



REQUISITION NO. C22FT102829986

PART 1 – DESIGN-BUILD AGREEMENT

**FOR
RED LINE EXTENSION
DESIGN-BUILD**

CHICAGO TRANSIT AUTHORITY

**RFP
September 8, 2023**

FINANCIAL ASSISTANCE BY:

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

SUPERVISED BY:

**CHICAGO TRANSIT AUTHORITY
INFRASTRUCTURE DIVISION - CONSTRUCTION**

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Subpart A: Definitions and Abbreviations; Interpretation; Project Information

1. Definitions and Abbreviations

For purpose of this Contract, and except as otherwise specified herein or as the context may otherwise require:

- a. when any abbreviation, word or term set out in Annex A to this Part 1 is used in any Contract Document, the reference is to such abbreviation, word or term as set out in such Annex A;
- b. when any abbreviation, word or term is defined in any Part of this Contract other than this Part 1, but not in Annex A to this Part 1, such abbreviation, word or term will have the meaning given to it in the applicable Part, subject to Section 3 of Annex B to this Contract, with respect to the resolution of potential conflicts; and
- c. words and phrases not otherwise defined in any Part of this Contract:
 - i. that have well-known technical, insurance, construction industry, or trade meaning will be construed pursuant to such recognized meanings; and
 - ii. of an accounting or financial nature will be construed pursuant to GAAP.

2. Construction of Contract

The Contract will be constructed in accordance with Annex B, which contains rules governing interpretation, the giving of consents and approvals, and the resolution of conflicts among Contract Documents.

3. Compliance with Project Standards

3.1. General Rules Regarding Compliance with Project Standards

Except to the extent otherwise expressly provided, any material, equipment, supplies, components, other products, and workmanship specified in any Contract Document by reference to a Project Standard must comply with the latest edition or revision thereof, and all amendments and supplements thereto, as in effect on the Reference Date or on such later date as provided for in Section 3.3.b.

3.2. Monitoring of Project Standards

- a. The Contractor is responsible for being knowledgeable and familiar with, and will ensure that each of its Subcontractors and each of their respective Subcontractors is knowledgeable and familiar with, its and their own trade's generally accepted, published standards of quality and workmanship, including all Project Standards. The CTA will not give consideration to, and the Contractor will not be relieved from any performance or otherwise entitled to make any Notice of Claim on the basis of, any claimed ignorance of a Project Standard.
- b. The Contractor will, and will ensure that each of its Subcontractors and each of their respective Subcontractors will, monitor and familiarize themselves with changes or additions to, or replacements of, the Project Standards (in the case of Subcontractors, to the extent applicable to their portion of the Work).

3.3. Changes, Additions or Replacements to or of Project Standards

- a. The Contractor will notify the CTA of any change or addition to, or replacement of, any Project Standard promptly after it becomes aware of such change, addition, or replacement.
- b. The Contractor will not be required to comply with any change or addition to, or replacement of, a Project Standard, except that it will comply with any such change, addition, or replacement:
 - i. if and to the extent such compliance is necessary for the CTA and/or the Contractor to remain in compliance with Law; or
 - ii. otherwise pursuant to a Change Order or a Directive Order.

4. Project Information and Due Diligence

4.1. Limited Reliance on Project Information

Contractor may rely on any Project Information, and any other materials, documents, drawings, plans, work product, or other information, provided or made available to the Contractor under the terms of this Agreement, or otherwise made available or provided by CTA, to the extent, and only to the extent, that such is:

- a. expressly incorporated into Parts 1-6 of this Contract;

- b. with respect to Reference Documents, expressly or implicitly and necessarily the basis for determining the occurrence of a Relief Event;
- c. with respect to the Base Case, in accordance with Section 4.4 below; or
- d. to the extent CTA notifies the Contractor of any express right to specifically rely on any Reference Document or any other material, document, drawing, plan, work product, or other information.

4.2. Acknowledgement and Agreement Regarding Project Information

- a. Notwithstanding such limited right to rely, Contractor acknowledges and agrees that:
 - i. prior to the Contract Date:
 - A. the Project Information was made available to the Preferred Proposer for information only pursuant to the ITP; and
 - B. the Preferred Proposer and the Contractor-Related Entities conducted their own due diligence on the accuracy, completeness, relevance and adequacy of the Project Information;
 - ii. subject to Section 4.5, all Project Information, and any other materials, documents, drawings, plans, work product, or other information, provided or made available to the Contractor under the terms of this Contract, including during the course of any meeting, or otherwise made available or provided by CTA, has been and is provided on an “as is”, “where is”, and “with all faults” basis and neither the CTA nor any other person that produced or provided any Project Information or any such other materials, documents, drawings, plans, work product, or other information, gives or has given any representation, warranty, undertaking or guaranty as to the accuracy, completeness, relevance, fitness for purpose, or adequacy of the same, nor does the CTA or any other Person that produced or provided any such Project Information or other materials, documents, drawings, plans, work product, or other information have any responsibility for the same as being representative of any aspect or condition, including any Project Area, subsurface or otherwise concealed conditions, of the Project, and as such:

- A. the Contractor's entitlement to rely on any Project Information (including Reference Documents) or such other materials, documents, drawings, plans, work product, or other information is limited by Section 4.1;
- B. the Contractor will assume responsibility for their use of any Project Information or other materials, documents, drawings, plans, work product, or other information, including any interpretations of or conclusions drawn, and will bear all risk, including of delay and/or increased cost, resulting from or arising out of its the use of any such Project Information or of such other materials, documents, drawings, plans, work product, or other information (including any incorporation of the same into Work Product); and
- C. neither the CTA, nor any other Person that produced or provided any Project Information or such other materials, documents, drawings, plans, work product, or other information, will have any responsibility or liability to the Contractor or any other Contractor-Related Entity in respect of, and the Contractor will not be relieved of any obligation under this Contract as a result of:
 - I. any lack of accuracy, utility, completeness, relevance, fitness for purpose, or adequacy of any kind whatsoever;
 - II. any interpretations of, or conclusions drawn;
 - III. any failure by the CTA, or by any other Person that produced or provided any such Project Information or such other materials, documents, drawings, plans, work product, or other information, to update the same, the contents of which may reflect information available as of the date that such was prepared or as of such other date indicated therein;
 - IV. any failure by the CTA or any other Person to reference or otherwise make available any materials, documents,

drawings, plans, work product, or other information relating to the Project; or

- V. any causes of action or claims of, or Losses whatsoever suffered by, the Contractor or any other Contractor-Related Entity by reason of any use of, or any action or forbearance in reliance on, such Project Information.

4.3. Responsibility for Independent and Continuing Diligence

- a. Subject only to its express rights under this Contract, as of the Contract Date the Contractor is deemed to have satisfied itself as to:
 - i. the sufficiency and (as applicable) conditions of the NEPA Decision Documents and of all property access rights, assets, and other rights that it is entitled to receive under this Contract;
 - ii. the nature and extent of the risks assumed by it under this Contract; and
 - iii. the sufficiency of the Preferred Proposer's and the Contractor-Related Entities' opportunities to conduct due diligence prior to the Contract Date pursuant to Good Industry Practice.
- b. On and from the Contract Date:
 - i. immediately prior to first initiating Construction Work in any portion of the Project Area, and subject to at least 48 hours' advance notice to the CTA for the purpose of providing the CTA with an opportunity to accompany the Contractor:
 - A. the Contractor will make a digital video record and digitally photograph the existing condition of adjacent buildings, structures and site improvements, including finish surfaces that may be misconstrued as damage caused by construction or demolition operations; and
 - B. promptly thereafter submit a copy of such records to the Chief Infrastructure Officer;
 - ii. at all times in performing the Work the Contractor will:

- A. confirm the accuracy of all elevations, dimensions, and locations relating to existing infrastructure at the Site, and on such basis promptly rectify errors caused by the accuracy of elevations, dimensions, and locations at its own cost and expense;
- B. be responsible to field verify all existing conditions, dimensions, and details that may relate to the performance of the scope of Work;
- C. be responsible for the performance of all required surveys and to field verify all existing conditions, dimensions and details that may relate to the performance of the Work, including property boundary, topographic, environmental, geotechnical, geophysical and structural condition surveys;
- D. provide survey control (lines, grades, and elevations) for the Project as directed by the CTA, to ensure that all Work is contained within the Site; and
- E. will provide location and elevation of benchmarks in the vicinity of the Project to the CTA,

in each case subject to the CTA's right to check the Contractor's layout and measurement during the course of the Work, and the Contractor will bear all risks, including of delay and/or increased cost, associated with modifications under this Contract resulting from the Contractor not updating and coordinating the existing survey conditions in accordance with the foregoing;

- iii. the Contractor must locate and preserve all geodetic control survey monuments and City of Chicago datum survey monuments during the course of the Work, and, if it is determined that a survey monument may be or is disturbed or destroyed as a result of construction activity, the Contractor must contact the CTA immediately in order to arrange with the U.S. Geological Survey office or the City of Chicago Department of Water Management, as applicable, for a temporary monument relocation site and, upon termination of construction activity, for an appropriate permanent location for the displaced geodetic control survey monument as determined

by the U.S. Geological Survey office or for the datum survey monuments as determined by the City of Chicago, as applicable; and

- iv. the Contractor must verify all measurements for finished Work at the Site prior to the preparation of as-built and Record Documents.

4.4. Additional Provisions Regarding Base Case

- a. Subject to Sections 4.1, 4.2, and 4.4.b, CTA has provided the Base Case for information only as Reference Documents. The Contractor acknowledges and agrees that the Base Case:
 - i. does not show all information required for design, construction, and overall planning of the Work; and
 - ii. may not reflect actual current field conditions.
- b. In accordance with Sections 4.1 and 4.2, the Contractor will bear the risk, including of delay and/or increased cost, resulting from or arising out of the use of the Base Case as a basis for the Final Design, as well as for any differences between its design for any portion of the Project and the Base Case.

4.5. Residual CTA Liability

Nothing in this Section 4.5 will exclude any liability which the CTA would otherwise have to the Contractor:

- a. in respect of any statements, representations or warranties made fraudulently, recklessly or in bad faith or constituting willful misconduct or gross negligence; or
- b. to the extent expressly provided for in this Contract.

5. Effectiveness of Contract; Representations and Warranties

5.1. Effectiveness of Contract

This Contract will come into effect on and from the Contract Date.

5.2. Representations and Warranties of the Contractor

The Contractor hereby represents and warrants to the CTA that each of the following representations and warranties made by it and set out in this Section 5.2 is true and correct as of the Contract Date.

a. Organization; power and authority

Contractor:

- i. is a [*type of organization*], duly [*incorporated / organized*], validly existing and in good standing in accordance with the laws of [*state*];
- ii. is authorized to transact business in, and is registered with the Secretary of State in Illinois;
- iii. will hire engineering professionals licensed or certified to provide the relevant professional services in the State of Illinois; and
- iv. has the [*corporate*] power and authority to:
 - A. transact the business that it transacts and proposes to transact pursuant to this Contract; and
 - B. execute, deliver, and perform the Contract.

b. Authorization and due execution

- i. Each Person executing this Contract on behalf of the Contractor has been (or, at the time of execution, will have been) duly authorized to execute and deliver such document on behalf of the Contractor.
- ii. The execution, delivery and performance of this Contract by the Contractor has otherwise been duly authorized by all necessary [*corporate*] action of the Contractor.
- iii. This Contract has been (or, at the time of execution and delivery, will have been) duly and validly executed and delivered by the Contractor.

c. Enforceability

This Contract constitutes (or, at the time of execution and delivery, will constitute) a legal, valid, and binding obligation of the Contractor, enforceable against the Contractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.

d. No conflicts

The execution, delivery and performance by the Contractor of this Contract does not and will not contravene any:

- i. Law applicable to the Contractor that is in effect on the date of execution and delivery of this Contract;
 - ii. organizational, corporate, or other governing documents of the Contractor; or
 - iii. agreement, instrument, Permit, judgment, or decree to which the Contractor is a party or is bound.
- e. Consents and approvals
 - i. Prior to the Contract Date, the Contractor familiarized itself with the requirements of any and all applicable Laws, including Laws applicable to the use of federal funds, and the conditions of any Permits necessary to perform its obligations under this Contract at the time and in the manner required.
 - ii. The Contractor has no reason to believe that any Permit that the Contractor is required to obtain pursuant to this Contract will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract.
- f. Due diligence; reasonable investigation
 - i. The statements set out in Sections 4.1, 4.2, and 4.3.a are true and accurate.
 - ii. On the basis of the due diligence conducted by the Preferred Proposer and the Contractor-Related Entities as referred to in in Sections 4.1, 4.2, and 4.3.a, the Contractor:
 - A. is familiar with and accepts the physical requirements of the Work;
 - B. has in accordance with Good Industry Practice evaluated constraints affecting design and construction of the Project;

- C. has reasonable grounds for believing and believes that the Project can be designed and built within such constraints pursuant to this Contract; and
 - D. has, in accordance with Good Industry Practice, obtained for itself all reasonably necessary information regarding the risks, contingencies, and other circumstances which may influence or affect its ability to perform its obligations under this Contract (taking into account its rights thereunder) and any other factors that would affect its decision to enter this Contract or the terms on which it would do so.
- g. Legal matters
 - i. Neither the Contractor nor any Contractor-Related Entity is in breach of any Law that would have a material adverse effect on the Work or the performance of any of the Contractor's obligations under the Contract.
 - ii. There is no criminal, civil, enforcement or other action, suit, proceeding, investigation or litigation pending or served on or against the Contractor or any Contractor-Related Entity that:
 - A. challenges the Contractor's or any other Contractor-Related Entity's authority to execute, deliver, or perform this Contract;
 - B. challenges the validity or enforceability of this Contract;
 - C. challenges the authority of any Contractor representative executing this Contract; or
 - D. could reasonably be expected to have a material and adverse effect on the ability of the Contractor to perform its obligations under this Contract; and
 - iii. There is no un-served or threatened action, suit, proceeding, investigation, or litigation against the Contractor or any other Contractor-Related Entity with respect to any of the matters referred to above of which the Contractor is aware and has not previously disclosed in writing to the CTA.
- h. Organizational Conflicts of Interest

Prior to the Contract Date and in accordance with the ITP, the Preferred Proposer disclosed to the CTA in writing all Organizational Conflicts of Interest (as such term is defined in the ITP) of which the Preferred Proposer was aware and, since such date, the Contractor has not obtained knowledge (the Contractor having made reasonable inquiries with a view to obtaining such knowledge) of any additional such Organizational Conflict of Interest, and there have been no Organizational Changes, Supplemental Key Personnel Submissions, or Key Personnel Changes (as such terms are defined in the ITP) to or by the Contractor which require approval and/or acceptance by the CTA pursuant to the terms of the ITP and have not been so approved.

i. Debarment

None of the Contractor or any other Contractor-Related Entity has been subject to any debarment, suspension, or other disciplinary action by any Governmental Authority, or is currently debarred for violations of any applicable public contracts incorporating labor standards provisions or included on any applicable list thereof, including the General Service Administration's System for Award Management, the Illinois Department of Transportation's Suspension List, the Illinois Department of Labor Works Debarred Contractors List, the Illinois Department of Human Rights Debarred Companies List, the City of Chicago's List of Debarred Firms and Individuals, or the CTA's Suspension and Debarments Report.

j. Work Product and Intellectual Property

The Contractor warrants its ability to pass title or to license to CTA any Work Product and Intellectual Property as described in Section 39.

5.3. Notice of Untrue, Incorrect or Misleading Representations and Warranties

Notwithstanding that the representations and warranties made by the Contractor pursuant to Section 5.2 are made only at particular times, the Contractor will promptly inform the CTA after it becomes aware that any of its representations and warranties either was false, misleading, or inaccurate in any material respect when made (or repeated) or omitted material information when made (or repeated).

Subpart B: Scope of Work and General Undertakings

6. Grant of Rights and Project Undertakings

6.1. Grant of Rights and General Undertakings

- a. Subject to the terms and conditions of this Contract:
 - i. the CTA hereby grants to the Contractor the right to design and construct the Project in each case pursuant to this Contract; and
 - ii. the Contractor accepts such right and acknowledges its obligations under this Contract.
- b. The Contractor hereby undertakes to perform the Work pursuant to and strictly in compliance with:
 - i. the scope of Work set out in Section 7 and all other terms, conditions, and requirements of this Contract, including the Proposal Extracts, each Part of this Contract, and each other Contract Document;
 - ii. the Project Standards;
 - iii. Law;
 - iv. federal funding requirements;
 - v. the Records of Third-Party Coordination;
 - vi. the NEPA Decision Documents and all other Permits in effect from time to time; and
 - vii. Good Industry Practice,

including in each case by, as applicable, maintaining, retaining, and/or complying with, and ensuring that each Subcontractor maintains, retains and/or complies with, all applicable licenses, certifications and accreditations and related standards, as well as all other required professional abilities, skills, and capacity, in each case required to perform the Work.

6.2. General Duty to Cooperate and Coordinate

Without limiting its other rights and obligations under this Contract, in performing the Work the Contractor will use reasonable efforts to cooperate and coordinate with the CTA and

all other Governmental Authorities, Utilities, and Railroads with jurisdiction or authority in matters relating to the Work, including their review, inspection, and oversight of the Project as contemplated herein, in accordance with any Law granting such jurisdiction or authority, or as contemplated by any Record of Third-Party Coordination.

6.3. Restrictions on Contractor Business and Activities

In consideration of the CTA grant of rights made pursuant to Section 6.1.a.i, the Contractor undertakes that it will not:¹

- a. carry out, or permit any other Person to carry out, any business or other activities in relation to the Project other than business and activities solely related to the performance of its obligations pursuant to this Contract;
- b. commit or otherwise knowingly facilitate, and not permit any other Contractor-Related Entity to commit or otherwise knowingly facilitate, the commission of any criminal acts; or
- c. adopt or, once adopted, change its legal form or name of organization without the CTA's prior consent, such consent:
 - i. to be in the CTA's discretion, if such change would adversely affect the CTA's rights, obligations or interests under this Contract or with respect to the Project; and
 - ii. otherwise, not to be unreasonably withheld.

6.4. Assumption of Risk and Responsibility

- a. Except to the extent otherwise expressly provided for in this Contract, all risks, costs, and expenses in relation to the performance by the Contractor of the Work are allocated to, and accepted by, the Contractor as its entire and exclusive responsibility, in consideration of which the CTA will pay the Contractor an amount not to exceed the Contract Price subject to the terms and conditions of this Contract.
- b. As between the parties, the Contractor will be solely responsible for the selection, pricing, and performance of all Subcontractors and all other persons for whom or

¹ Paragraphs a. and c. Subject to adjustment if the Contractor is not a specially formed entity, joint venture, or the like.

for which the Contractor is responsible by contract or pursuant to Law, and for the performance, acts, defaults, omissions, breaches, and negligence of the same, as fully as if any such performance, acts, de-faults, omissions, breaches, or negligence were those of the Contractor.

- c. In the event that the inclusion of any ATC Extract in this Contract was made subject to any express condition, the Contractor will be solely responsible for satisfying such condition. If any such condition is not satisfied, and without limiting the CTA's other rights hereunder, the Contractor will comply with the requirements of this Contract (unmodified by such ATC Extract) without any resulting entitlement to an extension of time, relief, and/or compensation.

7. Scope of Work and Related Contractor Obligations

7.1. Scope of Work

The Contractor's scope of Work is:

- a. to perform all the Work and to complete the Project in each case in accordance with Section 6.1.b and all other terms of this Contract, where completion of the Project includes achievement of Substantial Completion, completion of all Punchlist work, achievement of Final Completion and Project Closeout; and
- b. in performing the Work and completing the Project:
 - i. to undertake and complete all additional, collateral, and incidental Work as required and reasonably necessary to complete the Work in accordance with Section 6.1.b; and
 - ii. to furnish all required labor, services, parts, materials, equipment, tools, labor, temporary light and power, shop drawings, installation drawings, working drawings, and incidentals reasonably necessary to complete the Work in accordance with Section 6.1.b, whether or not such details are expressly shown or specified, all at no additional cost.

7.2. Restrictions on Scope of Work Pending CTA Authorization

- a. The Contractor will not carry out any Work before CTA issues the Notice to Proceed. Notwithstanding such restriction, the Contractor may, with the CTA's prior consent (such consent not to be unreasonably withheld) undertake, at its own

risk, cost, and expense, such preparatory activities as are reasonably necessary to prepare for issuance of the Notice to Proceed.

- b. The Contractor acknowledges and agrees that the CTA may issue the Notice to Proceed subject to certain restrictions or conditions on the Work which may be subsequently performed pending issuance of a later update to such Notice to Proceed.

7.3. Restrictions on Site Access and Use

All Construction Work will occur within and be subject to the conditions described for allowable Site access in Section 16 and the Records of Third-Party Coordination, including with respect to Track Access Occurrences and Substation Occurrences, as further provided for in Section 16.7.

7.4. No Rights to Fares; Prohibition of Unrelated Business Activities

The Contractor acknowledges and agrees that:

- a. it has no right to:
 - i. impose or collect fares or any other user fees (in any form) in relation to the Project or the use of any CTA facility; or
 - ii. directly or indirectly engage in any revenue generating business on any part of the Site in connection with the Project, other than the conduct of its business pursuant to Section 6.3 and the revenues it receives from the CTA as payments for Work performed made pursuant to this Contract; and
- b. it will not have or assert any lien over or security interest in any fare revenues, any user fees or other revenues generated by the CTA, any part of the Site, any Other CTA Project or Related Transportation Facility, or any other land or facility, in connection with the Project.

Subpart C: Time and Schedule

8. Contract Time

8.1. Contract Time

Subject to adjustment pursuant to Section 8.2, "Contract Time" for the Project is the number of Days after issuance of the Notice to Proceed allowed for the Contractor to achieve Substantial Completion of the Work as the final Milestone by the corresponding Milestone Deadline, which number of Days separately includes the number of Days after the issuance of the Notice to Proceed allowed for the Contractor to achieve Project Element Substantial Completion of each other Milestone by the corresponding Milestone Deadline.

8.2. Adjustments to Contract Time

- a. The Contract Time may be adjusted (either with respect to total Contract Time, or with respect to such portion of the Contract Time that relates to a particular Milestone Deadline) only as and to the extent provided under this Contract:
 - i. with respect to Changed Work, pursuant to Section 14.1.c; and
 - ii. with respect to a Relief Event, as a result of any resulting Delay to the extent provided through the resolution of a Notice of Claim pursuant to Section 15.9.
- b. For certainty, any adjustment to the Contract Time (including in relation to a particular Milestone Deadline) will, as applicable, adjust the corresponding time periods referenced in Sub Part 3.9 of Part 3.

8.3. Time is of the Essence

- a. Time is of the essence for this Contract. The Contractor will:
 - i. commence the Work upon the issuance of the Notice to the Proceed;
 - ii. proceed continuously and diligently to complete the Work within the Contract Time in accordance with the terms of the Contract Documents;
 - iii. timely return tracks and facilities back to service after each Track Access Occurrence, Substation Occurrence, or any other interruption (planned or unplanned) to CTA operations;

- iv. timely return any of track and facilities to the relevant Railroad following any period in which the Contractor was permitted temporary access to and use of such area by such Railroad in accordance with the terms under which the Railroad granted such access, including any Record of Third-Party Coordination; and
 - v. subject to Section 8.3.c, achieve each Milestone by the relevant Milestone Deadline, all in accordance with the Contractor's approved project approach and approved Schedule.
- b. If the Contractor is delayed as to a portion of the Work, it must nevertheless proceed continuously and diligently with the prosecution of the remainder of the Work.
- c. Notwithstanding anything to the contrary in Section 8.3.a, except as expressly provided for under Section 40.1.b, and without prejudice to the rights of the CTA (including its right to any liquidated damages owed by Contractor) under this Contract, the Contractor's failure to comply with the approved Schedule does not itself constitute a Contractor Default.

8.4. Float

- a. Subject to Section 8.4.b, Float will be considered as a jointly owned, expiring resource available to the Project for the benefit of all parties (and not for the exclusive benefit of either the CTA or the Contractor), available to each of them as needed to absorb delays caused by Relief Events or other events to achieve interim completion dates and deadlines set out in then-current Schedule and, ultimately, to achieve Project Element Substantial Completion of each Project Element, completion of each Milestone including Substantial Completion, Final Completion, and Project Closeout.
- b. Notwithstanding Section 8.4.a, Float shall not be available to the CTA to absorb delays caused by the occurrence of any Cost and Delay Event which is referenced as a "CTA Breach or Fault Event", "CTA Failure to Provide Access", "CTA Delay", "Railroad Fault Delay" or "CTA-Provided Materials Delay" in Section 15.1.b.

