

RESOLUTION NO. 13-_____

WHEREAS, the City of Huntsville, Alabama (hereinafter referred to as Distributor), and Tennessee Valley Authority (hereinafter referred to as TVA), have heretofore entered into Power Contract TV54501A, dated May 26, 1980, as amended (which contract is hereinafter called the Power Contract); and

WHEREAS, Navistar Diesel of Alabama, LLC (hereinafter referred to as Company), Distributor and TVA wish to enter into an agreement to cooperate in the Major Industrial Program (Program) to provide technical support and assistance to Company in order to identify and encourage implementation of energy efficiency and demand reduction improvements that can improve the efficiency of electric power and energy use in the Company's facility near Huntsville; and

WHEREAS, Company has selected for implementation the one (1) electrical project listed on Attachment A of the Agreement; and

WHEREAS, Company, Distributor and TVA wish to enter into such other arrangements as are necessary between TVA and Distributor with respect to Distributor providing service to Company under the Pilot Agreement;

WHEREAS, there is now presented to the City Council of the City of Huntsville, Alabama, a proposed tri-party letter agreement instituting the Program to be effective upon the date executed by TVA, with the representation that the said agreement has been approved by the Huntsville Electric Utility Board.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that it does hereby approve the aforesaid tri-party Agreement and Tommy Battle, as Mayor of the City of Huntsville, Alabama, be, and he is authorized to execute said tri-party Agreement for and on behalf of the City of Huntsville, Alabama, and the Clerk-Treasurer be and he is hereby authorized to attest the same and to affix thereto the seal of the City of Huntsville, Alabama, all in as many counterparts as may be necessary.

BE IT FURTHER RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville, the Tennessee Valley Authority and Navistar Diesel of Alabama, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement between Navistar Diesel of Alabama, LLC, City of Huntsville, Alabama and Tennessee Valley Authority," consisting of thirteen (13) pages and the date of _____, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed

copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the _____ day of _____, 2013.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2013.

Mayor of the City of Huntsville,
Alabama



6/13
Elec BO/Council
MEP

Tennessee Valley Authority, Post Office Box 1010, CSC 1A, Muscle Shoals, Alabama 35662-1010

May 22, 2013

Mr. William C. Pippin
President and Chief Executive Officer
Huntsville Utilities
Post Office Box 2048
Huntsville, Alabama 35804-2048

Dear Bill:

Enclosed for your review and execution are four duplicate originals of a proposed agreement to allow Navistar Diesel of Alabama, LLC (Navistar) to participate in the Major Industrial Program.

Please note that Navistar will sign and date the agreement in the space provide above its name as will the City of Huntsville.

Upon execution of all original copies by the customer and the City of Huntsville, please return the agreements to me for further handling. Upon execution by TVA three fully executed originals of the agreement will be returned to you.

If you have any questions, please contact me at (256) 386-2614.

Sincerely,

Kevin C. Chandler *by Al*
General Manager

Enclosures

cc: Mr. Darren Hunter
Contracts and Industrial Coordinator
Huntsville Utilities
Post Office Box 2048
Huntsville, Alabama 35804-2048



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

May 17, 2013

Contract No. 551357

Mr. Scott Seals, Manager of Special Services
Navistar Diesel of Alabama, LLC
646 James Record Road
Huntsville, Alabama 35824-1520

Mr. William C. Pippin, President and CEO
Huntsville Utilities
Post Office Box 2048
Huntsville, Alabama 35804-2048

Dear Mr. Seals and Mr. Pippin:

This will confirm the arrangements among Navistar Diesel of Alabama, LLC (Company), the City of Huntsville, Alabama (Distributor), and Tennessee Valley Authority (TVA) concerning our cooperation in the Major Industrial Program (Program) to provide technical support and assistance to Company in order to identify and encourage implementation of energy efficiency and demand reduction improvements that can improve the efficiency of electric power and energy use in Company's facility located near Huntsville, Alabama. Company has selected for implementation the one electrical project that is listed on Attachment A from potential energy savings projects identified in the energy assessment that was provided by TVA and/or the US Department of Energy, and/or their contractors, to Company. This one project has the potential to reduce the electrical demand by approximately 760.27 kW and to reduce the energy use by approximately 8,819,895 kWh (Estimated Energy Savings) per year at the Company's facility.

