Remanufactured Locomotive Vehicle Design Criteria and authorized under this Agreement, the Department will pay the Vendor a Total Maximum Amount of \$17,206,805.00, as detailed in Exhibit "C" Price Proposal Forms for Remanufactured Vehicles 1-7. Currently only \$13,107,686.00 of the Total Maximum Amount is available, the remaining \$4,099,119.00 will be made available before the Notice to Proceed is issued. This is a Term Contract for a defined product whereby the Vendor agrees to furnish the commodity within the prescribed period of time. Subsequent to contract execution the Department will issue a Notice to Proceed for the commencement of manufacturing and services relative to the production and delivery of this commodity in accordance with Exhibit "A", Scope of Services. If Notice to Proceed for the Initial Procurement is not issued by July 31, 2011, the Vendor reserves the right to hold the prices as outlined in Exhibit "C" Price Proposal Forms (initial procurement and options) or terminate the agreement. The Vendor must exercise the right to terminate prior to the Department's issuance of a Notice to Proceed.

The Department, based on need and availability of budget, may increase the Maximum Amount by amendment. Execution of this Agreement does not guarantee that the work will be authorized. At the Department's option additional optional commodities, changes or services may be added to the contract through one or more supplemental amendments, contingent upon legislative appropriation and budget approval.

2.1 Summary of Compensation

Vehicles:

Initial Procurement:

The initial procurement is for seven (7) Diesel Electric Passenger locomotives as defined in Exhibit "A" Scope of Services and Exhibit "D" SunRail Remanufactured Locomotive Vehicle Design Criteria.

Fees for each vehicle delivered, tested and fully operational as defined in Exhibit "A" Scope of Services and Exhibit "D" SunRail Remanufactured Locomotive Vehicle Design Criteria shall not exceed \$2,458,115.00 as detailed in Exhibit "C" Price Proposal Forms (Remanufactured Vehicles 1-7) per vehicle inclusive of all inspections, testing, manuals, training, shipping and handling, bonding, insurance, software and drawings delivered FOB to the Vehicle Storage and Maintenance Facility, Rand Yard, Sanford, FL.

Optional Vehicles:

Option I: The Department will issue a Purchase Order for additional vehicles required under this provision. At the Department's option up to thirteen (13) additional vehicles as defined in Exhibit "A" Scope of Services and Exhibit "D" SunRail Remanufactured Locomotive Vehicle Design Criteria may be purchased at a per unit price of \$2,440,228.00 as detailed in Exhibit "C" Price Proposal Forms (Page C-2, Base Vehicles 8-20) per vehicle inclusive of all inspections, testing, shipping and handling, bonding and insurance delivered FOB to the Vehicle Storage and Maintenance Facility, Rand Yard, Sanford, FL so long as the order is placed within Twelve (12) months from the date of this Agreement.

Option II: The Department will issue a Purchase Order for additional vehicles required under this provision. At the Department's option up to an additional Thirteen (13) vehicles as defined in Exhibit "A" Scope of Services and Exhibit "D" SunRail Remanufactured Locomotive Vehicle Design Criteria may be purchased at a per unit price not to exceed \$2,895,019.00 as detailed in Exhibit "C" Page C-3, Price Proposal Form (Vehicles 8-20), per vehicle inclusive of all inspections, testing, shipping, and handling, bonding and insurance delivered FOB to the Vehicle Storage and Maintenance Facility, Rand Yard, Sanford, FL so long as the order is placed within Four (4) years from the expiration date of the Option 1. The price for vehicles purchased under this option will be calculated based on the price of \$2,440,228.00 for the base unit, as detailed in Exhibit "C" Price Proposal Form (Vehicles 8-20), plus an increase based on the following:

Prices shall be adjusted based on the changes between; (a) the final data for the indices described in A, B, and C below for the contractually agreed base month (December 2010) and (b) the final data for such indices in the month with respect to which a price adjustment is calculated. The indices cited are those reported by the U.S. Bureau of Labor Statistics.

(A) 25% of the Price will be adjusted based on the percentage increase (but not adjusted by any decrease) in the Association of American Railroads (AAR) Cost Index, Table C West for labor.

(B) 65% of the Price will be adjusted based on the percentage increase (but not adjusted by any decrease) in the US Producer Price Index, Table 8 "Industrial Commodities Excluding Fuels and Electrical Power" (Series I.D. wpu03t15m05 at www.bls.gov).

(C) 10% of the Price will be adjusted based on the percentage increase (but not adjusted by any decrease) in the US Producer Price Index "Commodities Group Metals and Metal Products" (Series I.D. wpu101 at www.bls.gov).

The labor index mentioned in subparagraph A, the material index mentioned in subparagraph B and the metal commodity index mentioned in subparagraph C shall be the latest published in final indices available at the time of any new option order. If the government discontinues publishing or revises its method of determining and selecting indicators listed above, including, without limitation, a change of the base period or the classification of labor or commodities contained in such indices, the parties shall agree on a substitute indicator or an appropriate method of adjusting the Base Value to provide a comparable index. If the Base Value has at that time already been adjusted, the adjusted value (the "Revised Pricing Value") will be used. In determining any adjustment of the price, the percentage of the increase shall be calculated and rounded off to the nearest tenth of one percent (1/10%).

Insurance for vehicles under Option II shall be quoted at the time of purchase. However the cost of such insurance shall be included in the "Not to Exceed" price for Option II vehicles.

Bonding for any Optional purchases shall be at a level proportionate to the initial procurement.