9. Scheduling

9.1. Preparation and Approval of Schedules

The Contractor will prepare and receive CTA's approval of each of the Preliminary Schedule, the Baseline Schedule, and each update thereto as the then-current Schedule update in accordance with Sub Part 2.1.6 of Part 2.

9.2. Limitations on CTA Acceptance and Approvals

Notwithstanding the CTA's acceptance of the Proposal Schedule and any subsequent approval of the Preliminary Schedule, the Baseline Schedule or any other Schedule or Schedule update, which are subject to Section 2.2 of Annex B, the CTA has not assumed and is not assuming any of the Contractor's responsibility for the timely and orderly completion of the Work, for the coordination of the performance of the Contractor's Work with that of other contractors or for any errors or inconsistencies in any schedule.

9.3. Notice of Cancellation

- a. Without limitation of its other obligations under this Contract (including any obligation to comply with additional or extended notice periods as required by Law, any Record of Third-Party Coordination, or otherwise), the Contractor will inform the Chief Infrastructure Officer if any planned Work is rescheduled or cancelled at least 24 hours in advance of planned Work activities, other than:
 - i. Track Access Occurrences which must be rescheduled or cancelled at least 48 hours in advance (cancellation of flagger hours or infrastructure hours in and of itself is not a cancellation of Work under this Section 9.3, and is addressed in Sub Part 3.11.4 of Part 3); and
 - ii. activities involving construction monitoring (flaggers) or access to Railroad right-of-way, with respect to the Railroads, which must be rescheduled or cancelled, in accordance with the Sub Part 3.15 of Part 3 and any Records of Third-Party Coordination between CTA and the Railroads.
- b. Contractor acknowledges and agrees that the CTA will rely upon the Schedule any and pending Schedule update, as well as each other Contractor notification or report of Work activities, in coordinating and scheduling CTA's own responsibilities and those of its representatives in connection with the Project.

- c. In addition to any other remedy available to the CTA, and without limiting the Contractor's liability under Section 35.2, the Contractor will be liable:
 - i. to CTA for payment of liquidated damages under Section 34.1.a with respect to certain Contractor failures to comply with the requirements of Section 9.3.a.i; and
 - ii. to reimburse the CTA for any and all Losses incurred on a pass through basis by the CTA due to claims by Railroads and other third parties, and otherwise all other Losses incurred by Railroads and other third parties who are providing access, due to a failure to comply with Section 9.3.a.ii.

9.4. Failure to Perform the Work in Accordance with the Schedule

If the Chief Infrastructure Officer, acting reasonably, determines, including based on its review of a pending update to the then-current Schedule or the then-current Schedule itself (if any), that the Contractor is at risk of failing to achieve any Milestone by the relevant Milestone Deadline or to achieve Final Completion of the Work (as evidenced by issuance of a Certificate of Final Completion), or otherwise upon the Contractor determining the same, then:

- a. the Chief Infrastructure Officer may direct the Contractor to promptly submit, and in the case of an independent Contractor determination, the Contractor will promptly submit, a Schedule Recovery Plan for approval in each case within the time period specified in Sub Part 2.1.6.F. of Part 2; and
- b. the Contractor will, upon approval of the Schedule Recovery Plan:
 - i. implement the Schedule Recovery Plan at its own risk, including of increased cost, in order to bring the general progress of the Work into compliance with the Schedule; and
 - ii. reimburse the CTA for any costs and expenses incurred by the CTA directly resulting from, including the approval and oversight of, the Schedule Recovery Plan;

in either case, without prejudice to the Contractor right to claim for any Relief Event.

- c. The Schedule Recovery Plan may anticipate that the Contractor will, notwithstanding compliance with the plan, fail to timely achieve one or more Milestones, provided that:
 - i. the Schedule Recovery Plan includes the Contractor taking all reasonable steps to bring the Work into compliance with the Schedule, being those steps which a prudent, determined, and reasonable contractor similarly desiring to achieve the same result would take under the circumstances, including mitigation measures, such as resequencing of the Critical Path, altering design, reallocating or redeploying its forces to other parts of the Work, including at CTA's direction through the identification of additional Project Elements in accordance with Sub Part 2.13.2.F of Part 2; and
 - ii. the Contractor has agreed to be responsible for the applicable liquidated damages for the projected delay in accordance with Section 34.1.a and Sub Part 3.9.4 of Part 3; and
 - iii. unless otherwise agreed in the CTA's discretion:
 - A. the projected delay does not extend beyond any time period which could give rise to a Contractor Default under Section 40.1; and
 - B. Final Completion of the Work is still projected to be completed within the time period specified in Sub Part 3.9.3 of Part 3.

10. Completion

10.1. Closeout Plan

The Contractor will prepare and maintain the Closeout Plan for the Project in accordance with Sub Part 2.13 of Part 2.

10.2. Project Element Substantial Completion and Substantial Completion

- a. The Contractor will follow the applicable procedures specified in Sub Part 2.13 of Part 2 in order to achieve Project Element Substantial Completion of each Project Element and, separately, Substantial Completion of the Project, in order to demonstrate that the relevant portion of the Work is sufficiently complete and ready for use and occupancy and that the CTA can use it for its intended purpose.

- b. The Contractor will not be entitled to request or receive the CTA's confirmation of Project Element Substantial Completion of any Project Element or Substantial Completion of the Project if:
 - i. any applicable requirement specified in Sub Part 2.13 of Part 2 is not satisfied;
 - ii. the Punchlist with respect to, as applicable, such Project Element or Substantial Completion of the Project has not yet been approved by the CTA pursuant to Section 10.4 and Sub Part 2.13.3 of Part 2;
 - iii. the Contractor has failed to satisfy any other applicable requirement or condition under the Contract Documents which is required to be satisfied prior to such Project Element Substantial Completion or Substantial Completion, as applicable;
 - iv. any Contractor Default will have occurred and be continuing;
 - v. with respect to any Project Element:
 - A. the Contractor is then not compliant with the requirement under Sub Part 3.9.2 of Part 3 to complete all applicable Punchlist items in respect of any previously completed Project Element within the time period specified therein; and
 - vi. in addition, with respect to Substantial Completion of the Project only:
 - A. any Project Element has not yet achieved Project Element Substantial Completion as evidenced by a Certificate of Project Element Substantial Completion;
 - B. the Contractor has not completed all applicable Punchlist items and incomplete items in respect of all previously completed Project Elements; and
 - C. the Contractor has not otherwise repaired, replaced, or corrected any Defects or remedied any Nonconforming Work in respect of any previously completed Project Elements or other Work, except to the extent CTA has approved a deferral of such remedy, replacement, or correction (such approval not to be unreasonably

withheld) of any Defect or Nonconforming Work which does not adversely impact CTA's use of the Project Element or represent a material risk to the health or safety of any Person, the environment, the community, or property.

- c. Promptly upon confirming that any Project Element Substantial Completion or Substantial Completion, as applicable, has occurred, subject to the foregoing conditions the CTA will issue to the Contractor a Project Element Substantial Completion Certificate or a Certificate of Substantial Completion, as applicable.

10.3. Final Completion

- a. The Contractor will follow the applicable procedures specified in Sub Part 2.13.5 of Part 2 in order to achieve Final Completion.
 - b. The Contractor will not be entitled to request or receive the CTA's confirmation of Final Completion if:
 - i. any applicable requirement specified in Sub Part 2.13.5 of Part 2 is not satisfied;
 - ii. the Punchlist with respect to Final Completion has not yet been approved by the CTA pursuant to Section 10.4 and Sub Part 2.13.3 of Part 2;
 - iii. the Contractor has not integrated all Project Elements (and all other elements of the Project not subject to Project Element Substantial Completion) with one another, including with respect to all systems and equipment such that the same:
 - A. have been fully installed;
 - B. comply, in all respects, with applicable Law;
 - C. are fully operational and functional; and
 - D. have objective evidence of passing all tests and inspections and of supplying all required documentation under the Contract Documents,
- in each case subject to completion of any Final Completion Punchlist items;

- iv. the Contractor has failed to satisfy any other applicable requirement or condition under the Contract Documents which is required to be satisfied prior to Final Completion;
 - v. any Contractor Default will have occurred and be continuing;
 - vi. Substantial Completion has not yet occurred as evidenced by a Certificate of Substantial Completion;
 - vii. the Contractor has not completed all applicable Punchlist items identified in the Punchlist with respect to Substantial Completion; and
 - viii. the Contractor has not otherwise repaired, replaced, or corrected all Defects and remedied all Nonconforming Work in respect of all previously completed Work.
- c. Promptly upon confirming that Final Completion has occurred, subject to the foregoing conditions the CTA will issue to the Contractor a Certificate of Final Completion.

10.4. Punchlist Mechanics

- a. Punchlists will be separately prepared and approved with respect to each Project Element and Substantial Completion in accordance with Sub Part 2.13.3 of Part 2.
- b. The Contractor must:
 - i. begin work on Punchlist items immediately after preparation of the Punchlist, or within such other period as specified in the CTA Approval;
 - ii. prosecute that Work continuously; and
 - iii. complete all Punchlist items within the time period specified in Sub Part 3.9.2 of Part 3 or, where applicable, such earlier deadline with respect to specific items as may be required as a condition of CTA's approval of the Punchlist.
- c. The Contractor will, on an ongoing basis:
 - i. (A) verify that each item on any Punchlist has been corrected or completed, (B) provide all final documentation of the same, and (C) perform a final

review and inspection to verify that Punchlist items have been resolved, in the case of each (A)-(C) subject to verification by CTA; and

- ii. provide the CTA with regular written updates regarding the same.

10.5. Project Closeout

- a. Following receipt of the Certificate of Final Completion, the Contractor will, subject to the CTA's Approval, update the Closeout Plan to govern all Project requirements then remaining after achieving Final Completion.
- b. Project Closeout will occur after Final Completion and upon:
 - i. the receipt by the CTA of all applicable and complete Submittals specified in Part 2.13 of Part 2; and
 - ii. satisfaction of all otherwise required conditions in accordance with the Approved Closeout Plan.
- c. CTA will issue a letter notifying the Contractor of Project Closeout after which the Contract will be terminated, subject to Section 53.

Subpart D: Compensation and Payment

11. Compensation and Payments

11.1. Type of Contract; Lump Sum Price

This Contract is a design-build contract, with a total Lump Sum Price equal to \$*[insert "Lump Sum Price" from Form E-1 (Pricing Proposal) of Contractor's Proposal, adjusted as necessary to reflect CTA's election regarding Optional Work under the terms of the ITP]*.

11.2. Contract Price

- a. The "Contract Price" is the maximum total amount payable by the CTA to the Contractor for completion of the Work, as such amount may be payable and adjusted over time in accordance with the terms of this Contract. The Contract Price will at all times be the sum of:
 - i. the "Base Lump Sum Price" is *[insert from Form E-1 (Pricing Proposal) of the Contractor's Proposal, adjusted as necessary to reflect CTA's election regarding Optional Work under the terms of the ITP]*, as such amount may be adjusted in accordance with Section 11.2.b; and
 - ii. the amount of each Allowance set out in Sub Part 3.2 of Part 3, as each such amount may be adjusted in accordance with Section 11.2.b.

As of the Contract Date, the Contract Price is equal to the Lump Sum Price.

- b. The Contract Price may be adjusted only through an adjustment to one or more of the components referenced above by a Change Order. Change Orders are subject to the approval of the Chicago Transit Board as determined by CTA under its applicable regulations.

11.3. Invoicing and Payment

- a. Subject to the remainder of this Sections 11.3.c through 11.3.e, the Contractor will submit "Applications for Payment" as described and in accordance with Sub Part 2.1.8 of Part 2, and the CTA will pay for Work performed on the basis of such Submittals.
- b. Any undisputed, final, and approved invoices will be paid within 30 Days from the date they are approved by CTA's Account Payable Department for payment. If

payment of any undisputed, final and approved amount in an invoice is not made within 30 Days from the date such invoice is approved by CTA's Account Payable Department for payment, an interest penalty of 1% of any amount approved and unpaid will be added for each month or fraction thereof after the expiration of such 30-Day period, until final payment is made (the same rate of interest will apply to unpaid amounts due and owing from the Contractor to CTA).

- c. With respect to any Stored Material that has been delivered but not yet installed, the Contractor will be entitled to bill for such Stored Material as and to the extent allowed in accordance with Sub Part 2.1.8.D of Part 2.
- d. With respect to payment for Work to be made from Allowances, the Contractor will comply with Sub Part 2.1.10 of Part 2, and the CTA will pay for Work performed on the basis of such submittals.
- e. Upon achievement of Final Completion, the Contractor will be entitled to invoice for its share of any remaining balance in the Shared Contingency Allowances in accordance with Sub Part 2.1.10 of Part 2 and Sub Part 3.2 of Part 3.

11.4. Withholding Payment

Without limiting its rights of set-off under Section 12, CTA may withhold payment from the Contractor, in whole or in part, if:

- a. a part of the Work to which such payment relates constitutes Nonconforming Work or has Defects, with such withheld payment to only be with respect to such part of the Work, including the cost to correct such Nonconforming Work or Defect or other Losses which the Contractor may be liable to the CTA under the Contract with respect to such Nonconforming Work or Defect, all as reasonably determined by the Chief Infrastructure Officer for purposes of determining whether to withhold (subject to the Contractor's right to Dispute the existence of any Nonconforming Work or Defect);
- b. the Contractor has failed to comply with Section 22.6, with such withheld payment to only be with respect to the extent of such underpayment or such Subcontractor;
- c. the Contractor has made false or inaccurate certifications in any documentation by this Contract to substantiate such payment or with respect to any Work to which the payment relates;

- d. CTA has notified the Contractor of termination of this Contract as a result of Contractor Default;
- e. the Contractor has failed to submit a complete and accurate request for payment or otherwise to comply with the applicable invoicing procedures in accordance with the terms of this Contract; or
- f. the Contractor is otherwise in breach of the Contract and such breach relates to Contractor's request for payment or the Work for which payment is sought.

The CTA will not be liable for interest on amounts withheld pursuant to this provision.

11.5. Disputed Payments

If there is a dispute concerning the amount due on a certain portion of Work, the CTA will provide justification for the disputed amount and will pay the undisputed amount with the remainder to be determined pursuant to the Dispute Resolution Procedures.

11.6. Other Conditions to Payment

The Contractor must submit all documents, information, and materials indicated in the Contract Documents as conditions to any payment within the time periods set out in the Contract Documents. Such submissions are conditions precedent to the CTA's obligation to make the relevant payment.

12. Set-off

The CTA will have the right of set-off of any claim of the CTA hereunder, including under Section 35.2, against any payments due or to become due under this Contract to the Contractor.

13. Taxes

Federal Excise Tax does not apply to materials purchased by the CTA by virtue of Exemption Certificate No. 36-73-0234K. Illinois Retailers Occupation Tax, Use Tax, and Municipal Retailers' Occupational Tax do not apply to materials or services purchased by the CTA by virtue of Chapter 70 Illinois Compiled Statutes Section 3605/33, as amended. These taxes must not be included in any payment requests. Illinois Tax Exemption Identification number is E9978-2987-07.

Subpart E: Changes; Unforeseen Delays and Events

14. Changes to the Work

14.1. CTA Changes

a. Right to change Work

The CTA may at any time or from time to time, order additions, deletions, or revisions to the Work. If the Contractor does not have written authorization from the CTA pursuant to this Section 14.1, then the Contractor will not be compensated for any Changed Work. Any compensation for Changed Work will be as provided for in a Change Order.

b. Proposed changes in Work

i. If the CTA wishes to consider the Contractor to perform Changed Work, the Chief Infrastructure Officer will issue a Bulletin requesting the Contractor to submit a proposal for Changed Work. The Bulletin will describe the scope of the Changed Work.

ii. The Contractor will submit a proposal for Changed Work within 14 Days after receipt of the Bulletin or such shorter or longer time as the Chief Infrastructure Officer may set out in the Bulletin, but which shorter time must not be unreasonable and which longer time may be granted following a Contractor request (the consent to which the Chief Infrastructure Officer will not unreasonably withhold). The proposal for Changed Work will include all Bulletin requirements and will set out:

- A. any change to the Contract Price, including the basis for calculation of such amount as provided in Section 14.1.d;
- B. any change to the Contract Time required, taking into account Section 9, including a written Time Impact Analysis, which, using the then-current Schedule (or any proposed update thereto) including necessary reference to the Baseline Schedule, demonstrates the impact of the Changed Work to the Milestones and to the Schedule, provided that:

- I. the Contractor may request additional time to complete its Time Impact Analysis as an update to its initial proposal, subject to the consent to which the Chief Infrastructure Officer (not to be unreasonably withheld); and
 - II. if the Contractor does not ultimately submit a Time Impact Analysis within the time period approved by the Chief Infrastructure Officer, the Contractor will be deemed to have waived its rights to challenge CTA's determination of the time and cost due to the Contractor.
- C. any change to the number of Track Access Occurrences, Substation Occurrences, flagger hours, infrastructure hours or test trains, public way constraints, or any other constraints which are required.

Contractor will use all reasonable efforts to minimize the foregoing Contract Price, Contract Time, and constraint changes.

- iii. The CTA may or may not choose to then authorize the Contractor to perform the Changed Work as identified in the Bulletin in accordance with the Contractor's proposal for Changed Work (as such proposal may be modified by the parties' mutual agreement).
- c. Authorization for Changed Work
- i. Generally. Any agreement by CTA staff as to price or time is subject to final approval as required by the CTA's ordinances, regulations, and rules. Execution of a Proceed Order or Change Order after completion of any Dispute Resolution Procedures as provided in Section 46.4, if any, will be considered an accord and satisfaction for the Changed Work identified therein that was the subject of such Dispute, including but not limited to all labor, materials, time and related time or expense impacts of such Work. Under no circumstances will Contractor be entitled to claim additional cumulative or other impacts to Contract Price or Contract Time resulting from Changed Work after a Change Order has been executed by the

Parties except to the extent such claim is expressly permitted by the executed Change Order.

- ii. Proceed Order. The Director, Purchasing may issue a Proceed Order to direct the Contractor to proceed with the Changed Work for which the Contractor and the CTA agree on an adjustment to Contract Price and Contract Time if CTA authorizes Changed Work. Proceed Orders will be incorporated into a Change Order(s).
- iii. Directive Order. If the Contractor and the CTA have not agreed on terms for Changed Work, including in the case where there is a Dispute as to whether Work that CTA requires or directs Contractor to perform is otherwise already required under the terms of this Contract or would alternatively constitute Changed Work, the Director, Purchasing may issue a Directive Order. The Director, Purchasing, will determine the terms for the Work to be performed pursuant to such Directive Order, including, as and if applicable, with respect to payment subject to adjustment in any future Change Order or by completion of Dispute Resolution under the Contract. The decision of the Director, Purchasing, will be final and binding, subject only to the Dispute Resolution Procedures. The Contractor will thereafter perform the Changed Work, or other disputed portion of the Work, as directed. The Contractor's refusal or failure to proceed promptly as directed will constitute a Contractor Default. Directive Orders will, with respect to Changed Work, be incorporated into a Change Order(s) following agreement by the Parties on adjustments to Contract Price and/or Contract Time to the extent applicable, or following completion of Dispute Resolution under the Contract.
- iv. Change Order. The CTA may issue a Change Order as authorization for the Changed Work and/or for a Contract Price or Contract Time adjustment, or both. The CTA may also issue a Change Order that includes within its terms an Amendment to the terms of the Contract. A Change Order may include future Work to be performed under the Contract or Work performed in accordance with previously authorized Proceed Orders, Directive Orders, or approved claims. The Contractor cannot be

compensated for any work authorized through a Proceed Order or Directive Order or in connection with any other adjustment to Contract Price, including as a result of resolution of a Cost and Delay Event, until a Change Order is executed by the Parties and has received all approvals.

d. Compensation for Changed Work

- i. Unit Price. The amount to be paid by the CTA for Changed Work where an agreed unit price is applicable will be such agreed unit price.
- ii. No Unit Price. If no agreed unit price is applicable, the amount paid by the CTA for Changed Work will consist of the sum of the following (as applicable):

A. Cost of craft labor consisting of the following:

- I. payments made to craft labor and foreman in direct charge of the specific operations, or estimated number of craft labor hours for hourly wage labor and hourly wage foreman multiplied by their respective base wages;
- II. health and welfare benefits for such employees;
- III. pension fund benefits for such employees; and
- IV. other benefits required for such employees by the collective bargaining agreement,

where the cost of labor will be taken as the amount paid for same as shown on the payrolls of the Contractor. The rates charged for labor will in no case exceed the rate paid for the same class by labor employed to perform work under the regular items of the Contract. Salaried and/or site supervision and management staff costs are not reimbursable under this provision.

- B. Cost of salaried and/or site supervision and management staff who are dedicated full-time to the Project and whose primary work location is either the Project Office or the Site, consisting of the following:

- I. payments made to such staff in direct charge of the specific operations, estimated number of labor hours for hourly wage labor multiplied by their respective base wages, or pro rata portion of salary;
- II. health and welfare benefits for such staff;
- III. pension fund benefits for such staff; and
- IV. other benefits required for such staff by any collective bargaining agreement,

solely to the extent that the Changed Work, together with all other previously authorized Changed Work, extends the Milestone Deadline for Substantial Completion by more than ten (10) Days and an increase in the duration such staff are dedicated to the Project is required as a direct result of such time extension necessitated by the applicable Changed Work. Such costs will be compensable on a day-for-day basis beginning with the 11th day of such extension, and, for certainty, such compensation will not include the first ten (10) Days of such extension.

- C. Increase in cost of insurance and tax for labor costs according to 14.1.d.ii.A above, including:
 - I. insurance for property damage;
 - II. insurance for liability;
 - III. Worker's Compensation;
 - IV. unemployment insurance contribution;
 - V. Social Security tax; and
 - VI. any other insurance required by the Contract;where the Contractor will furnish satisfactory evidence of the rates paid for such insurance and tax.
- D. Cost of architects and engineers and/or other additional and necessary equivalent technical professional services for alterations

to the Final Design, or for alterations of other applicable drawings and Project Standards, at the same rates as they were compensated for the Design/Preconstruction Work. Any such costs will be submitted with documentation satisfactory to the CTA that such efforts were required solely as a result of the Changed Work after crediting any an estimate for work that would have been required in the absence of such Changed Work.

- E. Change in cost of Bonds.
- F. Cost of materials that are an integral part of the Work, including freight charges. Where applicable, the cost of materials will be the actual cost of the same type of material delivered to the Site under the regular items of the Contract.
- G. Cost of materials (less salvage value) that are used in the Work but not an integral part of Work without any percentage, such as sheeting, falsework, forms, materials used in protection of work, and environmental conditioning to meet installation requirements of this specific operation.
- H. Cost associated with use of machinery or equipment (other than small tools) will be calculated using the estimated number of hours the equipment or machinery would be used multiplied by the rate based on the following publications or method without adding any percentage:
 - I. "Equipment Watch's Rental Rate Blue Book" as published by Equipment Watch/Penton Media, Inc. when equipment and machinery is owned by the Contractor;
 - II. rental rates not to exceed those compiled in "Contractor's Equipment Ownership Expenses" of the Associated General Contractors of America when equipment and machinery is rented by the Contractor; and
 - III. by the CTA in its discretion, after reviewing all available records of the Contractor or other information, with respect

to the expense of operating equipment and machinery not listed in either of the aforesaid publications,

where the Contractor will furnish the CTA with one copy of each publication upon first reference.

I. Actual, reasonable, and documented third-party costs incurred by the Contractor as required under the terms of any Record of Third-Party Coordination or otherwise for the provision of changes to, or extensions of the period needed for, the Project Office required to be maintained pursuant to Sub Part 2.5.14 of Part 2;

J. Reasonable overhead and profit:

I. at the tier at which such Work is performed:

(a) an amount not to exceed 35% of the costs of additional craft labor;

(b) an amount not to exceed 15% if the costs of additional material; and

(c) with respect to the Contractor, an amount not to exceed 10% of the change in insurance, tax, and bonding costs; and

II. to the extent the work is not performed by the Contractor, then an additional amount for the Contractor's management of the Subcontractor, not to exceed a mark-up 5% of the change in the value of the applicable Subcontract associated with the Changed Work,

in each case to the extent consistent with Federal cost principles and the Contractor's then-current Schedule of Values and as negotiated by the parties based on the circumstances (the resulting profit will be a fixed fee negotiated in accordance with the then-current revision of FTA Circular 4220.1). To the extent that the Changed Work deletes Work from the Contract, there will be a reduction of an equivalent amount.