It is understood and agreed that:

1. The authorized representatives for Program implementation are:

Company: Mr. Scott Seals
Manager of Special Services
Navistar Diesel of Alabama, LLC
646 James Record Road
Huntsville, Alabama 35824-1520
Telephone: 256-774-6355
Email: scott.seals@navistar.com

TVA: Mr. Jason A. Krupp
Senior Project Manager
TVA EEDR
26 Century Boulevard; OCP-7B
Nashville, Tennessee 37214
Telephone: 615-232-6132
Email: jakrupp@tva.gov

Distributor: Mr. William C. Pippin
President and CEO
Huntsville Utilities
Post Office Box 2048
Huntsville, Alabama 35804-2048
Telephone: 256-535-1291
Email: bill.pippin@hsvutil.org

2. Company and TVA shall cooperate in preparing a measurement plan to use when conducting a pre and post measurement as provided for under this agreement.
3. TVA shall, insofar as it is feasible, test meter the Company equipment involved in the one electrical project before implementation and, after the project is implemented, gather data and determine the electrical demand and energy use reductions. Company shall ensure that TVA and its authorized agents have access to the Company's facility at reasonable times for test metering of the one project and for any other on-site activities associated with completion of the Program.
4. Company shall implement the one project listed on Attachment A by May 1, 2014. Based upon the Estimated Energy Savings and subject to section 6 below, the estimated incentive payment for the project identified in Attachment A is \$404,943.00, which is the lesser of (i) the product of \$0.10 and the Estimated Energy Savings, and (ii) 70% of the project's capital cost. Company shall notify TVA upon implementation of the project so TVA can begin post-installation test metering of the implemented improvements.
5. Upon TVA's completion, review, and approval of post-installation test metering of the one project, Company shall submit to TVA an invoice in accordance with the Billing and Payment Terms incorporated and attached hereto as Attachment D and all proof of payment for the one project, along with copies of all pre-installation studies, reports, and analyses showing how the costs and savings, and the electrical demand and energy use reductions attributable to the one project were estimated. The receipts and said studies, reports, and analyses (if any) shall be submitted to TVA's authorized representative at the address identified in section 1 above, and shall be in accordance with the attached Billing and Payment Terms.
6. In the event that the actual kWh energy savings determined in the post-installation measurement vary by more than +/- 10% from the Estimated Energy Savings, TVA will base the incentive payment amount upon the actual kWh energy savings. Such incentive payment shall be equal to the product of \$0.10 and the actual kWh energy savings or 70% of the project's actual cost, whichever is less.

7. Within fifteen (15) days of receipt of a properly submitted invoice and the completion of TVA's review and acceptance of the submitted documentation, TVA shall pay Distributor as outlined in the attached Billing and Payment Terms.
8. Distributor shall pay Company within fifteen (15) days of receipt of funds from TVA.
9. TVA shall not pay under this Program for any work on the one project initiated prior to the date that this agreement is accepted and agreed to by TVA below.
10. Company shall provide information and data about the effectiveness of the Program and the energy savings achieved, as requested, as well as participate in any surveys requested by TVA.
11. Company shall ensure that TVA and its authorized agents have continuing access to the facility at reasonable times for inspection of the installed improvements to verify and/or audit the Program. All access to the facility of Company by TVA or Distributor, or their authorized representatives, shall be subject to the safety and security rules and regulations then in effect for the employees at the facility and for any contractors performing work thereat.
12. Company hereby grants permission to TVA and Distributor to utilize said information and data in promotional materials related to implementing energy efficiency recommendations; provided, however, no promotional use shall identify the Company by name without the prior review and approval of the promotional materials by the Company. The parties understand that TVA plans to use said information, data, and promotional materials (a) to provide benefits to other consumers of TVA power by increasing their awareness of industrial energy efficiency programs, and (b) to increase customer retention in the TVA region.
13. Company, Distributor, and TVA acknowledge and agree that TVA may be required in the future by law or regulation to meet specific, or a combination of, renewable energy, energy savings, and/or demand reduction goals or requirements. Company, Distributor, and TVA further acknowledge and agree that as part of the consideration for this agreement and at no additional cost to TVA, TVA shall have the sole right to use or apply a percentage (Investment Percentage) of all qualifying energy savings for the project listed in Attachment A, including the right to a comparable portion of any credits which might be issued or awarded to Company or Distributor under the aforementioned law or regulation on account of such energy savings, that arise or accrue each year as a result of the project against the aforementioned types of goals and/or requirements. The Investment Percentage shall be equal to the ratio of incentive amounts provided by TVA to the total capital investment of the project.