In each case:

K. excluding:

- I. any miscellaneous costs not provided for above;
- II. general superintendence, to the extent not expressly provided for above;
- III. costs for small tools with a replacement cost of \$[] or less;
- IV. a contingency amount absent CTA approval;
- V. preparation costs for proposals or Claims; and
- VI. any internal costs, fees, or expenses of the Contractor or any of its Subcontractors, to the extent not expressly provided for above; and

L. where any indirect costs must be addressed with specificity; generalized unattributed impacts will not be accepted.

iii. Documentation.

A. The amount of compensation for Changed Work in Section 14.1.d.i or Section 14.1.d.ii above will be demonstrated and documented to the CTA's reasonable satisfaction, and either will be:

- I. agreed in advance, which for Section 14.1.d.ii is based upon the Contractor's good faith estimates demonstrated and documented to the CTA's satisfaction, and approved pursuant to Section 14.1.c, or
- II. reimbursed based upon the Contractor's actual, documented, and permissible costs.

B. At the CTA's request, the Contractor will provide such documentation together with a certification equivalent to the certification with respect to Relief Event claims in the form set out in the Notice of Claim.

e. Payment for Change Orders for deleted Work

When the Change Order deletes Work from the Contractor's scope (including deletion of any Work contained in the Contract that is found to be unnecessary), the amount of the reduction in the Contract Price will be based upon an estimate of the costs that would have been incurred by the Contractor had such Work been completed, including calculated in the same manner as pricing an additive Change Order.

14.2. Contractor Proposed Changes

- a. All Contractor Proposed Changes will be submitted on a Contractor Proposed Change Form with a sequential numbering as assigned by the CTA and the appropriate description of the proposal. All correspondence pertaining to such proposal will consistently reference the appropriate number and description.
- b. If the Contractor wishes to propose a Contractor Proposed Change, it will be at the Contractor's own cost.
- c. No later than 15 Days following receipt of the Contractor Proposed Change Form, the CTA will respond to the Contractor in writing, indicating either:
 - i. that it is not prepared to consider the Contractor Proposed Change, in which case the CTA and the Contractor will take no further action in respect of such change; or
 - ii. that it is prepared to consider such Contractor Proposed Change further, in which case the Contractor will submit a revised Contractor Proposed Change Form incorporating any modifications to the original proposal or additional information no later than 14 Days after CTA's written response.
- d. The Contractor Proposed Change will not be implemented without a Proceed Order, Change Order, or Amendment. The CTA may, in its discretion, reject the Contractor Proposed Change or meet with the Contractor in an attempt to negotiate a Change Order agreeable to both Parties that incorporates the essential elements of the Contractor Proposed Change.
- e. If the CTA agrees to portions of the Contractor's proposal, the Parties will attempt to negotiate a Proceed Order, Change Order, or Amendment that incorporates those portions of the proposal that the CTA would like to incorporate into the Project. If the parties cannot agree, then the CTA may issue a Directive Order.

15. Claims Process

15.1. Relief Events

- a. "Relief Events" are comprised of Delay Events and Cost and Delay Events, each as more fully defined below.
- b. For the purposes of this Contract, a "Cost and Delay Event" means any of the following conditions or circumstances, unless and to the extent such conditions or circumstances result from a Contractor Fault Event:

<u>Cost and Delay Event</u>	<u>Definition / Description</u>
"Unforeseen Environmental Impairment"	means any Environmental Impairment encountered at the Site: (i) that differs materially from those indicated in the Reference Documents; and (ii) that: (A) was not otherwise disclosed to or known by the Preferred Proposer or a Contractor-Related Entity; and (B) could not have reasonably been anticipated by the Preferred Proposer or any Contractor-Related Entity undertaking due diligence pursuant to Good Industry Practice on the basis of the RFP and the Reference Documents, in each case prior to the Reference Date.
"Unforeseen Geological Impairment"	As defined in Annex A to this Part 1.
"Unforeseen Utility Impairment"	As defined in Annex A to this Part 1.
"Unexpected Historically Significant Remains"	means any antiquities (including structures), fossils, coins, articles of value, cultural artifacts, human burial sites and remains, and other similar remains of archaeological, historical, cultural, or paleontological interest encountered within a Permissible Area which: (i) was not otherwise disclosed to or known by the Preferred Proposer or a Contractor-Related Entity; and (ii) could not have reasonably been anticipated by the Preferred Proposer or any Contractor-Related Entity undertaking due diligence pursuant to Good Industry Practice on the basis of the RFP and the Reference Documents, in each case prior to the Reference Date.

Cost and Delay Event	Definition / Description
"Unexpected Endangered Species"	means any animal or plant species listed as threatened or endangered under and subject to an applicable threatened or endangered species Law, or any bird protected under the Migratory Bird Treaty Act, encountered at the Site, the temporary, continual or habitual presence of which on the Site was that: (i) was not otherwise disclosed to or known by the Preferred Proposer or a Contractor-Related Entity; and (ii) could not have reasonably been anticipated by the Preferred Proposer or any Contractor-Related Entity undertaking due diligence pursuant to Good Industry Practice on the basis of the RFP and the Reference Documents, in each case prior to the Reference Date.
"CTA Breach or Fault Event"	Any: (i) incident of physical damage to any element of the Project or delay of or disruption to the Work caused by the construction, operation, or maintenance of any Other CTA Project, or of any other facility, infrastructure, or project constructed, operated, and/or maintained by or on behalf of the CTA, within or in the vicinity of the Project Area, but only to the extent (A) not constructed, operated, or maintained by the Contractor (or another Person under common Control with the Contractor) pursuant to this Contract or otherwise and (B) with respect to delays and disruptions, not otherwise disclosed to or known by the Preferred Proposer or any Contractor-Related Entity prior to the Reference Date or otherwise expressly contemplated and permitted under the terms of the Contract Documents; (ii) suspension of the Work by CTA made pursuant to Section 34.2 for which Contractor is entitled to an adjustment in Contract Time pursuant to 34.2.c.; (iii) failure by CTA to timely provide flagging personnel or infrastructure personnel in accordance with Sub Parts 2.6.3 and 2.6.4 of Part 2; (iv) failure by the CTA to perform and complete the "Advance Utility Relocation (AUR)" by the dates set out in Appendix 3J pursuant to Sub Part 3.14.2 of Part 3; (v) failure by the CTA to issue the Notice to Proceed within ten (10) Days following the Contract Date; (vi) failure by CTA to respond (affirmatively, negatively or otherwise) to a Contractor submittal or to otherwise act within any express time period required under the applicable Contract Document; and (vii) any material breach of this Contract or of Law by the CTA, in each case that is not separately a "CTA Failure to Provide Access" (as described below) or otherwise defined as another form of potential Relief Event.

Cost and Delay Event	Definition / Description
"Compensable Change in Law"	means a Change in Law that requires: (i) a material change in the quantity of, or material constituents incorporated into, physical elements of the Construction Work; (ii) the addition of new physical elements to be incorporated into the scope of the Construction Work (including as temporary works); or (iii) an increase in the Contractor's then-current and/or planned personnel level directly engaged in Construction Work, in each case (i) through (iii) which was not contemplated in the Project Requirements or the Proposal and are, with respect to (i) and (ii) (with the exception of temporary works), elements that are to be turned over to CTA prior to or at Substantial Completion.
"CTA Failure to Provide Access"	Any failure by the CTA to timely and continuously provide the Contractor with access to any part of the Site (including any such part of the Site access to which is provided from, through, or on behalf of a Railroad) as and when required pursuant to the Contract Documents, subject to the rights of other Persons, restrictions, or qualifications that were identified, disclosed or expressly anticipated or prior to the Reference Date as determined by reference to: <ul style="list-style-type: none"> i. the Contract Documents; ii. any Record of Third-Party Coordination; iii. Law; iv. Permits; v. any title commitment in relation to this Project in the possession of or made available to the Preferred Proposer and/or any Contractor-Related Entity prior to the Reference Date; and vi. the Reference Documents; provided that, with respect to any part of the Site access to which is provided from, through, or on behalf of a Railroad, the Contractor received less than [twenty-four (24) hours' notice of cancellation of access] ² .
"CTA-Provided Materials Delay"	Any failure by the CTA to make CTA-Provided Materials available to the Contractor in accordance with Section 38.3.
"CTA Generator Status Liability"	Any Loss by the Contractor as a result of it being held liable as generator with respect to any Hazardous Materials for which Contractor is not liable as the generator pursuant to Section 28.3.

² **Note to Proposers:** This clause remains under review by CTA and will be addressed in a future Addendum.

<u>Cost and Delay Event</u>	<u>Definition / Description</u>
"Governmental Authority Delay"	Any: delay by a Governmental Authority to issue, agree to modify, renew, or extend any Permit, manifest, easement, license, inspection or any other approval or authorization for which the Contractor is responsible pursuant to this Contract, but only if and to the extent: (i) where applicable, such delay exceeds the maximum review time period provided for in Appendix 2E of Part 2, or otherwise the Contractor included sufficient time in the Schedule for the processing and approval thereof in accordance with Good Industry Practice; and (ii) the Contractor diligently pursued such Permit, manifest, easement, license, inspection or any other approval or authorization.
"Railroad Fault Delay"	Any: (i) delay by a Railroad to respond to a Contractor's submission beyond the maximum review time period provided for in Sub Part 3.15 of Part 3 and Appendix 2E of Part 2 provided that the Contractor at all times diligently pursued such Permit, manifest, easement, license, inspection or any other approval or authorization; or (ii) unreasonable delay by a Railroad, after approval of required submissions, to issue, agree to modify, renew, or extend any Permit, manifest, easement, license, inspection or any other approval or authorization for which the Contractor is responsible pursuant to this Contract.
"Record of Third-Party Coordination"	Any designation of a new, amended, or modified Record of Third-Party Coordination in accordance with Section 18.4.b.
"Change in Response to a Permitted Profile Deviation"	means the Cost and Delay Event described in Part 2.4.8.F.1.c.

- c. For the purposes of this Contract, a "Delay Event" means any of the following conditions or circumstances unless and to the extent such conditions or circumstances result from a Contractor Fault Event:

<u>Delay Event</u>	<u>Definition / Description</u>
"Force Majeure"	<p>any of the following Force Majeure events or circumstances (and no others):</p> <ul style="list-style-type: none"> i. a Chicago metropolitan area-wide labor disputes generally affecting the infrastructure construction industry or a significant sector of it; ii. national railroad labor disputes generally affecting the railroad industry; iii. acts of the public enemy including war, civil war, invasion or armed conflict; iv. riot or illegal civil commotion; v. fires; vi. floods; vii. epidemics, including responses thereto with binding legal effect; viii. freight embargoes; and ix. acts of terrorism or sabotage; x. nuclear, chemical or biological contamination or emissions (including as applicable associated radiation); xi. earthquake or earth movement; xii. tornado; or xiii. the occurrence of any Weather Day to the extent such weather and potential delays were not required to be taken into account pursuant to Sub Part 2.1.6.L of Part 2; <p>For the purpose of the foregoing:</p> <ul style="list-style-type: none"> xiv. "epidemics" will be solely comprised of either (a) global pandemics which also are epidemic in the United States of America or (b) epidemics in the Chicago Metropolitan Area, in either case recognized by the World Health Organization or the Centers for Disease Control and Prevention to arise from communicable diseases; and xv. COVID-19 shall not qualify as a Relief Event except with respect to any effects of or responses to COVID-19 that had not occurred or were not foreseeable at the Reference Date.
"Court Order Delay"	The issuance of any temporary restraining order, preliminary or permanent injunction, or other form of interlocutory relief by a court of competent jurisdiction that prohibits the prosecution of a material part of the Work.
"Railroad Damage or Delay Event"	Any incident of physical damage to any element of the Project or delay of or disruption to the Work in either case caused by a Railroad, including the release of Hazardous Materials, but only to the extent such incident is not otherwise a Railroad Fault Delay.

<u>Delay Event</u>	<u>Definition / Description</u>
"Third Party Damage or Delay Event"	Any incident of physical damage to any element of the Project or delay of or disruption to the Work in either case caused by a third party, including but not limited to the release of Hazardous Materials, but only to the extent such damage or delay is not otherwise addressed by any other specific Relief Event.
"General Change in Law"	means a Change in Law that is not a Compensable Change in Law.
"CTA Order Delay"	Any Proceed Order or Directive Order with which the Contractor has complied, and which would have entitled to Contractor to an adjustment in Contract Time, but for which no Change Order has yet been executed.

15.2. Duties following a Relief Event

- a. Without modifying its other obligations pursuant to this Contract, the Contractor will use reasonable efforts to eliminate or mitigate the adverse impacts of any Relief Event and, except as expressly provided in this Contract, continue to perform its obligations under this Contract notwithstanding the Relief Event and, to the extent such performance has been affected by the Relief Event, to resume performance of the affected Work as soon as practicable and in all events promptly after the cessation or mitigation of the Relief Event.
- b. The Contractor will not be entitled to any compensation or relief to the extent (but only to the extent) the associated performance disruption or cost would have been avoided by its compliance with the foregoing mitigation obligation.

15.3. Conditions to Time or Price Adjustments

- a. The Contractor will not be entitled to any form of relief or compensation as a result of a Relief Event, and no Contract Time adjustment will be made pursuant to Section 8.2, no Change Order for a Contract Price adjustment will be made pursuant to Section 11.2, and no payment in respect of any Cost and Delay Event will be made pursuant to Section 11.3.d from the Owner's Contingency Allowance, any Non-Shared Contingency Allowance, or any Shared Contingency Allowance, as a result of any Relief Event:
 - i. unless:
 - A. a Relief Event has occurred;

- B. with respect to a payment from the Owner's Contingency Allowance, the CTA has, in its discretion, notified the Contractor that the relevant Cost and Delay Event will be payable from such Allowance;
- C. the Contractor has submitted a Notice of Claim with respect to such Relief Event pursuant to Section 15.5 and otherwise complied with all relevant requirements of this Section 15;
- D. the Contractor has:
 - I. maintained cost and schedule data and records as required by this Contract as necessary to document the relevant Relief Event;
 - II. with respect to any Delay, submitted a Time Impact Analysis in accordance with Sub Part 2.1.10 of Part 2 that demonstrates that the Delay (1) adversely affects the Critical Path and (2) causes completion of the Work for one or more of the Milestones to be delayed; and
 - III. in the case of a Cost and Delay Event, demonstrated an adverse cost impact in accordance with Section 15.3.b.i; and
- E. the Contract Time adjustment, Contract Price adjustment, and/or Allowance payment request complies with the requirements of this Section 15 and, as applicable, Section 11.2 with respect to a Contract Price adjustment and Sub Part 2.1.10 of Part 2 and/or Sub Part 3.2 of Part 3 with respect to payments to be made from Allowances; and/or
 - ii. to the extent the need for such relief or compensation results from a Contractor Fault Event, including any such fault which exacerbates, or results in a failure to mitigate, a Relief Event.
- b. With respect to any Notice of Claim in relation to any Relief Event, the amount claimed, whether as a Contract Price adjustment or as payment from the Owner's

Contingency Allowance, any Non-Shared Contingency Allowance, or any Shared Contingency Allowance, will be subject to the following additional conditions:

- i. such amount is and will be comprised only of the following (as applicable, and without double counting):
 - A. with respect to Cost and Delay Events only, as calculated pursuant to Section 14.1.d (but with respect to any “Change in Response to a Permitted Profile Deviation”, excluding any cost or expense referred to in Section 14.1.d.ii.D); and
 - B. with respect to both Cost and Delay Events and Delay Events (excluding only any Delay Event which is a “Force Majeure”, “Court Order Delay”, “Railroad Damage or Delay Event”, “Third Party Damage or Delay Event”, or a “General Change in Law”, and any Cost and Delay Event which is a “Change in Response to a Permitted Profile Deviation”), any Damages for Delay,in each case, as applicable such amount then:
 - C. subject to adjustment pursuant to a CTA approved “Allowance Expenditure Authorization” as described in Sub Part 2.1.10 of Part 2;
 - D. net of any Contractor savings or avoided costs of Work not being performed as a direct result of such Relief Event; and
 - E. net of any amounts the Contractor is entitled to recover under insurance that the Contractor maintains, or is required to maintain under this Contract; and
- ii. the item is not disputed or the amount calculated in accordance with Section 15.3.b.i equals or exceeds \$25,000 (and, for certainty, the Contractor will bear and not have any right to a Contract Price adjustment or other compensation if such amount is calculated to be less than \$25,000 for a single Relief Event (even if such amount would otherwise be payable from an Allowance)).

15.4. Determinations Regarding Relief Event Claims

To the extent any condition or circumstance simultaneously satisfies the definitional requirements of two or more Relief Events, then such conflict will be resolved by deeming such condition or circumstance to constitute a single Relief Event pursuant Section 3 of Annex B, for which purposes:

- a. if such condition or circumstance simultaneously satisfies the definitional requirements of two or more different Cost and Delay Events, or two or more different Delay Events, then the Cost and Delay Event or Delay Event, as applicable, with the more stringent requirements for receiving the relevant form of relief or compensation will apply to the exclusion of the other such event(s); and
- b. the Contractor's proposed treatment of such condition or circumstance as one type of Relief Event, but not another, will not be binding on, and may be disputed by, CTA.

15.5. Notice of Claims Process

- a. The Contractor will provide prompt oral notification to the Chief Infrastructure Officer upon discovering any Relief Event which it believes will result in a Claim. Upon oral notification of the Claim, the Chief Infrastructure Officer will attempt to resolve the identified issue as promptly as possible.
- b. Regardless of whether the relevant Relief Event has concluded or is continuing, and without limiting any other obligation the Contractor may have to notify the CTA or any other Person of, or in relation to, such event, if the Contractor discovers any conditions or circumstances that may result in a Claim, the Contractor will promptly, and in any event within 21 Days of becoming aware or determining that any Relief Event has occurred, and unless the Contractor wishes to waive its rights with respect to such event pursuant to Section 15.8, submit a notice in the form of a Notice of Claim, in compliance with the notification requirements under Section 48 to the Chief Infrastructure Officer. The Notice of Claim may be made subject to further updates as needed pursuant to Section 15.6 with respect to ongoing or recently concluded Relief Events.

15.6. Duty to Update

After the Contractor submits any Notice of Claim to the CTA, the Contractor will:

- a. submit an update to any Notice of Claim with respect to the Relief Event that was ongoing at the time of the original submission, or as otherwise requested by the CTA, by the date that is the later of 21 Days after such event concluded and the date of the CTA's request;
- b. promptly notify the CTA in the form of an updated Notice of Claim, if at any time it becomes aware of any further material information relating to the Relief Event, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading; and
- c. following the CTA's reasonable request, or as required pursuant to the terms of any written agreement previously made between the parties (including with respect to a continuing Relief Event), submit to the CTA additional information related to the relevant Relief Event and related claims.

15.7. Notice requirements not affected by certain CTA conduct

The Contractor understands and agrees that:

- a. regardless of any case law decision to the contrary, the notice requirements set out in Sections 15.5 and 15.6 will not be subject to or diminished by any claim on the part of the Contractor that the CTA or any person acting on behalf of the CTA, directed the Contractor to make changes in the Work other than through a Change Order or had actual or constructive knowledge of any changes in the Work associated with any Relief Event; and
- b. ongoing discussions and/or correspondence with the CTA in relation to any Relief Event will not relieve the Contractor of its obligation to timely comply with the notice requirements set out in Sections 15.5 and 15.6 or otherwise form a defense to the application of Section 15.8.

15.8. Failure to Provide Timely Notice

If the Contractor fails to timely submit a written Notice of Claim in accordance with Section 15.5.b or to timely submit any update to a written Notice of Claim in accordance with Section 15.6, then such failure or inaction will be deemed to mean that the Contractor with respect to the relevant Relief Event:

- a. if period of delay in making such submission is less than thirty (30) Days, the Contractor will remain able to claim such Relief Event but be deemed to have irrevocably and forever waived and released any rights or claims relating to the adverse effects of the Relief Event accruing, persisting or increasing after the expiry of the original deadline for such submission or otherwise due to such failure and until the Contractor complies with the relevant obligation; and
- b. if period of delay in making such submission is greater than thirty (30) days, the Contractor will be deemed to have withdrawn the Notice of Claim (to the extent previously submitted), and irrevocably and forever waived and released any rights or claims relating to the relevant Relief Event itself.

15.9. Resolution of Claims

- a. The CTA will have no obligation to provide a final response to any Notice of Claim (or update thereto) pursuant to this Section 15.9 unless:
 - i. the relevant Relief Event has concluded; and
 - ii. the relevant Notice of Claim is not subject to further update pursuant to Section 15.6.a or Section 15.6.c,provided that:
 - (x) at any time prior to (or following) final resolution of a Relief Event claim the CTA may, in its discretion, notify the Contractor that such claim will (if favorably resolved to the Contractor with respect to compensation owed) be payable from an Allowance, such that the Contractor must comply with the requirements that apply to payments from such Allowance, and
 - (y) within thirty (30) Days of receipt of any Notice of Claim that is ongoing and not yet completed, the Chief Infrastructure Officer, or their designee, will provide a preliminary response with respect to whether the Notice of Claim may appear to meet requirements for a Relief Event; such preliminary response may, but is not required to, request additional clarifications or information from Contractor. Should the Chief Infrastructure Officer, or their designee's preliminary response be that the Contractor's initial Notice of Claim lacks merit, the Contractor is still entitled to submit a final, completed Notice of Claim.

- b. Subject to Section 15.9.a, the Chief Infrastructure Officer will respond to any Notice of Claim which the Contractor has notified the CTA is the final, completed Notice of Claim by the later of 30 Days after:
 - i. receipt of such Notice of Claim,
 - ii. receipt of the most recent update to such Notice of Claim made pursuant to Section 15.6, or
 - iii. receipt of the Contractor's notice that such Notice of Claim was the final, completed Notice of Claim.
- c. The Chief Infrastructure Officer, acting reasonably and applying the terms of the Contract to determine the Contractor's rights hereunder with respect to the Relief Event (if any), and without being bound by any preliminary response provided under Section 15.8.a, will then provide as a response:
 - i. a rejection of the Notice of Claim;
 - ii. an unconditional agreement with the Notice of Claim;
 - iii. a conditional agreement with the Notice of Claim; or
 - iv. a reasonable determination that additional documentation (in the form of an update to be made pursuant to Section 15.6.c) is needed to complete evaluation of the Notice of Claim.
- d. Following any Chief Infrastructure Officer conditional agreement with or rejection of a Notice of Claim, the Contractor may:
 - i. dispute the Chief Infrastructure Officer's determination by submitting the matter for resolution in accordance with Dispute Resolution Procedures no later than 15 Business Days after the Chief Infrastructure Officer makes such determination; or
 - ii. accept the Chief Infrastructure Officer's determination either by submission of a notice to the Chief Infrastructure Officer within such 15-Day period or by any failure to timely submit any such notice or to otherwise submit such matter for resolution in accordance with Section 15.9.d within such time period.

- e. Following any Chief Infrastructure Officer unconditional or conditional agreement with a Notice of Claim, if the parties agree with such resolution (including the Contractor's deemed acceptance pursuant to Section 15.9.d.ii of a conditional agreement) they will use reasonable efforts to promptly execute a written memorandum in a form to be selected and prepared by the CTA setting out the binding details of such agreement.
- f. Any resolution of a Notice of Claim reached through the agreement of the parties or made in accordance with the Dispute Resolution Procedures in each case in accordance with Sections 15.9.c, 15.9.d or 15.9.e which provides for a Contract Time adjustment, Contract Price adjustment and/or Allowance payment will be subject to:
 - i. the Contractor's compliance with any applicable conditions of such agreement or resolution as well as with the relevant terms of the Contract; and
 - ii. with respect to any Contract Price adjustment, such adjustment being made pursuant to a Change Order approved by the Chicago Transit Board.

Subpart F: Land

16. Site and Availability

16.1. General Provisions Related to the Site

- a. The Contractor must not commence any Work on any part of the Site without the prior approval of the CTA, such approval not to be unreasonably withheld.
- b. The scope, timing, and nature of Contractor's rights to access and use each part of the Site will be limited to those rights provided in this Section 16 and Sub Part 3.6.3 of Part 3.
- c. Consent to enter upon all or any part of the Site given by the CTA will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the CTA.
- d. Without prejudice to the Contractor right to claim for any Relief Event, the Contractor's rights of access and use of any part of the Site is subject to any rights of third parties, including statutory or public franchise rights and the rights of Governmental Authorities, Utilities, and Railroads, Law, and any Permit (or the requirement to secure and abide by any Permit), and any encumbrance, mortgage, pledge, hypothecation, deed of trust, mortgage, security interest, lien, financing statement, charge, option, assignment, or property restriction of any kind or any arrangement to provide priority or preference, including any easement, right-of-way, restriction, right, lease, and other property restriction on title to real or personal property (whether or not of record), whether voluntary or imposed by Law, and any agreement to give any of the foregoing, as may exist from time to time.
- e. The Contractor's use of the Site in all cases is subject to the Contractor having been issued a Notice to Proceed, its satisfaction of requirements associated with each categorized area along with assumption of responsibility for of all properties acquired for the Project in accordance with Sub Part 3.6 of Part 3, and its compliance with the Contract Documents, all Laws, Permits, Records of Third-Party Coordination, and the any access plan prepared and approved in accordance with Sub Part 3.11 of Part 3.

- f. The Contractor will be responsible for obtaining a "Project Office" which office meets the requirements of and as described in Sub Part 2.5.14 of Part 2. For this purpose, the Contractor may utilize existing buildings which are located on the Site and described in Sub Part 3.6.3 of Part 3, subject to CTA approval, not to be unreasonably withheld.
- g. The Contractor will use, and will cause each of its officers, employees, agents, and Subcontractors, to use the standard of care provided for in Section 16.9.a when entering any part of Site which is a part of or adjacent to CTA operations.
- h. The Contractor must comply with, and will cause each of its officers, employees, agents, and Subcontractors to comply with, any and all applicable instructions and requirements for each part of the Site.
- i. The Contractor will not erect signs or advertising media of any nature on any part of the Site, except as expressly required by the Contract, without written approval of the CTA.

16.2. Access and Use

- a. CTA will provide access to each parcel or area within the Site on or before the later of (A) the date on which construction is scheduled to start on such parcel in the Schedule or (B) the date shown in Appendix 3O of Part 3.
- b. Subject to the restrictions and limitations set forth in Sub Part 3.6 of Part 3 and Appendix 3O, and in any applicable Record of Third-Party Coordination relating to such parcel or area, any parcel or area within the Site made available to the Contractor by the CTA may be used until CTA assumes maintenance obligations of that portion of the Site as part of a Milestone pursuant to Part 5. Once CTA assumes maintenance of an area, Contractor's access will be limited to what is provided for in the approved Closeout Plan and as further described in Sub Part 2.13.1 of Part 2.
- c. The Contractor will pay all permit fees and comply with all permit requirements in connection with the licensed areas, including obtaining necessary approvals of plans and specifications.

16.3. Responsibility for Site, Assumption of Risk, and Limitation on Claims

During the period of the Contractor's access to and use of any part of the Site, the Contractor will have sole responsibility for such part of the Site (and for all elements of the Work located thereon), including risk of damage and loss, subject to the express terms of this Contract.

16.4. Early Access and Use

- a. Prior to being granted CTA's approval to access and use any part of the Site over which CTA has jurisdiction at such time in accordance with Sub Part 3.6 and Appendix 3O of Part 3, the Contractor may from time to time submit written requests for CTA's review and approval to visit, survey, investigate, and inspect any such parcel for purposes of facilitating, and preparing for, the Contractor's performance of the Work. The Contractor will submit any request pursuant to this Section 16.4 in such form, and accompanied by such materials, as CTA may require.
- b. The Contractor may also from time to time submit written requests for CTA's review and approval to enter any other property:
 - i. to which CTA is entitled to grant such permission to enter; and
 - ii. that is not or will not be within a part of the Site over which CTA has jurisdiction,for surveying, non-intrusive environmental investigation, and appraisal purposes, and unless otherwise approved by CTA, no other purposes.
- c. The Contractor will submit any request pursuant to Section 16.4.a or Section 16.4.b no later than five (5) Business Days prior to the proposed date of entry.
- d. CTA's approval of any Contractor request submitted pursuant to either Section 16.4.a or Section 16.4.b will be subject to such conditions as CTA may require in its Discretion, and the Contractor having provided (or having procured a Subcontractor that has provided) satisfactory evidence to CTA that there is in place all necessary insurance coverage required by CTA in connection with such access and the activities the Contractor proposes to conduct during such early access and, as applicable, use. The Contractor, and not CTA, will be responsible for any

costs and expenses associated with the Contractor's satisfaction of the conditions required by CTA pursuant to this Section 16.4.

- e. The Contractor will be solely responsible for any and all damages and claims resulting from its access to any property pursuant to Section 16.4.a or Section 16.4.b and any activities performed during such access and, as applicable, use.

16.5. Acquisition of Temporary Interests by the Contractor

- a. The Contractor will acquire all temporary interests in property (if any) that the Contractor determines are necessary, desirable, or advisable to complete the Project. Temporary interests may include construction easements or rights to use property for borrow pits and storage, as well as any property needed for any temporary Utility facilities being constructed by the Contractor. The Contractor will pay the purchase price for all such property interests directly and will bear the risk of acquisition, any delay in acquisition, any inability to acquire such interests, and any schedule impact.
- b. CTA has no obligations or responsibilities with respect to the acquisition, maintenance, or disposition of such temporary rights or interests or the condition of such rights or interests, and is not obligated to use its powers of eminent domain in connection therewith.
- c. The Contractor will comply with all applicable Law and applicable permits and approvals in acquiring and maintaining or disposing of any such property rights or interests. The Contractor will cause the documentation of any such property interest to contain the grantor's express acknowledgment that CTA has no liability or obligations with respect thereto. Any acquisition which would require any notice or approval under the NEPA Decision Documents will require the express prior approval of the Chief Infrastructure Officer, and to the extent any such approval is granted, will be at Contractor's sole cost and risk.
- d. If a temporary interest in property is sought by the Contractor for any property that is owned or otherwise possessed or occupied by a Person from whom CTA has acquired or is acquiring licensed areas, CTA will, if such acquisition is, in CTA's determination, consistent with Law and permits and approvals, reasonably attempt to secure access through the applicable property owner, but the Contractor will

bear the sole cost and the risk of acquisition, any delay in acquisition, any inability to acquire such interests and any schedule impact, and CTA makes no representations or guaranty that CTA will be able to secure such interests or access.

16.6. Conveyance Documents

CTA will prepare legal descriptions and grant documentation for any transfers of real property and/or interests relating to the Project, including vacations and dedications of the public right-of-way. The Contractor will cooperate as needed and provide backup information that may be needed to prepare such documentation, but only if requested by CTA.

16.7. Track Access Occurrences and Substation Occurrences

- a. No Track Access Occurrence or Substation Occurrence may either begin, or end (in the case of a Track Access Occurrence with a resumption of service), without CTA's consent pursuant to Sub Parts 2.5.3 and 2.6.2 of Part 2 and Sub Part 3.11 of Part 3.
- b. Subject to any rights of the Contractor under this Contract arising as a result of the occurrence of any Changed Work or any Relief Event, the Contractor will bear all risk, including of delay and/or increased cost, associated with the inability to proceed with any Work that requires a Track Access Occurrence, Substation Occurrence, or resumption of service prior to the granting of consent to proceed with a Track Access Occurrence, Substation Occurrence, or resumption of service.
- c. All other Railroad access and occupations shall be in accordance with Sub Part 3.15 of Part 3 and the applicable Record of Third-Party Coordination.

16.8. Protection of the Site

- a. The Contractor must properly protect the Project Area in accordance with the applicable Contract Document requirements, including property acquired for staging, storage, or other construction support activities as described in the Contract Documents, and all adjacent property. Such protection includes, where required, appropriate protection in accordance with best construction practices from water, Debris, dust, and damage directly or indirectly caused by the Work.

- b. Without limiting its other obligations and liabilities under the Contract Documents, the Contractor must promptly remedy (or, at CTA's direction, pay for the remedy of) all damage or loss occurring on or off the Site to original condition (or such other condition as is specified in this Contract), without limitation to that shown in the existing condition survey conducted pursuant to Section 4.3 at no additional cost to the CTA, except as otherwise approved by the Chief Infrastructure Officer.
- c. Where the Contractor's proposed use of a portion of the Site, approved in accordance with the Contract Documents, includes demolition of existing structures, regrading, or any other modification or improvement, the Contractor must seek and secure the CTA's Approval of the final condition of such property when returned to the CTA.

16.9. Protection of and Access to Adjacent Property

- a. Without limiting its other obligations and liabilities under the Contract Documents, the Contractor will be liable for any damage to adjoining land and buildings occasioned by the Contractor's performance of the Work. The Contractor must exercise reasonable care in accordance with Good Industry Practice and its express obligations under this Contract, and take such precautions as are necessary to sustain adjoining land and buildings, and comply with applicable Laws (including required notices). The Contractor will also comply with Appendix 4B of Part 4, the "CTA Adjacent Construction Manual," to the extent applicable to any of the Work.
- b. The Contractor must keep a daily log of all existing structures and property adjacent to any excavation Work to monitor elevations and any settlements to existing structures and property. The format for the log, structures, and properties monitored, and procedures to obtain the information will be approved in advance by the Chief Infrastructure Officer. The Contractor must immediately notify Chief Infrastructure Officer when any changes in the elevation or settlement are detected for any structure or property.
- c. The Contractor must place all materials or equipment used in the performance of the Contract so as to safeguard the Work and allow free access to adjacent property as well as to all fire hydrants, water valves, gas valves, manholes, and other appurtenances that are a part of the various services.

16.10. Documents at the Site

The Contractor must have at the Site at all locations where Work is being performed from time to time, for reference, a complete set of specifications and Project Standards for the Work, a complete conformed set of the design documents that have been “Issued for Construction” pursuant to Sub Part 2.4.2 of Part 2 (including the Final Design as updated in accordance with subsequent developments, including as-built construction activities), all additional and revised drawings, plans, specifications, or Project Standards furnished by the CTA, and all orders issued to the Contractor by the CTA that relate to the Work.

16.11. Refusal of Access

The CTA reserves the right to refuse access to the Site by any Person:

- a. if the CTA reasonably believes that:
 - i. the presence or activities of such Person on the Site represents a material risk to the health or safety of any Person, the environment, the community or property;
 - ii. such Person is under the influence of alcohol or drugs; or
 - iii. if such Person is acting or threatening to act in a violent, harassing, discriminatory or illegal manner, or such Person previously acted in such a manner; or
- b. such Person previously committed any of the conduct described in Section 16.11.a while accessing any part of the Site.

The CTA’s rights under this Section 16.11 will in no way relieve the Contractor of any responsibility for the Site, and in no way will the CTA’s exercise, or failure to exercise, these rights imply any liability or responsibility of the CTA for the Site.

16.12. Equipment and Falsework

- a. Temporary stairs, ladders, and equipment
 - i. The Contractor must furnish and maintain all equipment such as temporary ladders, ramps, runways, hoists, scaffolding, and similar items required for proper execution of Work. All such apparatus, equipment, and construction

must meet all requirements of Laws concerning the safety and protection of employees.

- ii. The Contractor must locate hoists, scaffolding, or other equipment at sufficient distance from exterior walls to prevent staining or marring of any permanent Work.
- iii. The Contractor must lower all suspended scaffolding and staging to ground level at the end of each day that the Contractor works, except to the extent such scaffolding and staging is in active use at the end of any day.

b. Temporary barriers and enclosures

- i. The Contractor must provide temporary barriers or enclosures as required during the progress of the Work, including pursuant to Sub Part 2.5.14 of Part 2.
- ii. The Contractor must provide temporary work screens or enclosures, erected and maintained by the Contractor, to separate pedestrian or vehicular traffic and building areas free of noise, Debris, dirt, etc. resulting from the Work, including provision of all required protection for passersby and building occupants against all danger of injury, including all night and warning lighting.
- iii. Contractor will protect against damage to and interference of operations with adjacent Railroad facilities and infrastructure. Details of protective measures will be included in the agreements between CTA and the Railroads as described in Sub Part 3.15 of Part 3.
- iv. The Contractor must erect and maintain all protective measures in accordance with the requirements of Federal, State, and local authorities.

16.13. CTA Operations

- a. The CTA is an operating bus and rail transit system. The Contractor must take all precautions and instruct all personnel of the conditions and hazards involved as a result, including providing appropriate signage as determined by the CTA.
- b. The Contractor must coordinate with the CTA all Work that may impede normal CTA operations, the requirements of which are set out in Sub Part 3.3 of Part 3, or

the safety, comfort, and access of the traveling public with the CTA, including activities that generate excessive noise or dust.

- c. The Contractor must adhere to rail right-of-way operating requirements, flagging, slow zones, single track, and allowable hours of construction along with all safety requirements.
- d. All workers assigned to work on, over, or near CTA right-of-way must have current rail safety training as described in Sub Part 2.6.6 of Part 2.

16.14. Railroads

- a. The Contractor must coordinate with the Railroads all Work that may impede Railroad operations, the requirements of which are set out in Sub Part 3.15 of Part 3 and in Part 6.
- b. The Contractor is responsible for compliance with all Railroad requirements for working within, or in the vicinity of the Railroad right-of-way.

16.15. Streets and Street Closures

Without limiting its obligations to comply with the “Public Way Impact Mitigation Plan” developed and accepted in accordance with Sub Part 3.12.1 of Part 3 and otherwise under this Contract:

- a. the Contractor must conduct Work so as not to render dangerous or unnecessarily obstruct any public way, street, alley, any bus movement, or any other vehicular movement;
- b. the Contractor must make every effort to keep street closures to a minimum. In the event of street or lane closures that the Contractor deems necessary to complete the Work, the Contractor must:
 - i. obtain all required Permits;
 - ii. provide the Chief Infrastructure Officer with a minimum of 21 Days advance notice of the locations, dates, and times for which street and/or lane closing is required;
 - iii. submit “Traffic Control Plans” pursuant to Sub Part 3.12.1 of Part 3 prior to the commencement of any street or lane closures;

- iv. provide all required materials, signs, barricades, lights, other necessary devices for the street or lane closure and any related diversion of traffic, each meeting all Permit requirements; and
- v. provide labor and perform all work necessary for the diversion of traffic and the construction and maintenance of alternate roadways for the diversion of traffic; and
- c. before reopening a closed street, or other public way the Contractor must clean all Debris resulting from the conduct of the Work.

16.16. Storage

Without limiting its other obligations under this Contract with respect to storage and storage areas:

- a. The Contractor must maintain storage areas in a neat, clean, and orderly condition and must remove equipment not being used in the Work from the property.
- b. The Contractor must store and handle all materials and equipment in a manner that prevents the inclusion of foreign substances or damage from weather; remove damaged or rejected materials from the premises; and furnish new material of specified quality and type before proceeding with the Work.

Subpart G: Organization of the Work Site, Cooperation and Coordination

17. Representatives

17.1. Appointment of Representatives

- a. Unless otherwise expressly stated herein, any consents and approvals with respect to the Work to be given by the CTA will be made in writing by the Chief Infrastructure Officer.
- b. The Contractor will appoint and designate in writing to the CTA the employee(s) or representative(s) of Contractor who will have decision-making authority on behalf of Contractor sufficient to address and facilitate the Work, and by whose agreement and signature the Contractor can and will be bound. The Contractor will notify the CTA in writing of a change in the designation of such Person.

18. Obligations with respect to Adjacent Areas and Third Parties

18.1. Duty to Cooperate and Coordinate with Adjacent Work and Facilities

Without limiting its other obligations under this Contract, the Contractor will:

- a. cooperate and coordinate with any relevant third party (including the City) as reasonably requested by the CTA, with regard to the design and construction of, respectively, the Project and the Related Transportation Facilities;
- b. perform all the Work so that contiguous or adjacent Work, structures, facilities, or communities is and are not damaged or, as applicable, unnecessarily delayed;
- c. ensure that each trade performs all necessary cutting and fitting of its work to make it compatible with that of other trades; and
- d. otherwise use reasonable efforts in order to minimize any adverse impact on:
 - i. the Work or the operation of the Project as a result of the design and/or construction of any Related Transportation Facility; and
 - ii. (A) any Related Transportation Facility or (B) any Other CTA Project, as a result of the Work.

18.2. Assurances Regarding Compatibility and Integration

The Contractor will:

- a. as part of the Work, locate, configure, design, and construct the Project so that the Project will be compatible and integrated with the location, configuration and design of each Related Transportation Facility that:
 - i. existed on the Reference Date; or
 - ii. that:
 - A. was otherwise disclosed to or known by the Preferred Proposer or a Contractor-Related Entity; or
 - B. could have reasonably been anticipated by the Preferred Proposer or any Contractor-Related Entity undertaking due diligence pursuant to Good Industry Practice on the basis of the RFP and the Reference Documents,

in each case prior to the Reference Date; and
- b. not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate the construction, operation and maintenance of any Related Transportation Facility.

18.3. Acknowledgement Regarding Street and Rail Traffic Management

Without limiting Contractor's rights with respect to any Relief Event, the Contractor acknowledges that the CTA, the City, emergency services, and other Governmental Authorities with traffic management authority under Law, will have the right to conduct traffic management activities pursuant to standard practices and procedures in effect from time to time:

- a. on the Site that is open for use by the traveling public;
- b. in connection with any Other CTA Project; and
- c. on any Related Transportation Facility.

**18.4. Records of Third-Party Coordination and Other Third-Party Agreements;
Passthrough of Third-Party Liability**

a. Compliance with Records of Third-Party Coordination

The Contractor will not, and will ensure that each of its Subcontractors and each of their respective Subcontractors will not, take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate the performance by any third party of its obligations under or as described in any Record of Third-Party Coordination.

b. New Designations

The CTA may, in its discretion and at any time, by notice to the Contractor require the Contractor to comply with the terms (to the extent specified in such notice) of:

- i. an agreement (a copy of which will be attached to such notice) that is not prior to such notice a Record of Third-Party Coordination or otherwise referenced in this Contract and to which the CTA is a party with any Governmental Authority or third party; and
- ii. any amendment or modification of an existing Record of Third-Party Coordination or other agreement with which the Contractor is already required to comply (a copy of which amendment or modification will be attached to such notice).

c. New Third-Party Agreements

Unless expressly Approved by the CTA, the Contractor will not enter into, and will ensure that no other Contractor-Related Entity enters into, any agreement with any Governmental Authority, Railroad, Utility, or other third party that in any way purports to, or reasonably could be interpreted to, obligate the CTA.

d. Passthrough of Third-Party Liability

In addition to any other remedy available to the CTA, and without limiting the Contractor's liability and obligation to defend and indemnify under Section 35.2, the Contractor will be liable to reimburse the CTA on a pass through basis for any and all Losses incurred by the CTA due to penalties, fines, assessments, liquidated damages, reimbursement, claims, or other monetary obligations owing to or

imposed by Railroads and other third parties in each case as a consequence of the Contractor's act or omission, breach, negligence, fraud, or willful or intentionally tortious conduct, subject to the limitation in Section 35.2.b.

Subpart H: Personnel, Subcontractors and Workforce

19. Personnel

19.1. General Personnel Requirements

Without limiting any other requirement of the Contract Documents, the Contractor will ensure that all Work will be performed and, as applicable, supervised by adequate personnel, in the case of supervisory personnel including supervisors, inspectors, superintendents, and foremen:

- a. who are careful, skilled, experienced, and competent in their respective trades or professions;
- b. who are professionally qualified to, and who hold all necessary registrations, permits, approvals, and licenses to, perform or supervise the relevant part of this Work pursuant to this Contract;
- c. who will assume professional responsibility for the accuracy and completeness of the relevant part of the Work performed or supervised by them; and
- d. who are individually and collectively necessary or appropriate to ensure compliance with the provisions of the Contract Documents, including with respect to quality control, health, safety, and environment.

19.2. Unacceptable Personnel; Removal of Personnel

- a. It is the Contractor's sole obligation to ensure that the performance of Contractor and Subcontractor personnel is acceptable and that no such personnel are careless, incompetent, violate safety or security rules, obstruct the progress of the Work, act contrary to instructions, act improperly, or fail to follow the safety requirements of this Contract.
- b. The CTA reserves the right to direct the Contractor to remove any personnel providing the Work for any material reason given in writing.
- c. The Contractor acknowledges that the identity of such firms and personnel as provided in the Proposal were a material consideration of the award of this Contract, and that in the event that a replacement is required, the Contractor will propose as replacements for CTA review and approval only such firms and

personnel with at least comparable experience and qualifications to those being replaced.

19.3. Key Personnel

- a. Without limitation to Section 19.1, the Contractor must ensure that each of the Key Personnel (as identified in the Annex E, subject to any prior replacement pursuant to this Section 19.3):
 - i. is, subject to Section 19.3.b, at all relevant times employed by, contracted or seconded to the Contractor for the exclusive purposes of the Work; and
 - ii. occupies the role and function identified for such person in Annex E.
- b. The Contractor will not remove or, following a prior removal or any death, incapacitation, or resignation, replace, any Key Personnel without the CTA's prior Approval, provided that the Contractor may, as required by Law or pursuant to Good Industry Practice, suspend or limit the duties of any Key Personnel individual pending CTA Approval of any removal.
- c. The Contractor will deliver a notice to the CTA seeking its Approval under Section 19.3.b setting out the reason for such removal and/or replacement, together with:
 - i. the identity, expertise, and experience of the proposed replacement; and
 - ii. any such supporting information or evidence as the CTA may reasonably require in relation to such matters.
- d. The CTA will use reasonable efforts to provide the Contractor with its response to any Contractor request for Approval under Section 19.3.b within 15 Business Days after receipt of any such request.
- e. Notwithstanding such reasonable efforts, the CTA reserves the right to withhold its Approval to any Key Personnel change in its Discretion.

20. Workforce Commitment

20.1. Project Labor Agreement

- a. Contractor will take all steps necessary to avoid labor disputes and is responsible for any delays and damages to CTA caused by such disputes except as provided pursuant to the definition of "Force Majeure" in Section 15.1.c.

- b. Contractor may enter into Project labor agreements with relevant building trades unions as it may determine, following review and approval of same by CTA.
- c. Contractor agrees that where the work is stopped, delayed, or interfered with by strikes, slow-downs, handbilling, or similar interruptions or disturbances (including where Contractor's employees are engaged in a work stoppage solely as a result of a labor dispute involving Contractor or others), Contractor agrees to take such steps as may be necessary to continue the performance of the Work in accordance with the approved Schedule during the period of any such labor dispute, including but not limited to:
 - i. restraining and enjoining any illegal picketing, demonstrating, violence, or similar activity directed against Contractor or any Subcontractor,
 - ii. the establishment and use of separate entry gate(s) for access to the Site, using workers, suppliers, and contractors willing to cross a picket line, and
 - iii. adjusting work shift times to avoid union conflict.
- d. Contractor shall maintain and exercise control over all employees engaged in the performance of the Work, and to the extent permissible under Law, shall remove or cause to be removed from the Project any employee whose presence is detrimental to the orderly progression of the Work in accordance with Section 19.2.
- e. Contractor, in consultation with CTA, shall make and enforce procedures relating to the ingress and egress of its employees, materialmen, and suppliers to the Site in accordance with Section 16.
- f. Contractor agrees that if any provision of the Contract Documents conflict with any agreement among members of a trade association, or with a union or labor council which regulates work to be performed by a particular trade, Contractor shall reconcile such conflict without delay or damage to CTA.

20.2. Workforce Initiatives

- a. Contractor will comply with all requirements set forth in the Workforce Initiatives Special Conditions, including the Workforce Goals commitment. Contractor will achieve the Workforce Goals through the labor hours of qualified individuals per the Workforce Initiatives Special Conditions. Contractor may also meet the

Workforce Goals by documenting good faith efforts as described in the Workforce Initiatives Special Conditions.

- b. To the extent that the Contractor submitted a Proposal for this Contract which included additional commitments with respect to its workforce outreach and training programs in the form of a workforce plan:
 - i. Contractor will comply with the commitments made in such plan, with Contractor's failure to implement the efforts described in such plan being deemed a material breach of this Contract;
 - ii. Contractor will use the methods detailed in such plan to reach out to, utilize, and train a diverse pool of individuals and to achieve its Workforce Goals;
 - iii. in consideration of Contractor's good faith efforts for achievement of the Workforce Goals, consideration will be given to Contractor's implementation of the outreach efforts provided in such plan; and
 - iv. Contractor must report to the CTA on the efforts to implement such plan.
- c. In addition to the other remedies available under this Contract, CTA may assess liquidated damages if the Workforce Goals specified for this Contract are not achieved, as provided in the Workforce Initiatives Special Conditions.