Company and Distributor shall be obligated to take all reasonable steps necessary to assure such use or application by TVA, including providing any necessary documentation or transferring the aforementioned amounts of credits (if they are issued or awarded to Company or Distributor under the aforementioned law or regulation) that may be required in that regard; provided, however, it is expressly recognized that such reasonable steps shall

not require Company or Distributor to incur significant expenses to quantify, measure, certify, or otherwise prove the amounts of the credit to be transferred to TVA unless agreement is reached between the parties to cover such costs. For the project, this obligation will terminate at the end of the useful life of the project or 20 years, whichever occurs first.

14. Distributor and TVA will jointly talk to Distributor's end-use customers as it relates to participation in the Program.

15. All work done on the one project must adhere to state and local building and electrical codes.

16. NOTWITHSTANDING SECTION 7 OF ATTACHMENT D, DISTRIBUTOR, ITS OFFICERS, AGENTS AND EMPLOYEES DO NOT WARRANT THE QUALITY, QUANTITY, OR WORKMANSHIP OF THE WORK DONE IMPLEMENTING THE ONE PROJECT LISTED IN ATTACHMENT A. FURTHER, DISTRIBUTOR HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

17. Company assumes all responsibilities for any tax consequences resulting from any TVA incentive payment.

18. The terms and conditions in Attachments B, C, and D are made a part of this agreement.

Mr. Scott Seals and Mr. William C. Pippin
Page 5
May 17, 2013

If this letter correctly reflects our understanding on this matter, please have duly authorized representatives execute and date all three of the enclosed duplicate originals, and return them to TVA for further processing. Upon completion by TVA, a fully executed duplicate original will be returned to each of you for your files. This agreement shall become effective as of the date of TVA's execution. TVA is pleased to have the opportunity to work with the Company and Distributor on the Program.

Accepted and agreed to as of the
____ day of _____, 201__.

TENNESSEE VALLEY AUTHORITY

By _____
Senior Manager
Power Contracts

Accepted and agreed to as of the
____ day of _____, 201__.

NAVISTAR DIESEL OF ALABAMA, LLC

By _____
Title:

Accepted and agreed to as of the
____ day of _____, 201__.

CITY OF HUNTSVILLE, ALABAMA

By _____
Title:

Attachment A

Potential Energy Saving Projects from TVA / DOE Audits

Project Description	kW Reduction	kWh Reduction	Energy Savings	Capital Cost	Payback
Lighting renovation	760.27	8,819,895	\$268,314.78	\$578,490.00	2.16
Total	760.27	8,819,895	\$268,314.78	\$578,490.00	2.16

Attachment B
TERMS AND CONDITIONS

SECTION 1 - Termination of Agreement

This agreement may be terminated by any party upon 30 days' prior written notice to the other parties. Notwithstanding any such termination, nothing contained in this agreement shall be construed as relieving TVA, its authorized agents and contractors, Company, or Distributor of its obligations arising or accruing prior to the effective date of termination of this agreement or the effective date of termination of any option under this agreement. After the effective date of termination, Distributor shall make no commitments affected by the termination.

SECTION 2 - Relationship of Parties

None of TVA, Company, or Distributor shall be considered the agent or employee of either of the other parties for any purpose under this agreement, and none of the parties nor their agents or employees assumes any liability to the other parties or to any third party for any damages to property, both real and personal, including damages to Company's manufacturing facility or personal injuries, including death, which might arise out of or be in any way connected with any act or omission of such party.

SECTION 3 - Release

Company hereby releases TVA and Distributor from any liability with regard to the Program.

SECTION 4 - Indemnification

Company shall indemnify, defend, and hold TVA, Distributor, and their contractors, agents, and employees harmless from any claims, demands, liability, suits, actions, losses, costs (including reasonable attorney's fees), and claims for damages of every kind and description for injuries or damages to any person or property caused by or resulting from unsafe conditions (including toxic or hazardous materials) on, in, or in any way related to Company's manufacturing facility or from the performance of the Program except with respect to the sole negligence of TVA or Distributor. Company also shall indemnify TVA and Distributor from any third party claims for damage to property or injury to persons (including death) to the extent that such damage or injury results from the negligent or intentional actions of Company or Company's contractors, agents, or employees and is in any way associated with the performance of the Program.

SECTION 5 - Limitation of Liability

Company, TVA, and Distributor shall not be liable to each other (jointly or severally), whether in contract, in tort (including negligence and strict liability), under any warranty, or otherwise, for any special, indirect, incidental, or consequential loss or damage in any way connected with the Program.

SECTION 6 - Third Parties Not to Benefit

Notwithstanding any provision of this agreement that may be interpreted to the contrary, this agreement shall not be interpreted to confer any benefits or rights on any third party except as specifically set out in this agreement.