20.3. Illinois Works Jobs Program Act

The Illinois Works Jobs Program Act, 30 ILCS 559, applies to this Contract. Specific requirements regarding utilization of apprentices are described in the Workforce Initiatives Special Conditions.

21. Disadvantaged Business Enterprise Commitments

DBE commitment requirements for the Contractor are set out in Annex D-1. The Contractor must meet the DBE commitment in accordance with those requirements.

22. Subcontracting

22.1. General Obligation

The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. The Contractor is responsible for all segregation of Work between trade or craft jurisdictional limits.

22.2. Subcontracting Terms, Requirements and Restrictions

a. Third-party beneficiary

The CTA will be expressly identified as a third-party beneficiary in each Subcontract, and each Subcontract will include a provision permitting assignment to the CTA or its designee in the event of termination of this Contract, whether terminated for default or convenience. Contractor irrevocably grants the CTA a power of attorney to execute any such assignment of a Subcontract to the CTA or designee in the name of the Contractor upon termination of this Contract.

b. Notices

Each Subcontract will include an acknowledgment and agreement from the Subcontractor that:

- i. all notices, documentation, and other information required to be delivered by the Contractor to the CTA pursuant to this Contract will be directly delivered by the Contractor and not by such Subcontractor acting, directly or indirectly, on the Contractor's behalf, except to the extent that the CTA approves in advance the direct delivery of such type of notice by such Subcontractor to the CTA; and
- ii. the CTA may, in its discretion, disregard any notice delivered by such Subcontractor contrary to Section 22.2.b.i.

c. Participation

Each Subcontract will include terms to require the Subcontractor to:

- i. participate in meetings between the Contractor and the CTA when requested in writing by either the Contractor or the CTA; and

- ii. cooperate with any reasonable requests for information or assistance provided to them through the Dispute Resolution Procedures, except to the extent that such cooperation would require such Subcontractor to assume any legal liability.
- d. Stop Work per Notice of Termination for Convenience

The Contractor will insert in all Subcontracts that the Subcontractor will stop Work on the date of and to the extent specified in a Notice of Termination for Convenience from the CTA and will require that any tier Subcontractors insert the same provision in any tier Subcontracts.
- e. Other required clauses

Each Subcontract, and any amendments or supplements thereto, will comply with, and, as applicable, incorporate the following terms of this Contract:

- Section 33.6 "Confidentiality" as first item
- Section 20.1 "Project Labor Agreement"
- Section 22.6 "Prompt Payment of Subcontractors"
- Section 23 "Compliance with Laws"
- Section 24.1 "Civil Rights"
- Section 24.2 "Illinois Human Rights Act"
- Section 24.3 "Change in Ownership"
- Section 24.4 "State Energy Conservation Plan"
- Section 24.5 "Obligation to Comply with the Illinois State Officials and Employees Ethics Act"
- Section 24.6 "CTA Ethics Ordinance"
- Section 24.7 "Affirmative Action and Standard Federal Equal Employment Opportunity Construction Contract Specifications"
- Section 24.8 "Program Fraud and False or Fraudulent Statements and Related Acts"
- Section 24.9 "Steel Products"
- Section 24.11 "Conflict of Interest"
- Section 24.12 "Veterans Preference"
- Section 24.14 "Contract Work Hours and Safety Standards Act"
- Section 24.15 "Davis-Bacon Act"
- Section 24.16 "Build America Buy America"
- Section 24.17 "Cargo Preference—Use of United States Flag Vessels"
- Section 24.19 "No Federal Government Obligation to Contractor or Others"
- Section 24.20 "Obligation to Comply with State and Federal Law and Regulations"
- Section 24.21 "Fly America" (as required)
- Section 25.1 "Assurance of Compliance with 49 CFR Part 26"

Section 25.2 "Ineligible Contractors"
Section 25.3 "Job Creation and Hiring Reporting"
Section 25.4 "Posting with the Local Employment Security Office"
Section 25.9 "Minimum Wage"
Section 24.13 "Recovered Materials"
Section 24.18 "Seismic Safety" (as applicable to Subcontractor work)
Section 35 "Indemnity"
Section 40 "Contractor Defaults" (in all Subcontracts in excess of \$[])
Section 41 "Termination" (in all Subcontracts in excess of \$[])
Section 43.2.a.iii "Assignment of Subcontracts" (as provided therein)
Section 45 "Consent to Service of Process and Jurisdiction"

f. Additional Restrictions

Each Subcontract will:

- i. not otherwise contain terms that are contrary to or inconsistent with this Contract; and
- ii. provide that any amendment or waiver of any such Subcontract's provisions that would result in a violation of this provision will be null and void unless approved by the CTA.

g. Exemptions

To the extent permitted by Law, Contractor may request that CTA provide exemptions from specific requirements set out in this Section 22.2 with respect to Subcontracts that by their nature cannot be or are not customarily compliant with such requirements. Such exemptions will be subject to CTA's prior Approval.

22.3. Relationship with Subcontractors

- a. The subcontracting of all or any part of the Work by Contractor will not relieve the Contractor from any of the obligations or conditions of this Contract. The Contractor will direct, coordinate, and control the activities of all Subcontractors with respect to the Work. The Contractor must supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. It is the Contractor's responsibility to see that the Work complies with the Contract.
- b. The work of any Subcontractor will be subject to inspection and approval by the CTA to the same extent as the work of the Contractor is subject to inspection and

approval under this Contract, and all Subcontracts and supply agreements made by Contractor under the terms hereof will so provide. Nothing contained in the Contract Documents nor any Subcontract will create any contractual relationship between the CTA and any Subcontractor, other than designating the CTA a third-party beneficiary thereof or as a result of any assignment of any Subcontract to the CTA, or create any obligation on the part of the CTA to pay or cause the payment of any sums to any Subcontractor or grant any Subcontractor any rights as a third-party beneficiary.

22.4. Subcontracting with Affiliates

The Contractor will have the right to have Work directly or indirectly performed by its Affiliates (including any Affiliate that may be a Subcontractor identified in the Proposal), so long as the Contractor will execute, or have a Subcontractor execute, a written Subcontract with the Affiliate.

22.5. Copies of Subcontracts

- a. The Contractor will deliver to the CTA a copy of each Subcontract, and any amendment or replacement thereof:
 - i. with a Subcontractor who is a DBE disclosed on a Schedule C or D;
 - ii. with Subcontractors listed on the Subcontractor breakdown in an Application for Payment (Form 308 Payment Request and Sworn Statement); or
 - iii. which CTA has requested in writing,

promptly and in any event no later than 30 Days after (x) execution of such Subcontract (or amendment/replacement), or (y) CTA request, as applicable, and in all events prior to requesting payment for such Subcontractor on the applicable Application for Payment.
- b. The Contractor will maintain records of all Subcontracts to which the Contractor is a party and will, upon CTA request, provide the CTA with a list describing all Subcontracts.

22.6. Prompt Payment of Subcontractors

- a. The Contractor is required to pay each first tier Subcontractor for all Work that the Subcontractor has performed to the satisfaction of the CTA, no later than 14 Days after the Contractor has received payment from the CTA for that Work, and each tier of Subcontractors must likewise pay the next lower tier of Subcontractors within 14 Days after receiving payment. All of the Contractor's contracts with its Subcontractors must include the requirements of this paragraph.
- b. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the Director, Purchasing.
- c. The Contractor is required to include, in each Subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
- d. The CTA will not pay the Contractor for Work performed unless and until the Contractor ensures that each Subcontractor has been promptly paid under all previous payment requests, as evidenced by the filing with the CTA of lien waivers, canceled checks (if requested), invoices, and the Contractor's sworn statement that it has complied with the prompt payment requirements. The Contractor must submit a prompt payment affidavit consistent with Sub Part 2.1.8 of Part 2 in the form provided by the CTA in Appendix 2G of Part 2, which identifies each Subcontractor and the date and amount of the last payment to such Subcontractor, with every payment request filed with the CTA, except for the first payment request, on every Contract with the CTA.
- e. Failure to comply with these prompt payment requirements is a breach of the Contract which may lead to any remedies permitted under Law, including, but not limited to, Contractor debarment. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of 50 ILCS 505/9.

Subpart I: Compliance Obligations

23. Compliance with Laws

The Contractor must at all times observe and comply with Laws that may in any manner affect the performance of the Contract.

24. Federal, State and Local Requirements

24.1. Civil Rights

a. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 et seq, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant on the basis of race, color, creed, national origin, sex, sexual orientation, gender identity, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Equal employment opportunity

The following equal employment opportunity requirements apply to this Contract:

- i. Race, Color, Creed, National Origin, Sexual Orientation, Gender Identity, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity” as amended), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. In addition, the Contractor agrees to comply with all implementing requirements FTA may issue.

- ii. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - iii. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- c. During the performance of this Contract, the Contractor agrees as follows:
- i. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, gender identity, disability, age, or national origin. The Contractor must take affirmative action to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, color, creed, sex, sexual orientation, gender identity, disability, age, or national origin. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Director, Purchasing setting forth the provision of this nondiscrimination clause.
 - ii. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color,

creed, sex, sexual orientation, gender identity, disability, age, or national origin.

- iii. The Contractor will send to each labor union or representative of workers with whom the representative has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
- iv. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- v. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the CTA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation and orders.
- vi. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies applied as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- vii. The Contractor must include the provisions of the above i-vi in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. The Contractor must

take such action with respect to any subcontract or purchase order as the CTA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Federal Government contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- d. The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

24.2. Illinois Human Rights Act

During the term of this Contract, the Contractor must:

- a. Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- b. Comply with the procedures and requirements of the Illinois Department of Human Rights' regulations concerning equal employment opportunities and affirmative action;
- c. Provide such information, with respect to its employees and applicants for employment, and assistance as the Department may reasonably request from time to time;
- d. Have written sexual harassment policies that must include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples (iv) Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Illinois Human Rights Commission; (vi) directions on how to contact the Illinois Department of Human Rights and the Illinois Human Rights Commission; and (vii) protection against retaliation as provided in Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105). A

copy of the policies must be provided to the Illinois Department of Human Rights upon request;

- e. The Contractor must include verbatim or by reference, the provisions of this Section in every Subcontract it awards under which any portion of its obligations under this Contract are undertaken or assumed, so that such provisions will be binding upon such Subcontractor. In the same manner as with other provisions of this Contract, Contractor must be liable for such Subcontractor's compliance with applicable provisions of this clause; and further it will promptly notify the CTA and the Illinois Department of Human Rights in the event that any Subcontractor fails or refuses to comply therewith. In addition, the Contractor must not utilize any Subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

24.3. Change in Ownership

Consistent with Section 50, any direct or indirect change in ownership or control of the Contractor, other than a Permitted Reorganization, will be subject to compliance with the CTA's then-current "Purchasing Policies and Procedures", including submission of updated ownership disclosure affidavits, as provided therein.

24.4. State Energy Conservation Plan

The Contractor agrees to comply with all standards and policies relating to energy efficiency which are contained in the State of Illinois Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, which are incorporated into this Contract by reference.

24.5. Obligation to Comply with the Illinois State Officials and Employees Ethics Act

- a. The Contractor agrees to comply with all of the requirements of the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/1-1 *et seq.* (as it may be amended, the "Ethics Act"), the provisions of which are incorporated into this Contract to the same force and effect as if set out in full herein. As required by the Ethics Act, the Contractor agrees to cooperate fully and expeditiously with the State Office of the Executive Inspector General in all investigations or audits. This obligation applies

to all officers, directors, agents, partners, Subcontractors and employees of the Contractor.

- b. The Contractor agrees to insert this provision in any Subcontracts that it awards.

24.6. CTA Ethics Ordinance

The Contractor must comply with CTA Ordinance No. 004-76, as amended, the CTA Ethics Ordinance, the provisions of which are hereby incorporated into this Contract, including that neither Contractor nor any Subcontractor will intentionally offer or make a gift to any officer or employee of CTA, or any spouse, domestic partner or immediate family member living with any officer or employee of the CTA, in violation of the CTA Ethics Ordinance. The Contractor agrees that, as provided by Section 5.3 of the Ethics Ordinance, any Contract negotiated, entered into, or performed in violation of the Ethics Ordinance will be voidable as to the CTA.

24.7. Affirmative Action and Standard Federal Equal Employment Opportunity Construction Contract Specifications

- a. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity

- i. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals for Minority Participation
for each trade: 19.6%

Goals for Female Participation
for each trade: 6.9%

These goals are applicable to all of the Contractor's Construction Work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside the covered area, it must apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non- federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4.3 will be based on its implementation of

the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set out in 41 CFR § 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training will be substantially uniform throughout the length of the contract, and in each trade, and the Contractor will make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals will be a violation of the Contract, the Executive Order, and the Regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- ii. The Contractor will provide notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) Business Days of award of any construction subcontract in excess of \$10,000 at any tier for Construction Work under the Contract resulting from this solicitation. The notification will list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.
 - iii. As used in this Contract, the "covered area," is the CTA's service area.
- b. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)
- i. As used in these specifications:
 - A. "Covered Area" means the CTA's service area;
 - B. "Director" means the Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - C. "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

- D. "Minority" includes:
- I. Black (All persons having origins in any of the Black African racial groups not of Hispanic origin);
 - II. Hispanic (All persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
 - III. Asian and Pacific Islander (All persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and
 - IV. American Indian or Alaskan Native (All persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- ii. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it will physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice that contains the applicable goals for minority and female participation that are set out in Section 24.7.a.i above.
- iii. If the Contractor is participating (pursuant to 41 CFR § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) will be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligation under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does

not excuse any covered Contractor's or Subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

- iv. The Contractor will implement the specific affirmative action standards provided this Section 24.7.b. The goals for minority and female participation set out in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing Construction Work in geographical areas where they do not have a federal or federally assisted construction contract will apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goal in each craft during the period specified.
- v. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women will excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- vi. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- vii. The Contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications will be based upon its effort to achieve maximum

results from its actions. The Contractor will document these efforts fully, and will implement affirmative action steps at least as extensively as the following:

- A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor will specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this will be documented in the file with the reason therefore, along with whatever additional actions, the Contractor may have taken.
- D. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- E. Develop on-the-job training opportunities and/or participate in training programs for the area, which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor will provide notice of these programs to the sources compiled under Section 24.7.b.vii.B above.
- F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations: by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.
- G. Review, at least annually, the company's EEO Policy and Affirmative Action obligations under this Contract with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on- site supervisory personnel such as superintendents and general foremen, prior to the initiation of Construction Work at any job site. A written record will be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- H. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and

subcontractors with whom the Contractor does or anticipates doing business.

- I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor will send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training.
- M. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- N. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
 - O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- viii. The Contractor is encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations set out in Section 24.7.b.vii above. The efforts of a contractor association, joint contractor- union, contractor community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section 24.7.b.vii, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation will not be a defense for the Contractor's non-compliance.
- ix. A single goal for minorities and separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner

(for example, even though the Contractor has achieved its goal for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- x. The Contractor will not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity or national origin.
- xi. The Contractor will not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.
- xii. The Contractor will carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties will be in violation of these specifications and Executive Order 11246, as amended.
- xiii. The Contractor, in fulfilling its obligations under this Section 24.7 will implement specific affirmative action steps, at least as extensive as those standards prescribed in Section 24.7.b.vii so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or this Section 24.7, the Director will proceed in accordance with 41 CFR 60-4.8.
- xiv. The Contractor will designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records will at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which

the work was performed. Records will be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors will not be required to maintain separate records.

- xv. Nothing herein provided will be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area resident (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

24.8. Program Fraud and False or Fraudulent Statements and Related Acts; US Department of Transportation Inspector General Notification

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and United States Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of this Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which this Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, to the CTA or to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 USC §1001 and 49 U.S.C. § 5323(l) on the Contractor to the extent the Federal Government deems appropriate.

- c. The Contractor must promptly notify the CTA, the U.S. DOT Inspector General and the FTA Chief Counsel or Regional Counsel for the FTA Region 5, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs with any agreement between the Contractor and CTA, or another agreement involving a principal, officer, employee, agent, or third-party participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.
- d. The Contractor agrees to include the above three clauses in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clauses must not be modified, except to identify the Subcontractor that will be subject to the provisions.

24.9. Notification to FTA of Current or Prospective Legal Matters

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the CTA, the FTA Chief Counsel, and the FTA Regional Counsel for FTA Region 5. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the scope of work that FTA approved when FTA agreed to provide federal

assistance, the underlying grant agreement, cooperative agreement, and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

- b. The Contractor must also include an equivalent provision in its Subcontracts at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

24.10. Steel Products

- a. This Contract will be subject to all provisions of the "Steel Products Procurement Act," 30 ILCS 565/1 et seq. as it may be amended from time to time. Steel Products issued or supplied in the performance of this Contract or any subcontract thereto will be manufactured or produced in the United States.
- b. For purposes of this provision, "United States" means the United States and any place subject to the jurisdiction thereof and "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed or processed by a combination of two or more such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making processes. Knowing violation of this provision may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

24.11. Conflict of Interest

- a. No Board member, officer or employee of the CTA or other unit of local government, who exercises any functions or responsibilities in connection with the carrying out of the Work or the carrying out of the Work to which this Contract pertains, may have any personal interest, direct or indirect, in this Contract or the proceeds thereof.
- b. In accordance with 41 USC § 22, the Contractor agrees that no member of or Delegate to the Congress of the United States, or the Illinois General Assembly and no members of the Chicago Transit Board or CTA employees, may be admitted to any share or part of this Contract or to any private financial interest, profit, or benefit arising herefrom.

- c. The Contractor covenants that it, its officers, directors and employees, and the officers, directors, and employees of such of its members if a joint venture, and subcontractors presently have no interest and must not acquire any interest, direct or indirect, in the Work to which this Contract pertains, which would conflict in any manner or degree with the performance of the Work hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest must be employed by the Contractor.
- d. The Contractor is prohibited from performing any work or services for the CTA under this contract that conflict with work or services that the Contractor performs under any other contract with the CTA. Such conflicts include, but are not limited to, design work for the Project under another contract, supervision or management for the Project under another contract, and review or audit work for the Project under another contract. The restrictions in this paragraph are applicable to all subcontractors. The Contractor has sole responsibility for compliance with this provision. Any violation of this provision is a material breach of the Contract, which is cause for termination.

24.12. Veterans Preference

The Contractor must ensure that the following provisions are inserted in all subcontracts entered into with any Subcontractors and labor organizations that furnish skilled, unskilled, and craft union skilled labor, or which may provide any material, labor, or services in connection with this Contract:

- a. Federal requirements

The Contractor must give preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform Construction Work required under the Contract; however, this does not require a Contractor to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

- b. State requirements

The Contractor must comply with the provisions of 330 ILCS 55/0.01 *et seq.*, which requires that a preference be given to veterans in the employment and

appointment to fill positions in the construction, addition, or alteration of all public works. However, this preference will apply only where the individuals are available and qualified to perform the Work to which the employment relates.

24.13. Recovered Materials

- a. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation Recovery Act (RCRA), as amended (42 USC § 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
- b. This requirement applies to all procurement actions involving items designated by the EPA, where the Contractor purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

24.14. Contract Work Hours and Safety Standards Act

- a. Section 102 of the Act (Overtime):
 - i. Overtime Requirements. No Contractor or Subcontractor contracting for any part of the Work that may require or involve the employment of laborers or mechanics will require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
 - ii. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set out in Section 24.14.a.i, the Contractor and any Subcontractor responsible therefore will be liable for the unpaid wages. In addition, such Contractor and Subcontractor will be liable to the United States for liquidated damages. Such liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set out in Section 24.14.a.i, in the sum of \$10 for each Day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without

payment of the overtime wages required by the clause set out in Section 24.14.a.i.

- iii. Withholding for unpaid wages and liquidated damages. The CTA will, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set out in Section 24.14.a.ii.
- iv. Subcontracts. The Contractor or Subcontractor must insert in any subcontracts the clauses set out in this Section 24.14.a and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor will be responsible for compliance by any of its Subcontractors or lower tier Subcontractors with the clauses set out in this Section.

b. Section 107 of the Act (OSHA)

- i. Contract Work Hours and Safety Standards Act. The Contractor agrees to comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 333, and applicable Department of Labor regulations, “Safety and Health Regulations for Construction,” 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- ii. Subcontracts. The Contractor also agrees to include the requirements of Section 107 of the Act in each subcontract. The term “subcontract” under Section 107 is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration, or repair. A person who undertakes to perform a portion of a

contract involving the furnishing of supplies or materials will be considered a “subcontractor” under Section 107 if the work in question involves the performance of Construction Work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials that will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor.” The requirements of this Section 24.14.b do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

24.15. Davis-Bacon Act

- a. Minimum Wages
 - i. All mechanics and laborers employed or working upon the Site, (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is attached in Annex D and made a part hereof, regardless of any contractual relationship that may be alleged to exist between the Contractor and such laborers and mechanics.
 - ii. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 24.15.a.v below; also, regular contributions made or costs incurred for more than a weekly period (but not

less often than quarterly) under plans, funds or programs that cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Section 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set out the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under this Section 24.15) and the Davis-Bacon poster (WH-1321) must be posted at all times by the Contractor and its Subcontractors at the Site in a prominent and accessible place where it can be easily seen by the workers.

iii. Wage Classification

A. The Director, Purchasing will require that any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under the Contract be classified in conformance with the wage determination. The Director, Purchasing will approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- I. The work to be performed by the classification requested is not performed by a classification in the wage determination;
- II. The classification is utilized in the area by the construction industry; and
- III. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

B. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the

Director, Purchasing agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the Director, Purchasing to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC, 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 Days of receipt and so advise the Director, Purchasing or will notify the Director, Purchasing within the 30-Day period that additional time is necessary.

C. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Director, Purchasing do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Director, Purchasing will refer the questions, including the views of all interested parties and the recommendation of the Director, Purchasing to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 Days of receipt and so advise the Director, Purchasing or will notify the Director, Purchasing within the 30-Day period that additional time is necessary.

D. The wage rate (including fringe benefits where appropriate) determined pursuant to this Section 24.15.a must be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

- iv. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor must either pay the benefit, as stated in the wage determination or must pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- v. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or

mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

b. Withholding

The CTA will upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, the CTA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guaranty of funds until such violations have ceased.

c. Payrolls and Basic Records

- i. Payrolls and basic records relating thereto must be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the Site (or under the United State Housing Acts of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records must contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe

benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs must maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- ii. The Contractor must submit weekly for each week in which any Work is performed, an electronic copy of all payrolls to the CTA through the Web based Certified Payroll application. The payrolls submitted must set out accurately and completely all of the information required to be maintained under §5.5(a)(3)(i) of 29 CFR Part 5, except that full social security numbers and home addresses will not be included on weekly transmittals. Instead the payrolls will only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and subcontractors will maintain the full social security number and current address of each covered worker, and will provide them upon request to the CTA, the FTA, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this Section 24.15.c for the Contractor to require a subcontractor to provide addresses and social security

numbers to the Contractor for its own records, without weekly submission to the CTA.

- iii. Each payroll submitted must be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and must certify the following:
 - A. that the payroll for the payroll period contains the information required to be maintained under §5.5(a)(3)(i) of 29 CFR Part 5, and that such information is correct and complete;
 - B. that each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set out in 29 CFR Part 3; and
 - C. that each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- iv. The weekly submission of properly executed certification set out on the reverse side of Optional Form WH-347 will satisfy the requirements for submission of the "Statement of Compliance" required by Section 24.15.c.iii above.
- v. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 231.
- vi. The Contractor or subcontractor must make the records required under this Subsection 24.15.c.vi available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration, or the Department of Labor, and must permit such representatives to interview employees during working hours on the job. If the Contractor or

Subcontractor fails to submit the required records or to make them available, the CTA and/or Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guaranty of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

d. Apprentices and Trainees

- i. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 Days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship and Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the applicable wage rate on the wage rate determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen's hourly rate)

specified in the Contractor's or Subcontractor's registered program must be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen's hourly rate specified in the applicable wage determination. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the Site must not be greater than permitted under the plan provided by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen's hourly rate specified in the applicable wage determination. Trainees must be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees must be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeymen's

wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, that is not registered and participating in a training plan approved by the Employment and Training Administration, must be paid not less than the applicable wage rate on the wage determination for the classification for work actually performed. In addition, any trainee performing work on the Site in excess of the ratio permitted under the registered program must be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event that the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to use trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal Employment Opportunity. The use of apprentices, trainees, and journeymen under 29 CFR § 5.16 will be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- e. Compliance with Copeland Act requirements

The Contractor must comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

- f. Subcontracts

The Contractor or Subcontractor must insert in any Subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the CTA or FTA may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The Contractor will be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR § 5.5.

- g. Contract termination and debarment

A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.

h. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference.

i. Disputes Concerning Labor Standards

Disputes arising out of labor standards provisions of this Contract will not be subject to the general disputes clause of this Contract, Section 46.4. Such disputes will be resolved in accordance with the procedures of the Department of Labor set out in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

j. Certification of Eligibility

- i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).
- ii. No part of this Contract will be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12 (a)(1).
- iii. The penalty for making false statements is prescribed in the United States Criminal Code, 18 U.S.C. § 1001.

24.16. Build America, Buy America³

- a. The Contractor agrees to comply with 49 U.S.C. § 5323(j), 49 CFR Part 661, and Build America, Buy America Act (BABA), Public Law 117-58, div. G §§ 70901-27, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver, and provide the appropriate certification. General waivers are listed in 49 CFR Part 661.7, and include microcomputer

³ Subject to update for latest BABA regulations in effect as of the Reference Date.

equipment, software, and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 CFR Part 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have at least a 70 percent domestic content for rolling stock delivered in 2020 or thereafter.

- b. The Contractor also agrees that it will make the Buy America requirements set out in this Section 24.16 a mandatory requirement of any and all Subcontracts it may enter into with the appropriate Subcontractors that shall be performing the Work identified in this Contract. This will include that the Subcontractors comply with all of the requirements set out above, including submitting to the Contractor the appropriate Buy America certification with any bids for the Project, except those subject to a general waiver. Bids or offers from the Subcontractors that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

24.17. Cargo Preference – Use of United States Flag Vessels

The Contractor agrees:

- a. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. To furnish within 28 Days following the date of loading for shipments originating within the United States, or within 42 Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the CTA (through the Contractor in the case of Subcontractor bill-of- lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W. Washington, D.C. 20590, marked with appropriate identification of the Project; and

- c. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

24.18. Seismic Safety

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by regulation. The Contractor also agrees to ensure that all Work is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

24.19. No Federal Government Obligation to Contractor or Others

- a. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the award of this Contract, the Federal Government is not a party to this Contract and will not be subject to any obligations or liabilities to the Contractor, or any other person (whether or not a party to this Contract) in connection with this Contract or pertaining to any matter resulting from this Contract, the Work, or the Project.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause must not be modified, except to identify the Subcontractor who will be subject to its provisions.

24.20. Obligation to Comply with State and Federal Law and Regulations

The Contractor must at all times comply with all applicable IDOT, RTA and FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the FTA's most recent "Master Agreement" between the CTA and FTA, and any agreements between IDOT and RTA and RTA and CTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply will constitute a material breach of this Contract.

24.21. Fly America

The Contractor agrees to comply with 49 U.S.C. § 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor must submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and must, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Section 24.21 in all subcontracts that may involve international air transportation.

25. Incorporation of Federal Transit Administration Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set out in the preceding contract provisions. All contractual provisions required by DOT, as set out in the latest revision of FTA Circular 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms will be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor must not perform any act, fail to perform any act, or refuse to comply with any CTA requests that would cause the CTA to be in violation of the FTA terms and conditions.

25.1. Assurance of Compliance with 49 CFR Part 26

The Contractor, sub recipient or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the CTA deems appropriate. The Contractor agrees to include this assurance in all subcontracts.

25.2. Ineligible Contractors

- a. The Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the CTA's requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the CTA.
- b. Contractor further certifies that neither it nor any of its Subcontractors are currently debarred for violations of any applicable public contracts incorporating labor standards provisions or included on any applicable list thereof, including without limitation the General Service Administration's System for Award Management, the Illinois Department of Transportation's Suspension List, the Illinois Department of Labor Public Works Debarred Contractors List, the Illinois Department of Human Rights Debarred Companies List, the City of Chicago's List of Debarred Firms and Individuals, or the CTA's Suspension and Debarments Report.

25.3. Job Creation and Hiring Reporting

Within 30 Days of the Notice to Proceed, the Contractor will provide a report of the estimated number of direct, on-site jobs created and/or retained by this Contract, whether from the Contractor's own workforce or any Subcontractor. Contractor will include the following information in its report:

- a. Expenditure amounts (amount of payment)
- b. Expenditure descriptions (what was exchanged for the payment)
- c. A brief description of the types of jobs created and jobs retained. "Jobs or positions created" mean those new positions created and filled, or previously existing unfilled positions that are filled, as a result of the Contract. "Jobs or positions retained" mean those previously existing filled positions that are retained as a result of the Contract.
- d. An estimate of the number of jobs created and jobs retained. At a minimum, this estimate will include any new positions created and any existing filled positions that were retained to support or carry out the Contract. The number will be

expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule. A job cannot be reported as both created and retained.

Within 30 Days of Substantial Completion, and a prerequisite to Final Completion, the Contractor will update the report with the actual direct, on-site jobs which were created and/or retained by this Contract. Together with this final report, Contractor will also provide a separate report, identifying all zip codes in which the persons performing such jobs maintained their primary residence and the number of persons residing in such zip code.

25.4. Posting with the Local Employment Security Commission Office

In addition to any other job postings the Contractor and Subcontractor normally utilizes, the Contractor and Subcontractor will post with the local Employment Security Commission Office, all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semi-skilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five (5) Days before the hiring decision. The Contractor and any Subcontractor will report the new hires in the manner prescribed by the Employment Security Commission.

25.5. IDOT Training Program Graduate (TPG) On-The -Job Training

This Section will only apply if the CTA notifies the Contractor that Illinois Department of Transportation funding is to be utilized on the Contract.

- a. In addition to the equal employment opportunity affirmative action requirements of Section 24.7 of this Contract, the Contractor is encouraged to participate in the incentive program to provide additional on-the-job training to certified graduates of Illinois Department of Transportation (“IDOT”) funded pre-apprenticeship training programs (the “IDOT TPG Program”).
- b. It is the policy of IDOT to fund IDOT pre-apprenticeship training programs throughout Illinois to provide training and skill-improvement opportunities to assure the increased participation of minority groups, disadvantaged persons and women in all phases of State-funded construction. The intent of the IDOT TPG Program is to place certified graduates of the IDOT funded pre-apprentice training programs on IDOT-funded project sites when feasible, and provide the graduates with

meaningful on-the-job training intended to lead to journey-level employment. IDOT has determined this Contract will include the IDOT TPG Program requirements. To benefit from the incentives to encourage the participation in the additional on-the-job training under the IDOT TPG Program, the Contractor will make every reasonable effort to employ certified graduates of IDOT-funded pre-apprenticeship training programs (a "TPG").

- c. Participation by the Contractor or Subcontractor in the IDOT TPG Program entitles the Contractor or Subcontractor to be reimbursed at \$15.00 per hour for training provided to a certified TPG on this Contract, subject to the Authority's approval. This reimbursement will be made even though the Contractor or Subcontractor may receive additional training program funds from other sources for other trainees, provided such other source do not specifically prohibit the Contractor or subcontractor from receiving other reimbursement. For purposes of the IDOT TPG Program, the Contractor is not relieved of requirements under the Illinois Prevailing Wage Act or the Federal Davis Bacon Act.
- d. No training reimbursement will be made to the Contractor if the Contractor or Subcontractor fails to provide the required training. It is expected that a TPG will begin training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project through completion of the Contract, so long as training opportunities exist in the TPG's work classification or until the TPG has completed the training program. Should the TPG's employment end in advance of the completion of the Contract, the Contractor shall promptly notify the consultant or Authority staff person designated in writing by Authority that the TPG's involvement in the Contract has ended and supply a written report of the reason for the end of the employment, the hours completed by the TPG under the Contract for which reimbursement under the TPG Program has been or will be sought.
- e. The Contractor will provide for the maintenance of records and furnish periodic reports documenting its performance under this provision.
- f. Method of Measurement. The unit of measurement is in hours.
- g. Basis of Payment. This work will be paid for at the Contract unit price of \$15.00 per hour for certified TPGs. The estimated total number of hours, unit price and

total price have been included in an allowance added to the Contract to pay for the reimbursement.

- h. The Contractor shall provide training opportunities aimed at developing full journey workers in the type of trade or job classification involved. The initial number of TPGs for which the incentive is available under this Contract is as notified by Authority to Contractor in writing. During the course of performance of the Contract, the Contractor may seek approval from the Authority for additional incentive-eligible TPGs. In the event the Contractor subcontracts a portion of the Contract work, it shall determine how many, if any, of the TPGs are to be trained by the Subcontractor, provided however, that the Contractor shall retain the primary responsibility for meeting the TPG requirements. The Contractor shall also ensure that this TPG Provision is included in such Subcontract if the TPGs are to be trained by a Subcontractor and that the incentive payment is passed on to each subcontractor.
- i. For the Contractor to meet the obligations for participation in this TPG incentive program under this Provision, IDOT has contracted with several entities to provide screening, tutoring and pre-training to individuals interested in working in the applicable construction classification and has certified those students who have successfully completed the program and are eligible to be TPGs. The Director of IDOT's Office of Business and Workforce Diversity (OBWD) or the Director's designee will provide assistance and referrals to the Contractor for the applicable TPGs. For purposes of this Contract, contacting the Director of IDOT's OBWD or the Director's designee and interviewing each candidate he/she recommends constitutes reasonable recruitment.
- j. Prior to commencing construction, the Contractor will submit to the Authority for approval the TPGs to be trained in each selected classification. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. No employee will be employed as a TPG in any classification in which he/she has successfully completed a training course leading to journeyman status or in which he/she has been employed as a journeyman. Notwithstanding the on-the-job training purpose of this TPG Provision, some offsite training is permissible as long

as the offsite training is an integral part of the work of the Contract and does not comprise a significant part of the overall training.

- k. Training and upgrading of TPGs of IDOT pre-apprentice training programs is intended to move said TPGs toward journeyman status and is the primary objective of this TPG provision. Accordingly, the Contractor will make every effort to enroll TPGs through the IDOT-funded TPG programs. The Contractor will be responsible for demonstrating its compliance with the TPG Program in order to be entitled to the TPG Program provision, \$15.00-an-hour incentive.
- l. The Contractor or Subcontractor will provide each TPG with a certificate showing the type and length of training satisfactorily completed.

25.6. Utilization of Deposit Institutions and Community Banks

- a. The Contractor is encouraged to utilize minority deposit institutions or community banks as defined by the Federal Deposit Insurance Corporation, in particular where they are located in Economically Disadvantaged Areas. Information about minority deposit institutions or community banks is available on-line at <https://www.fdic.gov/regulations/resources/minority/mdi.html> and <https://www.fdic.gov/resources/community-banking/index.html>.
- b. To the extent that the Contractor submitted a Proposal for this Contract which included additional commitments with respect to utilization of minority deposit institutions or community banks (the "MDI Plan"):
 - i. Contractor will comply with the commitments made in its MDI Plan. Contractor's failure to implement the efforts described in its MDI Plan, including making the applicable percentage of deposits committed to, is considered a material breach of this Contract.
 - ii. Contractor must report to the CTA on the implementation of MDI Plan efforts, at minimum with monthly reports that list the names of the financial institutions used with summaries of the amounts and periods of all deposits and other activities for the previous month.

25.7. Community Relations

The Contractor will assign a person to serve as the liaison to CTA Government and Community Outreach Relations (GCR) staff and the CTA's Community Outreach Consultant to address all matters dealing with elected officials, community outreach, and troubleshooting community concerns. Contractor's GCR liaison will work with CTA GCR and the CTA's Community Outreach Consultant on communications with the local communities, all meetings with elected officials and community leaders, and coordinating Contractor communications and written materials used in the community. Contractor's GCR liaison will also be responsible for delivering all required reports to the CTA GCR and the CTA's Community Outreach Consultant.

25.8. The Contractor's Diversity Commitments

- a. Contractor will comply with all requirements set forth in the DBE Special Conditions, including the DBE contract goal commitment. Contractor will achieve the DBE contract goal through the participation of qualified DBE firms on the Contract. Contractor may also meet the goal by documenting good faith efforts as described in the DBE Special Conditions.
- b. To the extent that the Contractor submitted a Proposal for this Contract which included additional commitments with respect to DBE and DBE outreach (the "Diversity Outreach Plan"):
 - i. Contractor will comply with the commitments made in its Diversity Outreach Plan. Contractor's failure to implement the efforts described in its Diversity Outreach Plan is considered a material breach of this Contract.
 - ii. Contractor will use the methods detailed in its Diversity Outreach Plan to reach out to and utilize a diverse pool of DBE firms to participate on the Contract.
 - iii. In consideration of Contractor's good faith efforts, consideration will be given to Contractor's implementation of the outreach efforts provided in its Diversity Outreach Plan.
 - iv. Contractor must report to the CTA on the implementation of Diversity Outreach Plan efforts in accordance with the reporting requirements provided in the DBE Special Conditions.

- c. Contractor will appoint a qualified person or persons with DBE Program management experience ("Diversity Coordinator"), who will have overall responsibility for DBE, EEO, Workforce Goal, and IDOT TPG compliance for the Contractor and for all Subcontractors working on the Project. The Diversity Coordinator shall monitor all employee hours under such programs, and work with the CTA's Diversity Compliance personnel to address all matters dealing with DBE, EEO, Workforce Goal, and IDOT TPG compliance. The Diversity Coordinator will also be responsible for ensuring that all reports concerning DBE, EEO, Workforce Goal and IDOT TPG compliance required under this Contract are compiled and delivered by Contractor.

25.9. Minimum Wage

- a. Contractor and its Subcontractors must comply with Section 1.10 of the CTA's Purchasing Policy and Procedures ("Minimum Wage Policy"), to provide for a fair and adequate minimum wage to be paid to certain employees of certain CTA contractors and subcontractors, as described below. The minimum wage that must be paid pursuant to the Minimum Wage Policy is set out in the CTA Minimum Wage Regulations, available at: http://www.transitchicago.com/business/procurement_information/regulation_and_policies.aspx ("Minimum Wage").
- b. Contractor and its Subcontractors must cooperate in any investigation by the CTA regarding compliance with the Minimum Wage Policy. Failure of the Contractor or any of its Subcontractors to comply with the Minimum Wage Policy or to cooperate in such an investigation is grounds for the CTA declaring the Contractor in default of this Contract and exercising such remedies as the CTA deems appropriate.
- c. Contractor must include this provision in all subcontracts and cause its Subcontractors to comply with its requirements.
- d. If this Contract includes any provisions (including, but not limited to, Davis-Bacon Act or Illinois Prevailing Wage Act) requiring payment of higher wages than required by the Minimum Wage Policy, then the Contractor and its subcontractors will pay the higher wages required by such provisions.

26. Permits

26.1. Compliance With Permits

Pursuant to Section 6.1.b.vi, the Contractor is obligated to comply with Permit requirements in its performance of the Work.

26.2. CTA-Provided Permits

- a. The CTA-Provided Permits were obtained prior to the Contract Date by the CTA and, subject to Section 26.4.b, will be maintained by the CTA at its cost and expense (excluding any cost or expense borne by the Contractor pursuant to Section 26.4.b).
- b. The alignment, structure width, and the station and traction power substation locations shown on the Base Case plans are consistent with the plans used in the NEPA evaluation which resulted in the CTA-Provided Permits.

26.3. The Contractor's Responsibility to Obtain Permits

- a. Subject to Section 26.5.a, and without limiting its rights under this Contract arising as a result of the occurrence of any Contractor Proposed Change documented in a Change Order or any Relief Event (including any such rights that relate to obtaining any new or amending any existing Permit as a result of any such Change Order), the Contractor will be responsible for obtaining all Permits (other than the CTA-Provided Permits), paying all Permit Fees, and arranging any necessary amendments to any Permits (including, pursuant to Section 26.4.b, CTA-Provided Permits), in each case as required by Law, including all Environmental Laws, and as necessary to access and use the Site and to otherwise perform its obligations hereunder at the time and in the manner when they fall due for performance.
- b. Without limiting its obligations under Section 33, the Contractor will deliver to the Chief Infrastructure Officer copies of all Permits for which it is responsible pursuant to Section 26.3.a (and copies of any modifications, renewals, extensions and waivers to or of any thereof) promptly following receipt by the Contractor of the same.
- c. The Contractor's obligations under Section 26.3.a will not be limited by any Law placing responsibility for the same upon the CTA or another Person.

26.4. Submissions to the FTA Involving CTA-Provided Permits

- a. Prior to submitting (i) an application for any Permit (or for any proposed termination, modification, renewal, extension or waiver of a Permit) or (ii) (with respect to FTA only) any other deliverable, in either case to:

- i. the FTA; or
- ii. any Person with respect to all such submissions that involve a CTA-Provided Permit,

the Contractor will first submit the same, together with any supporting environmental or other studies, analyses, and data, to the CTA for Approval. Except as otherwise expressly provided in this Contract, the Contractor will submit each other application for a Permit (or for any proposed termination, modification, renewal, extension, or waiver of a Permit) for information only.

- b. Except to the extent otherwise provided with respect to Relief Events or as agreed in a Change Order, as between the CTA and the Contractor, the Contractor will perform all necessary actions and will bear all risk of delay and/or all risk of cost and expense, in either case, associated with Permits, including:

- i. without limiting the CTA's and FTA's rights to independently evaluate all environmental and other studies and documents and fulfil the other responsibilities assigned to them by NEPA Decision Documents, statute, regulation, or FTA Guidance, conducting all necessary environmental or other studies and preparing all necessary environmental or other documents in compliance with Law (provided that the CTA may, in its discretion, elect to conduct any such studies or to prepare any such documents at the CTA's cost and expense);
- ii. preparing Permit documentation to submit for Permits (including for all scopes of Work for which the CTA has historically obtained Permits), such documentation to include all calculations, worksheets, applications, and inspection reports, or any other documentation required, in order to secure the Permits;
- iii. participating in pre-intake meetings, Permit intake meetings, and Permit review meetings with relevant Governmental Authorities, and preparing

corrections or changes based upon Permit review comments from Governmental Authorities in accordance with all applicable standards and requirements of the applicable Governmental Authority;

iv. obtaining and complying with all necessary new Permits, or all necessary modifications, renewals, and extensions of existing Permits, or of pending applications for Permits; and

v. all risk and cost of litigation,

where such risk of delay and/or risk of cost and expense:

vi. either:

A. relates to a Permit that is not a CTA-Provided Permit; or

B. results from:

I. differences between the design, construction, operations, and/or maintenance means and methods the Contractor chooses for any portion of the Project and those set out, referred to or contemplated in any Permit (including any CTA-Provided Permit), or in the application for any Permit;

II. the incorporation of any ATC (as defined in the ITP) into this Contract;

III. the acquisition of any additional property; and/or

IV. any Contractor Fault Event; and

vii. does not otherwise result from the occurrence of any Relief Event (including where such Relief Event results in a requirement to obtain any new or amend any existing Permit) or to the extent otherwise agreed in any Change Order.

26.5. Obtaining and Modifying Permits

a. If the Contractor is unable to obtain, modify, renew, or extend any Permit for which it is responsible pursuant to Section 26.3.a, then, without limiting its rights under this Contract arising as a result of the occurrence of any Contractor Proposed Change documented in a Change Order or any Relief Event (including as a result

of the CTA's breach of its obligations under Section 26.5.a and including any such rights that relate to obtaining any new or amending any existing Permit as a result of any such Change Order or Relief Event), the Contractor will promptly notify the CTA and proceed or continue to design and build the Project according to the requirements of this Contract and the design and construction means and methods set out, referred to or contemplated in the CTA-Provided Permits, and any other Permits that have been or are subsequently obtained.

- b. No such inability of the Contractor to obtain, modify, renew, or extend any Permit for which it is responsible pursuant to Section 26.3.a will itself constitute a Relief Event or other legal or contractual basis for any claim or relief hereunder by or for the Contractor to the extent that the cause of, or reason for, such inability does not otherwise constitute a Relief Event or such other basis for any claim or relief.
- c. The CTA will, as and when expressly provided in this Contract and otherwise at the reasonable request of the Contractor, where necessary to obtain, modify, renew, or extend any Permit for which the Contractor is otherwise responsible pursuant to Section 26.3.a, use reasonable efforts to:
 - i. execute such documents as can only be executed by the CTA;
 - ii. make such applications or recordings, either in its own name or jointly with the Contractor, as can only be made by the CTA, or in joint names of the Contractor and the CTA; and
 - iii. attend meetings and cooperate with any relevant Governmental Authority as reasonably requested by the Contractor, in each case within a reasonable period of time after being requested to do so by the Contractor.
- d. Subject to any pre-agreed scope of Work and budget and to any rights of the Contractor that arise as a result of the occurrence of any Contractor Proposed Change documented in a Change Order or Relief Event, the Contractor will fully reimburse the CTA for all reasonable costs and expenses it incurs as a result of the CTA complying with its obligations pursuant to Section 26.5.a, provided that, except to the extent provided pursuant to Section 26.4.b, the Contractor will not be responsible for the payment of the CTA's costs and expenses incurred in obtaining, modifying, renewing, or extending any CTA-Provided Permit.

Subpart J: Health, Safety, Security, Environmental Matters and Utilities

27. Health, Safety and Security Obligations

27.1. General Security and Work Protection Obligations

- a. The Contractor must maintain adequate protection of all Work under construction. In particular, the Contractor must protect all Work and materials and equipment to be incorporated into the Work, whether in storage, on or off the Site that is under the care, custody, or control of the Contractor.
- b. The Contractor must take all precautions to render all portions of the Work secure in every respect, and to decrease the possibility of, or liability for, accidents from any cause, and to avoid contingencies that may delay the completion of the Work.
- c. The Contractor must furnish, maintain, and remove all temporary work required to keep in operation all requisite lights, guards, temporary heat to prevent freezing, temporary scaffold, construction barriers, foot traffic barriers, sidewalks, fences, and other safeguards for the protection of the Work and safety of the premises and the public.

27.2. General Health and Safety Obligations

- a. The Contractor must take all necessary precautions for the safety of all Persons on or near the Site and all Persons affected by the Work.
- b. Without limitation of Section 24.14, the Contractor must take all necessary precautions for safety of the employees on the Site and must take all actions to prevent accidents or injury to Persons on, about, or adjacent to the premises where Work is being performed. The Contractor must designate responsible members of its organization, in such numbers as are necessary, whose duties will be prevention of accidents. The Contractor must report the name, position, and qualifications of Person(s) so designated to the Chief Infrastructure Officer.
- c. Although the Chief Infrastructure Officer may observe construction and give the Contractor opinions and suggestions about safety defects and deficiencies, the CTA will not be responsible for any unsafe working conditions. The Chief Infrastructure Officer's suggestions on safety, if any, will in no way relieve the

Contractor of its responsibility for safety on the Project. The Contractor will have sole responsibility for safety.

- d. The Contractor must comply with all applicable federal, state, and local health and safety and building laws and codes, including, without limitation, the then most recent revision of FTA Circular 5800.1. Such laws, codes, acts and rules and the applicable parts thereof are considered part of this Contract.
- e. The Contractor must keep on the Site, completely equipped first aid kits, which include AEDs, readily accessible at all times. The Contractor must designate a person on each shift, to be in charge of first aid and must cause such person to receive proper instructions therein.
- f. The Contractor must comply with the requirements of CTA Adjacent Construction Manual, Appendix 4B of Part 4.

27.3. Safety Program and Training

- a. The Contractor must require each employee to attend a formal "New Employee Orientation" prior to the employee starting on the Work.
- b. The Contractor has sole and complete responsibility for implementation of a safety program. The Contractor's safety program must, at a minimum, meet the requirements of CTA's safety program included in the Contract Documents. The Contractor's safety program must be submitted to the Chief Infrastructure Officer before the start of the on-site construction activities.

27.4. Injuries to the Contractor's Employees

In case of accident, the Contractor must immediately furnish the Chief Infrastructure Officer with full data relative to the accident. The Contractor must comply with all Laws, ordinances, codes, rules and regulations relative to health, safety and the prevention of accidents.

28. Environmental Matters

28.1. Compliance with Environmental Laws

- a. The Contractor must comply with all Environmental Laws and with any amendments to Environmental Laws in connection with its performance of the

Work. Contractor must not bring on the Site any item that contains any Hazardous Material in violation of any Environmental Laws.