SECTION 7 - Amendment or Modification

This agreement may be modified or amended only by a writing signed by all of the parties.

SECTION 8 - Entire Agreement

This agreement contains the entire agreement and understanding among the parties about the Program and all prior understandings, terms, or conditions are deemed to be merged in this agreement.

Attachment C

To the extent applicable, the contract governing this Program incorporates by reference the Affirmative Action for Disabled Veterans and Veterans of the Vietnam-Era clause, 41 C.F.R. § 60-250.4; the Affirmative Action for Handicapped Workers clause, 41 C.F.R. § 60-741.4; and the Equal Opportunity clause, 41 C.F.R. § 60-1.4; and all amendments thereto and all applicable regulations, rules, and orders issued thereunder.

Attachment D

BILLING AND PAYMENT TERMS

(Payments by TVA)

(11/16/2009 version)

SECTION 1 - DEFINITION OF TERMS

"TVA" means the Tennessee Valley Authority.

"Reimbursable Contract" means the agreement or contract to which these Billing and Payment Terms are made a part as an attachment or exhibit.

"Billing Party" means the party owed any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms.

"Billed Party" means the party obligated to pay any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms. (The same party to the Reimbursable Contract may be the Billing Party or the Billed Party or both.)

"Payment Due Date" means the date by which payment is due the Billing Party as defined in Section 2 below.

"Deliverables" means the work or services performed, or property or equipment furnished, by the Billing Party under the Reimbursable Contract for the ownership benefit of the Billed Party.

SECTION 2 - INVOICING AND PAYMENT DUE DATE

The Billing Party shall submit an invoice to the Billed Party for the amount due. When TVA is the Billed Party, invoices shall be submitted to TVA Accounts Payable, P.O. Box 15500, Knoxville, Tennessee 37901, or may be submitted electronically to TVA Accounts Payable at accountspayable@tva.gov. When TVA is not the Billed Party, the invoice may be submitted in electronic form, if permitted under the Reimbursable Contract. For accounting reference purposes, the invoice shall be numbered and dated and shall include (a) the contract number assigned under Section 11 (**Assignment of Contract Number**) below and (b) reasonably sufficient detail or supporting documentation to permit the Billed Party to verify the appropriateness or accuracy of the amount owed. Unless a later due date is specified in the Reimbursable Contract, the Payment Due Date shall be 30 days from the date of receipt of the invoice. Payment by TVA will be made by electronic fund transfer (after the Billing Party completes a TVA Electronic Vendor Payment Form).

SECTION 3 - INTEREST ON UNDERPAYMENTS OR OVERPAYMENTS

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billed Party shall pay interest on the unpaid amount based on the maximum rate under the United States Prompt Payment Act, (31 U.S.C. §§ 3901-3907) as published in the Federal Register and adjusted periodically (currently semi-annually). Interest shall accrue from the Payment Due Date until the date the Billing Party receives payment. Failure to pay

within 90 days after the Payment Due Date shall constitute a material breach of the Reimbursable Contract. If the Billed Party overpays (such as, due to erroneous or inaccurate invoicing by the Billing Party or due to refund of an excess deposit payment), the Billing Party shall promptly refund the amount overpaid.

SECTION 4 - DELAY OR SUSPENSION OF WORK DUE TO PAYMENT FAILURE

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billing Party shall have the right to delay or suspend the work or services being performed until after such payment failure has been satisfactorily resolved. Nothing herein contained shall be construed as relieving the Billed Party of the obligation to pay the Billing Party for the work completed as of the date such work or services are delayed or suspended.

SECTION 5 - PAYMENT DISPUTE

The Billed Party may dispute the payment of all or a portion of the amount due in an invoice if the Billed Party has a reasonable basis to demonstrate that such amount is inappropriate or questionable. In that case, the Billed Party shall promptly advise the Billing Party in writing of the reasons for disputing all or a portion of the invoiced amount. Upon receipt of the Billed Party's written statement of reasons, the dispute resolution provisions of Section 12 below shall apply. If as a result of the dispute resolution, one party is required to pay the other for the amount overpaid or underpaid, such amount shall include interest calculated in accordance with Section 3 (**Interest on Underpayments or Overpayments**) above.

SECTION 6 - OFFSET

Each party reserves the right to offset any amount owed to the other party against any amount owed by the other party.

SECTION 7 - WARRANTIES AND LIMITATION OF LIABILITY

Unless otherwise provided in the Reimbursable Contract, the Billing Party warrants the Deliverables to be in conformance with generally accepted professional standards prevailing at the time of delivery. Any Deliverables not in accordance with such standards shall be corrected at no cost to the Billed Party as long as such nonconformance is reported in writing within one year from the date of delivery. The Billing Party expressly disclaims any other warranties, including implied warranties of merchantability or fitness for any particular use or purpose, as to any Deliverables provided hereunder.