- b. To the extent permitted by Law, the CTA hereby delegates to the Contractor, and the Contractor accepts, all the CTA's obligations, commitments, and responsibilities for environmental management and environmental compliance in accordance with the requirements identified in this Contract and all applicable Environmental Laws and Environmental Approvals except for those "Environmental Mitigation Measures" specifically assigned to the CTA in the RLE-Mitigation Tracking Matrix.
- c. The Contractor will also assist the CTA in implementing any and all non-delegable obligations, commitments, and responsibilities regarding applicable Environmental Law and Environmental Approvals.

28.2. Hazardous Materials and Debris

- a. The Work must be performed to avoid and prevent any adverse effect on any condition involving Hazardous Materials that may currently exist at, on, or beneath the Site and as necessary to avoid and prevent any new contamination of any portion of the Site by Hazardous Materials.
- b. The Contractor must remove from the Site any fill material that contains any Hazardous Material, unless the Chief Infrastructure Officer gives specific written approval for on-site reuse of fill.
- c. The Contractor must not allow any Debris to accumulate, or to be stockpiled, at the Site. Upon loading Debris into any vehicle for removal from the Site, such Debris will be deemed the property and responsibility of the Contractor. The Chief Infrastructure Officer may, by notice to the Contractor, designate any Debris as the property of the CTA (to the extent such was not already CTA's property) prior to its removal, in which case such material will no longer be Debris and the Contractor will provide reasonable assistance as requested by the CTA with respect thereto.
- d. The Contractor will be responsible for the transport of Debris from the Site, and the selection of the transport route (subject to any applicable traffic management plan of a public authority), to a disposal facility selected by the Contractor.

- e. For any Debris that includes Hazardous Material that is to be removed by the Contractor, the disposal facility selected by the Contractor must be: (1) legally permitted to accept the type of waste and materials contained in the Hazardous Material (including being an acceptable facility pursuant to 40 CFR 300.440(e)); (2) fully licensed to receive the Hazardous Material and otherwise in good standing under applicable Law; and (3) not identified on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) list.
- f. Contractor must designate by name and location the disposal facility(ies). Failure to identify disposal facility(ies), or failure to submit this information when requested by the Chief Infrastructure Officer, may be cause to terminate this Contract in accordance with Sections 40 and 41. If the Chief Infrastructure Officer requests, the Contractor must provide to the Chief Infrastructure Officer copies of all contractual agreements, sanitary landfill permits, and licenses for those disposal facility(ies) selected by the Contractor.
- g. Contractor must (i) leave the Project Area and any other area to which the Contractor has access and use from time to time for Project purposes clean of Debris including as reasonably required by the CTA, and (ii) clean all streets, tracks, rights of way, alleys, sidewalks, and adjacent areas, from Debris caused by the performance of the Work including to the extent required by public authorities, any Railroad, or applicable third party, in each case (i) and (ii) also as and to the extent required to otherwise comply with Law, any Permit, or any Record of Third-Party Coordination.

28.3. Generator Status

- a. CTA agrees that it will be liable as generator and arranger for Hazardous Materials existing and located on any part of the Site prior to the date on which the Contractor is first granted access to and/or control of such part of the Site, or thereafter released by CTA onto such part of the Site as a result of a Cost and Delay Event resulting from a "CTA Breach or Fault Event". Contractor agrees that it will be liable as generator and arranger for Hazardous Materials brought onto the Site, or otherwise released onto the Site or in connection with the Work, by any Contractor-Related Entity.

- b. The Contractor will consult with the CTA as to whom to designate as the “generator” on any manifests and other waste tracking records.

28.4. Unforeseen Environmental Impairments

Without limiting its obligations under Section 15 with respect to any corresponding Relief Event, the Contractor will comply with the following requirements with respect to any actual or potential Unforeseen Environmental Impairments:

- a. if the Contractor discovers any conditions which may constitute Unforeseen Environmental Impairments, other notice provisions in this Contract notwithstanding (including in Section 15.5 with respect to Relief Events), the Contractor must immediately, but in all cases within 24 hours, notify the Chief Infrastructure Officer of the Unforeseen Environmental Impairments by telephone or in person and the Contractor must comply with all Environmental Laws and all directions issued by the Chief Infrastructure Officer with respect to such Unforeseen Environmental Impairments; and
- b. the Contractor will address remediation of such Unforeseen Environmental Impairments in accord with the requirements of Sub Part 3.8.4 of Part 3 unless otherwise directed by the Chief Infrastructure Officer.

29. Utilities

29.1. Contractor’s Responsibilities

The Contractor’s responsibilities for Utilities are set out in Sub Part 3.14 of Part 3.

29.2. Unforeseen Utility Impairments

- a. If the Contractor discovers any condition that may constitute an Unforeseen Utility Impairment, other notice provisions in this Contract notwithstanding (including in Section 15.5 with respect to Relief Events), it will notify the CTA within 24 hours.
- b. If either the CTA or the Contractor considers that the condition constitutes an Unforeseen Utility Impairment it will proceed in accordance with Section 14.

Subpart K: Construction Documentation

30. Construction and Design Documentation

30.1. Construction Documents

The Contractor will design and develop the construction documents for the Project to complete the scope of Construction Work identified in the Contract Documents, including technical specifications and drawings. In developing the construction documents, the Contractor will comply with all Project Requirements and other Contract Documents, and, except as expressly waived by the CTA in writing, its Proposal. The Contractor will check the documents for completeness, constructability, and coordination and make recommendations to the CTA.

30.2. Performance Specifications

The Contractor's construction documents, including the Final Design and all "Design Submittals" described in Sub Part 2.8.11 of Part 2, should include design and performance specifications rather than specify brand names or trade names where feasible in order not to unduly restrict competition; where a brand name or trade name is used, such reference must only be descriptive, for instance, through adding "or approved equal", and not restrictive, and used to indicate item characteristics or quality.

Subpart L: Quality Management and Project Oversight

31. Contractor's Testing and Inspection Obligations

The Contractor or its authorized testing and inspection agency must perform inspection and testing of materials, equipment, and apparatus furnished under the Contract, except as otherwise expressly stated in the Contract. The inspection agency must meet all applicable requirements set out in the Contract, including Sub Part 2.12.2.G of Part 2, and must be included in the Contractor's Testing, Inspection, and Commissioning Plan which will be approved by the CTA as part of the DBMS. The inspection and test procedures in the Contract will apply to all inspections and testing except as otherwise set out in the Project Standards.

32. Nonconforming Work, Defects and Warranties

32.1. Nonconforming Work

- a. Without limiting its obligations under Sub Parts 2.2.2 and 2.8.7 of Part 2 with respect to the identification and correction of any Nonconforming Work, at any time prior to Project Closeout, the Contractor agrees that:
 - i. it will (at its own risk, cost, and expense, including the risk, cost, and expense of associated design work) promptly remove, replace, re-execute and/or otherwise correct all Nonconforming Work such that it ceases to be Nonconforming Work:
 - A. without cost or expense to CTA; and
 - B. without any other right to claim or receive any Contract Price or Contract Time adjustment; and
 - ii. in complying with its obligations under Section 32.1.a.i, it will also comply with any CTA instructions given pursuant to Section 32.1.b.
- b. With respect to any Nonconforming Work, the CTA may in its discretion, and without altering the Contractor's obligations hereunder, acting through the Chief Infrastructure Officer:

- i. advise the Contractor the steps that the CTA believes the Contractor must take with respect to such Nonconforming Work in compliance with Section 32.1.a.i;
 - ii. instruct the Contractor as to a reasonable period within which the Contractor must carry out such steps and/or any other rectification plan, including any corrective action determined in accordance with Sub Part 2.2.2 and Sub Part 2.8.7 of Part 2;
 - iii. inform the Contractor that it conditions the approval of future submittals or achievement of future Milestones or Project Element Substantial Completion on correction of such Nonconforming Work, but only to the extent such Nonconforming Work is related to CTA's ability to review and approve such submittal or evaluate and confirm as complete the relevant Milestone or Project Element Substantial Completion (with respect to conditioning an Project Element Substantial Completion or Substantial Completion, which relates the ability of CTA to occupy or utilize the Project or a Project Element for its intended use); and/or
 - iv. inform the Contractor that it accepts the Nonconforming Work, subject to any conditions set by the CTA.
- c. If the Contractor fails to comply with its obligations under Section 32.1.a.i within any time period specified by the CTA pursuant to Section 32.1.b.i or otherwise as and when required pursuant to Sub Part 2.8.7 of Part 2, and without limiting the CTA's other rights and remedies hereunder, the CTA will be entitled to:
 - i. intervene pursuant to Section 34.5; or
 - ii. issue a Proceed Order pursuant to Section 14.1.c.ii or a Directive Order pursuant to Section 14.1.c.iii relieving the Contractor of its obligations under Section 32.1.a.i with respect to all or any part of the relevant Nonconforming Work, in consideration of which the Contract Price will be reduced to reflect the CTA's reasonable estimate of the resulting reduced value of the Work, including any associated Losses to the CTA.

32.2. Contractor Warranties

- a. The Contractor warrants to CTA that all Work to be performed and all materials to be furnished under the Contract, including pursuant to Section 32.2.b, will, throughout the Warranty Period:
 - i. meet or exceed all applicable requirements of the Contract Documents;
 - ii. be in accordance with Good Industry Practice in every respect;
 - iii. be comprised of new materials at the time of installation (except to the extent otherwise expressly permitted under the Contract Documents); and
 - iv. with respect to construction elements of the Work (excluding any design, architectural, or engineering services performed as part of the Work), equipment and materials only, be of good quality and free from faults and Defects affecting the condition, use, functionality, or operation of any element of the Work, including (A) Defects in materials and workmanship, and (B) any Defect that is recognized to exist as a matter of Law.
- b. The Contractor will (at its own risk, cost, and expense, including the risk, cost, and expense of associated design work), during the Warranty Period, promptly investigate, repair, replace, or otherwise correct and fully remedy any Defect or any breach of the warranties made pursuant to Section 32.2.a so that the Work fully complies with the Contract, including with respect to any redesign:
 - i. without cost or expense to CTA; and
 - ii. without any other right to claim or receive any Contract Price or Contract Time adjustment.
- c. Beginning promptly, and in any event no later than 5 Days from the earlier of written notice from CTA or discovery of the relevant Defect or breach, Contractor will perform and diligently pursue completion of its work under Section 32.2.b as rapidly as possible under the circumstances. The completion of such will be subject to the Approval of the Chief Infrastructure Officer.
- d. When an initial warranty repair results in a subsequent failure of the original repair Work within the Warranty Period, the Contractor will perform a root cause analysis and submit a report to determine whether the failures are due to latent Defects. If

latent Defects are identified, the Contractor will take all corrective actions necessary to correct the latent Defect. Contractor will repair all failures resulting from a latent Defect until the latent Defect is corrected.

32.3. Subcontractor and Supplier Warranties

- a. Without limiting or otherwise relieving the Contractor of any obligation under this Contract, Contractor will require Subcontractors, including equipment suppliers, to execute and deliver to and for the benefit of the CTA a warranty for the Work to be performed by, including the equipment to be supplied, by such Subcontractor, in compliance with Section 32.3.c and otherwise in form and substance Acceptable to the CTA.
- b. Without limiting the foregoing:
 - i. the Contractor will secure on CTA's behalf such additional extended warranties from Subcontractors to and for the benefit of the CTA as are expressly required under any other Part of the Contract Documents; and
 - ii. the Contractor will, and Contractor will require Subcontractors, including equipment suppliers, to comply with all manufacturers' and suppliers' instructions and requirements to the extent necessary to ensure that all otherwise assignable warranties are not voided and remain valid for assignment.
- c. Any warranty delivered pursuant to this Section 32.3 will:
 - i. meet the requirements specified in the Project Standards, or where no such warranty is specified, will be for as long as, and with terms at least equal to, those provided by such Subcontractor or supplier on other similarly situated projects and in connection with similar work in accordance with Good Industry Practice;
 - ii. specify a single point of contact, common across all warranties, for the purposes of CTA enforcing the warranty; and
 - iii. be submitted within the timeframes specified in the Contract Documents, and otherwise no later than (and as a condition to) the Final Payment.

- d. At CTA's request the Contractor shall use its best efforts to enforce any warranty, or assist CTA with enforcing any warranty as applicable, delivered pursuant to this Section 32.3 on its own behalf or, if requested by CTA, on behalf of CTA.

32.4. No Limitation on Liability

The rights and remedies of the CTA arising with respect to any breach of the warranty made pursuant to Section 32.2.a will not limit the Contractor's liability or responsibility, or the CTA's rights and remedies, under this Contract or Law with respect to the Work, including with respect to any Defect, Nonconforming Work, breach, fraud, willful misconduct, criminal conduct, recklessness, bad faith, or negligence.

Subpart M: Project Oversight

33. Meetings, Reports and Record Keeping

33.1. Conferences, Meetings and Presentations

- a. The Contractor will attend such conferences and meetings with representatives of the CTA and other interested parties as described in the Contract Documents or as may otherwise be required in connection with the Work. The Contractor will assist the CTA's project manager in making presentations regarding construction progress to the CTA at regular intervals throughout the Project. The Contractor will prepare occasional presentations to other organizations as requested by the project manager regarding construction issues.
- b. The Contractor will appear before and make a presentation to the CTA's board as and when required by the CTA.

33.2. Progress Reports

- a. The Contractor must prepare and submit to the CTA via the Project Website, in a format approved by the CTA, monthly progress reports on the Work pursuant to Sub Part 2.1.7 of Part 2.
- b. Additionally, the Contractor will deliver such other reports as reasonably requested by the CTA in accordance with all applicable City, CTA, IDOT, RTA, and FTA regulations, policies, procedures, and directives (or requirements of any other applicable funding partners).

33.3. Project Records

- a. The Contractor will (and will require that each of its Subcontractors and each of their respective Subcontractors will) at all times create and maintain full and complete records, books, documents, papers, databases, files, accounts, and other documentation of information relating to the Project and, as applicable, the Contractor's performance of its obligations under this Contract and each Subcontractor's performance under the Subcontracts to which it is a party, including:
 - i. as required by Law, including FOIA to the extent it is applicable to Project Records in the custody of Contractor-Related Entities as a matter of Law;

- ii. pursuant to Good Industry Practice;
- iii. pursuant to GAAP, as applicable;
- iv. maintenance of copies of:
 - A. all Subcontracts (and all amendments and waivers thereto) and, with respect to each Subcontractor's records, of each Subcontract to which it is a party (and all amendments and waivers thereto); and
 - B. all notices, correspondence, submissions, change, purchase or work orders, or other documents and materials expressly referenced as work product in this Contract, any Subcontract and, with respect to each Subcontractor's records, each Subcontract to which it is a party,together, the "Project Records".
- b. The Contractor must keep Project Records open for inspection by the CTA, the FTA Administrator, the RTA, the Comptroller General of the United States, any applicable authority of the State of Illinois, or any of their duly authorized representatives. The Contractor agrees to permit the authorized representatives to reproduce by any means whatsoever excerpts and transcriptions of Project Records as reasonably needed.
- c. The Contractor must furnish the CTA with certified copies of payrolls in such number as may be required, promptly following the preparation of said payrolls.
- d. The Contractor must maintain an accurate record showing the names and occupation of all laborers, employees, and mechanics employed in connection with the Work, and showing also the actual hourly wages paid to each worker.
- e. The Contractor must, if required, furnish to the CTA a written statement, verified by affidavit, giving the names and addresses of all persons, firms, and corporations who have, up to the date thereof, furnished labor or material in or about the performance of the Contract, and the amounts due or to become due to said parties.
- f. The Contractor must furnish the CTA with such information as may be required relating to the progress and execution of the Work and the character of the

materials including all information necessary to determine the cost of the Work, such as the number of employees, their pay, the distribution of labor into Work items, equipment time distribution, delivery tickets, invoices, and any other information that the CTA may require.

33.4. Maintenance of Project Records

The Contractor will (and will ensure that each of its Subcontractors and each of their respective Subcontractors will):

- a. create and maintain Project Records in the format or formats (hardcopy, analog, digital, or otherwise) determined from time to time by reference to the requirements and standards set out in Sections 33.3.a.i through 33.3.a.iv;
- b. maintain originals or copies of all Project Records that are otherwise required to be maintained in a physical format at a location in the State of Illinois; and
- c. develop and maintain procedures to backup and secure all Project Records that, at a minimum, comply with Law and Good Industry Practice.

33.5. Retention of Project Records

- a. In addition to the Project Website requirements set out in Sub Part 2.8.1 of Part 2, each individual Project Record will be retained for a period of at least seven (7) years after Final Completion, or for such longer period as may be required pursuant to Sections 33.3.a.i through 33.3.a.iv or Section 33.5.b.
- b. Notwithstanding Section 33.5.a, the Contractor will (and will ensure that each of its Subcontractors and each of their respective Subcontractors will) retain and make available pursuant to this Section 33.5 all Project Records:
 - i. that relate to a Claim until any later date that such matters are Agreed or Determined; and
 - ii. in existence on the last Day of the term of this Contract (or the equivalent under any Subcontract) until the later of the seventh anniversary of such Day and any date as may be required pursuant to Sections 33.3.a.i through 33.3.a.iv.

33.6. Confidentiality; Advertising and Publicity

- a. The Contractor, its employees and any Subcontractors or suppliers will keep confidential all information furnished to it by the CTA or otherwise learned by it in the performance of the Work. Except as may be required by Law, the Contractor will not make any announcements or release any information concerning this Contract, the Work, or any part thereof, to any member of the public, press, or any official body, unless prior written consent is obtained from the CTA. Upon receipt of any request or order, including a subpoena for any Project Records, Contractor will immediately advise the Chief Infrastructure Officer. For requests other than orders or subpoenas from legal or administrative bodies with jurisdiction, the Chief Infrastructure Officer will advise Contractor what information, if any to make available and to whom. Nothing herein is intended to restrict Contractor from complying with any requirement of Law.
- b. Without limiting Section 33.6.a, the Contractor must not disclose, use or refer to this Contract or any of its terms, or the name of the CTA in any advertising, publicity releases, promotional materials or materials, distributed to existing or prospective customers, without the prior written consent of the CTA.

33.7. Audit and Inspection of Records

- a. The Contractor agrees to cooperate with the authorized representatives of the CTA including but not limited to, U.S. Department of Transportation, the Comptroller General of the United States, and the State of Illinois (each, an "Inspecting Party"), who may inspect and audit all Project Records, from date of this Contract through and until the expiration of five (5) years after Project Closeout.
- b. The Contractor will, without charge:
 - i. make its Project Records available for inspection by the Inspecting Parties at its principal offices, or at such other facilities as the CTA may reasonably require on behalf of itself or any other Inspecting Party to the extent records are maintained at such other facilities:
 - A. during normal business hours (and, upon reasonable request, at times outside normal business hours); and

- B. upon reasonable notice, unless the CTA has a good faith suspicion of fraud in which case no prior notice will be required; and
- ii. allow any Inspecting Party to make extracts and take notes during any inspection and, upon request, furnish copies of Project Records to any Inspecting Party.
- c. The Contractor will ensure that each of its Subcontractors and each of their respective Subcontractors will, either directly or through the Contractor and in either case without charge, make its Project Records available to the Inspecting Parties for inspection on terms equivalent to those set out in Section 33.7.b.
- d. To the extent any Project Records are in the exclusive possession of a Subcontractor that fails to make such records available pursuant to 33.7.c, the Contractor will notify the CTA of such occurrence, identify the Project Records that are unavailable, and describe what efforts the Contractor has made to secure compliance or otherwise obtain such Project Records.
- e. No provision in this Contract granting the CTA a right of access to records and documents is intended to impair, limit, or affect any right of access to such records and documents that the CTA would have had in the absence of such provisions.

33.8. Survival of Obligations

The Contractor's obligations under this Section 33 will survive until the later of:

- a. the seventh anniversary of the expiry or termination of this Contract in accordance with its terms;
- b. with respect to the retention of any Project Record, the date determined pursuant to Section 33.5.

34. Performance Management

34.1. Damages for Delays

- a. Liquidated Damages
 - i. The Contractor acknowledges and agrees that the CTA will suffer Losses if the Contractor:

- A. directly or indirectly causes a delay in returning the system to normal operational service in accordance with Sub Part 2.6.2 of Part 2 after any Track Access Occurrence;
 - B. directly or indirectly causes a delay in returning the system to normal operational service in accordance with Sub Part 2.6.2 of Part 2 after any Substation Occurrence;
 - C. directly or indirectly causes an Unexpected Rail Interruption;
 - D. is delayed in achieving a Milestone by the relevant Milestone Deadline; or
 - E. fails to achieve the requirements for Workforce Goals in accordance with the Special Conditions Workforce Initiatives.
- ii. The Parties agree that it is impracticable or impossible to determine the amount of actual Loss as a result of such delay or Unexpected Rail Interruption, and the Parties further agree that the Contractor will pay as fixed and liquidated damages, and not as a penalty, such amounts as are determined pursuant to Sub Part 3.9.4 of Part 3 with respect to any of the events described in Section 34.1.a.i. The Contractor agrees that such amounts, together with such amounts as provided for in the Workforce Initiatives Special Conditions, are reasonable liquidated damages in order to compensate the CTA for the corresponding Loss as a result of such delay or Unexpected Rail Interruption or, as applicable, any failure to achieve the Workforce Goals specified for this Contract.
 - iii. To the extent provided in Section 12, CTA may set-off the amount of any liquidated damages assessed pursuant to this Section and Sub Part 3.9.4 of Part 3 from any monies otherwise due, or that otherwise may become due to, the Contractor. If such monies are insufficient, the CTA may recover the balance from the Contractor or its Guarantor, or through a claim against the Performance Bond.
 - iv. The liquidated damages determined pursuant to this Section and Sub Part 3.9.4 of Part 3 are the CTA's sole and exclusive remedy to recover Losses suffered solely by reason of the Contractor's delay or Unexpected Rail

Interruption as described in Section 34.1.a.i (and do not constitute a remedy with respect to any other Losses suffered by CTA, including as a consequence of the event that gave rise to such delay or Unexpected Rail Interruption if such event separately resulted in other Losses for which the Contractor is liable under this Contract). To the extent provided in Section 49.2, CTA may not recover compensation under this Contract or any other agreement in relation to the Project in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Section 34.1. Liquidated damages may accrue cumulatively if multiple liquidated damage provisions apply simultaneously.

b. Limitation of Liability for Liquidated Damages

The Contractor's total aggregate liability to CTA for the payment of liquidated damages referenced in Section 34.1.a shall not exceed 5% of the Lump Sum Price. Any liquidated damages owed by Contractor under this Agreement shall apply towards the cap on Contractor's total liability stated in Section 49.5.

c. Actual Damages for Delayed Final Completion of the Work

If the Contractor fails to achieve Final Completion of the Work (as evidenced by issuance of a Certificate of Final Completion) within the time period specified in Sub Part 3.9.3 of Part 3, the Contractor will be liable to the CTA for an amount equal to \$112,000⁴ multiplied by the number of Days of delay in achieving Final Completion of the Work.

34.2. Suspension of the Work and Rights to Intervene

- a. In addition to the right of the CTA to suspend the Work under any other provision of the Contract, the CTA will at all times have the right and authority to suspend, in whole or in part, the Work by written order to the Contractor. Any such suspension order will include the following: a clear description of the Work to be suspended; the CTA's reasons for the required suspension; guidance as to the action to be taken on Subcontracts; and other requests for minimizing costs.

⁴ Figure to be the same as that set out in Sub Part 3.9.4.A. for failures to timely obtain a certificate of Substantial Completion.

- b. Upon receipt of a suspension order, the Contractor will comply with its terms immediately and take all reasonable steps to minimize cost allocable to the Work covered by the suspension order during the period of work stoppage. Within the period specified by the suspension order, or within any extension of that period to which the parties may agree, the CTA may:
 - i. terminate the Work covered by the suspension order as set out in this Section 34.2,
 - ii. cancel the suspension order,
 - iii. or allow the period of the suspension order to expire.
- c. The Contractor will resume Work upon cancellation or expiration of a suspension order. If appropriate, an adjustment will be made in the scope of the Work, Contract Price (to the extent compensable as Damages for Delay), or Contract Time if:
 - i. the suspension order qualifies as a Relief Event and the Contractor notifies CTA of the Relief Event according to Section 15.5, and
 - ii. the suspension order was not caused by or made in response to:
 - A. any uncured failure by the Contractor to comply with any Law or Permit;
 - B. the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Project Standards related to safety or to comply with any CTA order related to safety; or
 - C. a Contractor Default or other act or omission within the control or responsibility of the Contractor.
- d. In preparation for and during suspensions of the Work, the Contractor will take every reasonable precaution to prevent damage to or deterioration of the Work. The Contractor will repair or replace, at no cost to the CTA, Work that has been damaged or that has deteriorated during a work suspension due to the Contractor's failure to comply with this duty. If the CTA determines that the Contractor is not taking reasonable precautions and the Contractor fails to take the corrective action

required within five (5) Days after written notice from the CTA, the CTA may cause such action to be taken and recover the cost thereof from the Contractor.