SECTION 8 - TIME OF COMPLETION AND FORCE MAJEURE

Any delays in or failure of performance by the Billing Party or its contractors shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Billing Party or its contractors, and Billing Party shall not be liable for any loss or damage due to or arising out of any such delays or failure of performance. Such occurrences include, but are not limited to, acts of God or the public enemy, fires, epidemics, quarantines, strikes, freight embargoes or delays in transportation, priorities or other acts or orders of Governmental authority, or unforeseeable severe weather or floods, or any causes,

whether or not of the same class or kind of those specifically above named, which are not within the control of Billing Party or its contractors.

SECTION 9 - ACCESS TO BILLING RECORDS AND CONFIDENTIALITY

Upon written request by the Billed Party, the Billing Party shall provide access during normal working hours to its records as necessary to permit the Billed Party to verify the accuracy or appropriateness of the invoice. Except as may be required by law, the Billed Party shall keep the information examined confidential. If a billing dispute is submitted to dispute resolution as set out in Section 12 below, the Billing Party agrees to provide the pertinent records or information to counsel and independent experts of the Billed Party and those attempting to resolve the dispute, provided such third parties agree to keep such records or information confidential to the extent allowed by law. Nothing in this Section shall be construed as in any way impairing the ability pursuant to statutory authority of the Office of the Inspector General of TVA or of any other Federal agency having auditing jurisdiction over TVA to examine the records of the Billing Party to the extent relating to any amount billed TVA by the Billing Party.

SECTION 10 - ENTIRE CONTRACT

The Reimbursable Contract and all exhibits or attachments thereto (including these Billing and Payment Terms) shall constitute the entire agreement between the parties. In the event of any conflict between the provisions of the Reimbursable Contract and these Billing and Payment Terms, the Reimbursable Contract shall prevail.

SECTION 11 - ASSIGNMENT OF CONTRACT NUMBER

The Reimbursable Contract will have a contract number assigned by TVA for all parties to use as a reference as part of the invoicing and payment processes.

SECTION 12 - DISPUTE RESOLUTION

If a billing amount dispute arises out of or relates to the Reimbursable Contract, including these Billing and Payment Terms, or the breach thereof, the parties agree to use their best efforts to resolve such a dispute informally at the lowest possible levels of decisionmaking. Such a dispute not resolved at the working level should be referred to higher levels of management of both parties for consideration, as necessary. If said dispute cannot be so settled, the parties further agree to develop and use consensual alternative dispute resolution processes, such as facilitation and mediation to try in good faith to settle said dispute, before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may, for example, try to resolve the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

SECTION 13 - RESTRICTION OF BENEFITS

No member of or delegate to Congress or Resident Commissioner, or any officer, employee, special Government employee, or agent of TVA shall be admitted to any share or part of the Reimbursable Contract or to any benefit that may arise from it unless the agreement be made with a corporation for its general benefit. The other party to the Reimbursable Contract shall not offer or give, directly or indirectly, to any

officer, employee, special Government employee, or agent of TVA any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, except as provided in 5 C.F.R. part 2635 (as amended, supplemented, or replaced). Breach of this provision shall constitute a material breach of the Reimbursable Contract.

SECTION 14 - CONFORMANCE WITH WORK SCOPE AND COST ESTIMATE

It is recognized that depending on the nature or extent of the work involved, the Reimbursable Contract may include a detailed work scope and a cost estimate (or cost limitation) for work subject to reimbursement based on actual costs incurred. In that case, the Billing Party shall use its best efforts to perform the work within the specified work scope and cost estimate. If at any time the Billing Party becomes aware that the actual costs will likely exceed the cost estimate by 15 percent or more, the Billing Party shall use its best efforts to obtain concurrence or resolution with the Billed Party regarding such cost estimate overrun. This shall include notification of the Billed Party in writing of the cost estimate overrun together with a revised cost estimate and an explanation for the cost estimate overrun so as to provide the Billed Party an opportunity for input and/or consultation. For work or services in excess of the work scope, unless mutually agreed by the parties in advance (such as in the form of an amendment to the Reimbursable Contract), the Billing Party shall not be obligated to perform such work or services, and the Billed Party shall not be obligated to pay for such work or services. The Billing Party may elect to suspend the work in question until it has obtained concurrence or resolution with the Billed Party regarding work in excess of the work scope and/or cost estimate.