34.3. Increased Oversight

- a. At any time when:
 - i. there are material Defects in the Work; or
 - ii. the Contractor has materially failed to comply with its obligations under this Contract, and such failure remains uncured,

CTA may, in its discretion and without prejudice to any other right or remedy available to them, and without limiting the Contractor's other obligations under this Contract, provide the Contractor with at least five (5) Business Days written notice of its intent to invoke its rights under this provision and, provided that the relevant condition remains continuing after such notice period:

 - iii. require the Contractor to promptly prepare and submit for Acceptance a remedial plan and, following Acceptance of such plan and provided that the relevant condition is continuing, the Contractor will be required to comply with such plan for so long as such condition is continuing; and/or
 - iv. increase the level of its monitoring of the Contractor relative to the prior standard of practice under this Contract prior to such event or circumstance until such time as the relevant condition is no longer continuing and the Contractor has demonstrated to the reasonable satisfaction of the CTA that it is capable of performing and will perform all its obligations under this Contract.
- b. If the CTA issues a notice pursuant to Section 34.3.a the Contractor will bear its own costs and expenses and pay to the CTA, upon request, all reasonable costs and expenses incurred by or on behalf of the CTA in relation to any increased level of monitoring.

34.4. Persistent Breach

- a. Any Initial Warning Notice served by the CTA to the Contractor shall:
 - i. specify that it is an Initial Warning Notice;

- ii. give reasonable details of the breach by the Contractor; and
 - iii. state that the relevant breach is a breach which, if it continues more than for the period of time specified in Section 34.4.b.i and recurs as specified in Section 34.4.c.ii, may result in a Contractor Default for Persistent Breach, provided that an Initial Warning Notice may not be served with respect to any incident of breach which has previously been the subject of a separate Initial Warning Notice or a Final Warning Notice.
- b. If the breach specified in an Initial Warning Notice:
 - i. continues beyond 30 consecutive Days after the date of service of the Initial Warning Notice; or
 - ii. recurs three (3) or more times in any six consecutive month period after the date of service of the Initial Warning Notice,then the CTA may serve a Final Warning Notice to the Contractor which shall:
- c. specify that it is a Final Warning Notice;
 - i. state that the breach specified has been the subject of an Initial Warning Notice; and
 - ii. state that the continuation of such breach for more than 30 consecutive Calendar Days after the date of service of the Final Warning Notice or the reoccurrence of such breach two (2) or more times within the six consecutive month period after the date of service of the Final Warning Notice shall constitute a "Persistent Breach" and constitutes a Contractor Default.

34.5. Intervention

- a. Without limiting any other rights of the CTA under this Contract, if the CTA reasonably believe that they need to take action in connection with the Project or the Work as a result of:
 - i. an emergency having occurred and being continuing;
 - ii. any Contractor Default having occurred and not having been cured;

- iii. the Contractor having failed to comply with its obligations pursuant to Section 32.1 with respect to any Nonconforming Work;
- iv. the Contractor having failed to comply with its obligations pursuant to Section 32.2 with respect to any defect or any other breach of the warranties provided therein;
- v. the Contractor having failed to comply with its obligations with respect to any properly given CTA order or instruction related to safety; and/or
- vi. there being any necessity for the CTA to intervene or act in order to discharge a constitutional, statutory, or other legally binding duty,

then, subject to prior notice (to the extent reasonably practical under the circumstances), the CTA may take such action as it deems reasonably necessary, and the Contractor will use reasonable efforts to give all necessary assistance to the CTA while it is taking such action.

- b. If the CTA takes any action pursuant to Section 34.5.a in response to or because of any Contractor Default, any costs and expenses of the CTA incurred in taking, or as a result of taking, such action will be payable by Contractor to the CTA, upon request.

34.6. Inspection of Work and the Site

- a. The CTA will at all times have access to the Site. Accordingly, the Contractor must provide proper facilities for safe access to allow proper inspection of the Work.
- b. If the Project Standards, the CTA's instructions, Law, or any other Governmental Authority require certain Work to be tested or approved, the Contractor must give the Chief Infrastructure Officer timely notice of its readiness for inspection and notify the Chief Infrastructure Officer of the inspection date.
- c. If any Work is covered up without the CTA's approval or consent to the extent required pursuant to the Contract Documents, the Contractor will, if the CTA requires, uncover the Work for examination at no expense to the CTA.
- d. The Contractor must uncover for re-examination questioned Work as ordered by the CTA. If this uncovered Work is found to be in accordance with the Contract,

- the CTA will pay the cost of re-examination and replacement. If this Work is not in accordance with the Contract, then the Contractor must pay all costs involved.
- e. For work requiring inspection or approval before continuing with subsequent Work, the Contractor must notify the proper authorities and agencies that have jurisdiction over the Site and secure the necessary inspections and approvals.
 - f. The Contractor must maintain a written record of deficiencies observed as the Work progresses, and during periodic, regular inspections. The Contractor must make this written record available for the CTA's inspection. The Contractor must correct deficiencies before any particular trade leaves the Project.
 - g. The CTA will have free access to the part of any manufacturer's plant where the Work under this Contract is being performed.
 - h. The CTA has full power to reject any and all material or equipment that fails to meet the requirements of the Contract Documents during the term of this Contract and through the Warranty Period. The Contractor must promptly remove all such material or equipment from the Work under the Contract, without additional cost to the CTA. In addition, the Contractor must remove and replace all material or equipment that proves defective during the life of the Contract, before or after completion, but in no circumstance later than the end of the Warranty Period; notwithstanding that it may have passed the specified inspection and tests.
 - i. The CTA's right to inspect and reject will not obligate the CTA to conduct such inspections. Neither exercise by the CTA of such right (whether pursuant to this Section 34.6, Section 22.3 or otherwise), nor any failure on the part of the CTA to discover or reject any materials, equipment, or other Work (or payment by CTA therefor) will be construed to imply an acceptance of any material, equipment, or other Work which fails to meet the requirements of the Contract Documents.

Subpart N: Indemnity, Insurance and Performance and Payment Security

35. Indemnity

35.1. No CTA Obligation to Indemnify

The CTA has no obligation to, and will not, indemnify the Contractor or any Contractor-Related Entity.

35.2. Contractor Indemnity

- a. The Contractor must indemnify, defend, and hold harmless to the maximum extent permitted by Law the CTA, its agents, officials, and employees (collectively, the “Indemnified Parties”) against all Losses that may in any manner accrue against the CTA or any Indemnified Party as a consequence of the award or performance (or non-performance) of this Contract or any breach of this Contract by the Contractor, including such Losses:
 - i. accruing as a consequence of any breach of a representation or warranty given by the Contractor pursuant to this Contract; or
 - ii. caused or contributed to by the sole or partial act or omission, negligence, fraud, willful or intentionally tortious conduct of the Contractor, or any Contractor-Related Entity, or any of their respective agents or employees.
- b. The Contractor’s foregoing indemnification and hold harmless obligations will not apply to any Loss:
 - i. directly caused by the negligence, fraud, willful, or intentionally tortious conduct, or breach of Law, by the Indemnified Party;
 - ii. directly caused by breach of this Contract by the CTA or by the performance by CTA of any of its obligations pursuant to this Contract; andto the extent such Loss (A) arose from, or as a consequence of, the Contractor’s mandatory performance as directed by CTA (and not of any non-performance or breach) of its obligations under this Contract, (B) could not have been avoided by the Contractor due to this Contract specifying, without permitting Contractor deviation or the exercise of Contractor discretion, the manner of performance, and (C) is not a type of Loss otherwise excluded under this Section 35.2.b,

in each case, to the extent disputed by CTA, as determined following Contractor's compliance with its defense and indemnity obligations and a final determination by a court of law as to the limitations under this Section 35.2.b.

- c. The Contractor must, at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising in connection with this defense and indemnity. If any judgment is rendered against the CTA, the Contractor must at its own expense satisfy and discharge the judgment; provided, however, that CTA will be responsible for its percentage share of liability attributed to its own negligence, fraud, or willful or intentionally tortious conduct, as finally determined by a court of law. If indemnity pursuant to this Section 35.2 is not permitted by the Law, then, to the maximum extent permitted by Law, the Contractor must make full contribution to the CTA for its percentage share of any liability that is attributable to the Contractor's acts or omissions.
- d. Waiver of Limitations on Liability
 - i. The Contractor expressly waives any legal limitations on its liability to the CTA for contribution, including but not limited to limitations related to the payment of workers compensation benefits.
 - ii. The Contractor expressly understands and agrees that any Bond, or insurance protection required by this Contract or otherwise provided by the Contractor, will in no way limit the responsibility to indemnify and defend the CTA pursuant to this Section 35.2. The indemnification contained in this Section 35.2 will survive the termination of this Contract.
 - iii. The indemnification obligation under this Section 35.2 will not be limited by (i) a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, or pursuant to any common law or case law including, without limitation, Kotecki v. Cyclops, 146 Ill.2d 155 (1991), or (ii) by reason of any insurance maintained by the Contractor or any Subcontractor; provided, however, that the Contractor may apply any insurance proceeds received by the Contractor to the satisfaction of the Contractor's obligations under this Section 35.2.

- e. The indemnification obligations set out in this Section 35.2 will include indemnification for Losses resulting from claims made by third parties against any Indemnified Party.
- f. The CTA will have the right, at the CTA's sole discretion, to participate in the defense of any such claim of Loss, without relieving the Contractor of its obligations under this Section 35.2.

36. Insurance

Insurance requirements are set out in Annex C. The Contractor must take out and maintain, or as applicable cause to be taken out and maintained, such insurance at such times and in such manner as is provided for in accordance with those requirements.

37. Bonds

Performance Bond and Payment Bond requirements are set out in Annex C. The Contractor must furnish and maintain Performance Bonds and Payment Bonds in accordance with those requirements.

Subpart O: Ownership and Rights to Property

38. Materials Incorporated in the Work

38.1. Title

- a. Legal title to:
 - i. all material, equipment, supplies, components, other products incorporated, or to be incorporated, into the Work;
 - ii. any Stored Materials; and
 - iii. the Work,will pass to the CTA upon the earliest to occur of:
 - iv. payment by CTA with respect to the same;
 - v. with respect to any material, equipment, supplies, components, or other products: delivery to the Site and fixture to the Site; and
 - vi. with respect to the Work, performance of such Work.
- b. The Contractor warrants and guaranties that such legal title to and ownership will be free and clear of any and all liens, claims, security interests, or other encumbrances when title thereto passes to the CTA. The Contractor will provide any evidence of transfer of the ownership as applicable or requested by the CTA.
- c. Notwithstanding the transfer of legal title pursuant to Section 38.1.a, risk of loss associated with such material, equipment, supplies, components, or products will remain with the Contractor until the Contractor achieves Substantial Completion.

38.2. Products

- a. Products referenced in this Contract and the Project Standards are generally specified by ASTM, ANSI, AREMA, or other reference standard, or by manufacturer's names and model numbers or trade names. When specified only by reference standard, the Contractor may select any Product meeting the standard, by any manufacturer. If several Products or manufacturers are specified as being equally acceptable, the Contractor may exercise the option of using any Product or manufacturer combination listed.

- b. The Contractor must ensure that all Products furnished under the Contract are new, unless otherwise specifically stated, and that the Product is, unless such right is waived by the CTA in its Discretion, subject to inspection by the Chief Infrastructure Officer and the Chief Engineer of the CTA at all times during the manufacture, fabrication, and construction to assure the CTA that the terms of the Contract, the Project Standards, and the Final Design are complied with in all respects.

38.3. CTA-Provided Materials

- a. The CTA will make the CTA-Provided Materials available to the Contractor as and when required by the Project Requirements and, in the case of any equipment, subject to the Contractor's compliance with Section 38.4. The Contractor must inspect all such CTA-Provided Materials when such are made available to it to ensure compliance with the Project Requirements, and otherwise of fitness for purpose, in all respects.
- b. In the event that CTA-Provided Materials are delivered to the Contractor off-Site, or taken by the Contractor off-Site, the Contractor will treat such materials in the same manner as Stored Materials in accordance with Sub Part 2.1.8 of Part 2.
- c. Subject to Section 38.3.d, CTA will provide CTA-Provided Materials to the Contractor without representation or warranty as to quality, quantity, fitness for purpose, absence of defects or deficiencies or otherwise, and the Contractor will bear all risk, including of delay and/or increased cost, resulting from or arising out of the use of the CTA-Provided Materials in the Work. Furthermore, the Contractor hereby releases and forever discharges the CTA and its agents, officials, and employees from all obligations and Losses, whether known or unknown, contingent or direct, or liquidated or unliquidated, and from any claims, demands, judgments, actions, or suits of any kind directly or indirectly arising out of the Contractor's use of the CTA Provided-Materials.
- d. The CTA will assign to the Contractor the rights to and benefit of any manufacturers' and other third-party warranties for the CTA-Provided Materials. Upon reasonable request by the Contractor, the CTA will use reasonable efforts to enforce such warranties.

38.4. CTA-Provided Equipment

In the event that the CTA makes any equipment available for use by the Contractor, except as expressly already included in Sub Part 3.1.4 of Part 3, either as CTA-Provided Materials or otherwise pursuant to a Proceed Order, Directive Order, Change Order, or in connection with the resolution of a Notice of Claim, the CTA may impose such additional conditions and restrictions, including a requirement for execution by the Contractor of an agreement in form and substance provided by the CTA governing the use of such equipment, as it deems necessary in its Discretion.

39. Work Product and Intellectual Property

39.1. Ownership of Work Product and Rights in Intellectual Property

- a. All design drawings, Project Standards, or proposed design drawings and specifications, or other drawings, plans, engineering models, manuals, CAD materials, job books, designs, computer software, reports, studies, and other written products created by Contractor in the performance of the Work, including without limitation each design submittal and the Final Design, and any and all inventions or discoveries developed during performance of and arising out of the Work, including improvements and modifications, whether or not patentable, and any applications for letters patent issuing thereon (collectively, "Work Product"), including copies thereof, will be considered "work for hire", in which the Contractor transfers any ownership claim to the CTA upon creation, and all such Work Product will be the property of the CTA; provided that:
 - i. Work Product will not include, and CTA will not obtain title to, any proprietary materials of Contractor that existed prior to the Contract Date, subject to Contractor granting to CTA a perpetual, royalty free, worldwide, non-exclusive license to use it in connection with the Project; and
 - ii. the Contractor may request that an invention or discovery be excluded from Work Product, subject to:
 - A. CTA's Approval;

- B. Contractor granting to CTA a perpetual, royalty free, worldwide, non-exclusive license to use it, whether on the Project or otherwise, with right to sub-license;
 - C. Contractor delivery of all applicable rights and documents in order for CTA to utilize, update, and maintain such invention or discovery, including source code and similar;
 - D. Contractor agreeing to share with CTA, on a 50/50 basis, any royalties or other revenues generated by monetizing, securitizing, or licensing the rights to such invention or discovery; and
 - E. such other conditions as reasonably required by CTA.
- b. Contractor agrees and does hereby assign, grant, transfer and convey to CTA, its successors and assigns, Contractor's entire right, title, interest, and ownership in and to such Work Product, including all intellectual property rights associated with such Work Product and specifically including the right to secure patent and copyright registration.
 - c. The specifications and Work Product may not be used for any purpose other than the Project and, with the exception of the signed Contract set, must be returned to the Chief Infrastructure Officer at Project completion.
 - d. The Contractor will execute such documents and take such further actions as may be reasonably requested by the CTA to give effect to this Section 39.1.
 - e. Notwithstanding ownership of Work Product by the CTA, risk of loss associated with Work Product will remain with the Contractor until the Contractor achieves Substantial Completion.

39.2. Assignment of Certain Causes of Action

The Contractor agrees to assign to the CTA all rights, title, and interest in and to all causes of action that the Contractor may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under comparable State Law, arising from purchases of goods, services, or materials pursuant to this Contract. This assignment will be made and become effective automatically upon payment of the Final Payment, without further acknowledgment by the Parties.

Subpart P: Defaults, Remedies and Termination

40. Contractor Defaults

40.1. Occurrence of Contractor Default

The occurrence of any one of the following events will constitute a “Contractor Default”:

- a. the Contractor causes one or more unpermitted service or track outages affecting CTA or any Railroad or IDOT that:
 - i. are continuing or will recur; and
 - ii. causes, or with respect to anticipated recurrences, will cause, a material interference with or disruption to CTA’s or such Railroad’s or IDOT’s customers or any of CTA’s or such Railroads or IDOT’s operations with respect to such service or tracks;
- b. failure to:
 - i. complete any Punchlist within 120 Days after the deadline specified in Sub Part 3.9.2 of Part 3;
 - ii. achieve Project Element Substantial Completion of any Milestone within 180 Days after the corresponding Milestone Deadline;
 - iii. achieve a Milestone, including Substantial Completion, within 180 Days after the corresponding Milestone Deadline; or
 - iv. achieve Final Completion within 180 Days after the deadline specified in Sub Part 3.9.3 of Part 3;
- c. the Contractor is assessed total liquidated damages under the Contract in an aggregate amount of 5% of the Lump Sum Price;
- d. the Contractor:
 - i. states an intent not to perform, or continue to perform, a material part of the Work; or
 - ii. fails to perform a material part of the Work for a continuous period of 30 Days (except to the extent that such failure is substantially consistent with

the then-current Schedule and does not otherwise constitute a breach of this Contract);

in each case unless such intention or failure is otherwise expressly permitted or excused pursuant to this Contract;

- e. the Contractor is Insolvent;
- f. any Guarantor is Insolvent, unless within 90 Days after the Guarantor becomes and remains Insolvent the Contractor has:
 - i. replaced such Insolvent Guarantor with a guarantor that is Accepted by the CTA;
 - ii. provided security for such Insolvent Guarantor's guaranty in the form of a cash deposit, other payment, or letter of credit, in each case in an amount equal to the specified sum or specified maximum liability (or, absent such specified sum or maximum liability, the reasonably estimated maximum liability) under its guaranty;
- g. after exhaustion of all rights of appeal, there occurs any disqualification, suspension, or debarment from bidding, proposing, or contracting with any state-level, interstate, or federal Governmental Authority (distinguished from ineligibility due to lack of financial qualifications) of;
 - i. the Contractor;
 - ii. any joint-venture member or equity owner of the Contractor⁵ which remains in such role 90 Days after the date of the relevant exclusion; or
 - iii. any Subcontractor (of any tier), any other entity (except the CTA) performing any of the Work for or on behalf of the Contractor, in either case whose work on or direct involvement with the Project is not completed at the date of the relevant exclusion and which is not replaced or removed from performance of any Work and involvement in the Project within 90 Days after the date of the relevant exclusion.

⁵ The CTA reserves the right to adjust this category of Contractor-Related Entities based on the Contractor's ownership, holding, and/or contracting structure.

- h. the Contractor fails to procure or maintain any Bond required to be procured and maintained pursuant to Annex C;
- i. the Contractor fails to maintain the Guaranty;
- j. the Contractor fails to obtain and maintain, or cause to be obtained and maintained, any insurance policy in full compliance with, and as and when required under, Annex C (other than any non-material deviation from the requirements of this Contract);
- k. the Contractor fails to make any payment to the CTA pursuant to or in relation to this Contract when due (unless such payment is the subject of a good faith Dispute);
- l. any representation or warranty made by the Contractor pursuant to this Contract, or in any certificate, schedule, report, instrument, agreement, or other document delivered by or on behalf of the Contractor to the CTA pursuant to this Contract, is false, misleading, or inaccurate in any material respect when made or omits material information when made;
- m. pursuant to Section 14.1.c.iii, the Contractor refuses or fails to proceed promptly with performance as directed by the CTA in a Directive Order;
- n. a Persistent Breach occurs;
- o. the Contractor fails to comply with or otherwise breaches any Permit or Law in any material respect; or
- p. any breach by the Contractor of any of its obligations under this Contract, including any written repudiation of this Contract, other than any breach that:
 - i. otherwise constitutes a Contractor Default above; or
 - ii. arises due to a Relief Event, provided that the Contractor has complied with its obligations under Section 15.3.a.

40.2. Contractor Obligation to Notify

The Contractor will promptly notify the CTA upon becoming aware that a Contractor Default is imminent, has occurred, or is continuing.

40.3. Notice of Contractor Default and Cure Period

- a. If any Contractor Default occurs, the Director, Purchasing may, in its discretion, notify the Contractor in writing that the Contractor is in default, (the "Contractor Default Notice").
- b. Upon receipt of the Contractor Default Notice the Contractor will have the following cure periods:
 - i. with respect to any Contractor Default in Section 40.1.m, 40.1.n, 40.1.o, and 40.1.p:
 - A. a period of 30 Days after the Contractor receives the Contractor Developer Default Notice; or
 - B. if, despite the Contractor's commencement of meaningful steps to cure immediately after receiving the Contractor Default Notice, the Contractor Default cannot be cured within such 30-day period, the Contractor may request an additional period of time, up to a maximum cure period of 120 Days, provided it has demonstrated to CTA's reasonable satisfaction that such additional period is reasonably necessary to cure the Contractor Default;
 - ii. with respect to any Contractor Default in Section 40.1.e, 40.1.f, and 40.1.g, there will be no cure period; and
 - iii. with respect to any other Contractor Default, a period of 30 Days after the Contractor receives the Contractor Developer Default Notice.
- c. If, in the opinion of the Contractor, the determination made pursuant to Section 40.3.a has not been made on a reasonable basis, the Contractor may refer the matter to the Dispute Resolution Panel pursuant to Section 47.7.

40.4. CTA's Remedies upon Contractor Default

- a. If any Contractor Default occurs and has not been cured by the expiry of the applicable cure period (if any):
 - i. the Director, Purchasing may, in its discretion, terminate the Contract pursuant to Section 42.1; and/or

- ii. the CTA may in its discretion exercise any rights and remedies available to it (under this Contract, at Law or in equity, or otherwise) for so long as such Contractor Default continues uncured, including:
 - A. the right to stop payment to the Contractor pursuant to Section 11.4;
 - B. the right to intervention pursuant to Section 34.5;
 - C. the right to make a demand upon and enforce any Bond or Guaranty in accordance with its terms, with the proceeds of any such action to be applied to the satisfaction of the Contractor's obligations under this Contract, including payment of amounts due to the CTA;
 - D. the right to recover all Losses incurred in connection with a Contractor Default, including the cost of re-letting the Contract and completing the Work;
 - E. the right to deem the Contractor non-responsible in future contracts to be awarded by the CTA; and/or
 - F. the right to waive such Contractor Default in accordance with Section 57, which waiver may be made subject to such conditions as the CTA may require in its Discretion.
- b. Subject to Section 42.1, the foregoing remedies under the terms of this Contract are not exclusive of any other remedy. Each and every remedy is cumulative and in addition to any other remedy, existing now or hereafter, at law, or in equity.

41. CTA Defaults

41.1. Occurrence of CTA Default

The occurrence of any one of the following events will constitute a "CTA Default":

- a. any failure by the CTA to pay the Contractor any amount due and owing under this Contract (unless such payment is the subject of a good faith dispute), provided that either:
 - i. such failure is disputed and CTA's obligation to make such payment has become binding in accordance with the Dispute Resolution Procedures or

been confirmed in a binding settlement agreement or by the issuance of a court order by a court of competent jurisdiction, and CTA subsequently failed to pay such confirmed amount within 30 Days of the date required in such settlement agreement or by such court order; or

- ii. such failure continued undisputed for at least 30 Days, the Contractor notified the CTA of such failure, and such failure continued without dispute for a further 30 Days.

41.2. Notice of CTA Default and Cure Period

- a. If any CTA Default occurs, Contractor will notify the Director, Purchasing in writing that the CTA is in default.
- b. The notice delivered pursuant to Section 41.2.a must specify a cure period of 30 Days. If the CTA Default cannot be cured within the specified cure period, and the CTA reasonably requests additional time to cure, the Contractor will, acting reasonably, grant an extended cure period in writing.
- c. If, in the opinion of the CTA, the determination made pursuant to Section 41.2.b has not been made on a reasonable basis, the CTA may refer the matter to the Dispute Resolution Panel pursuant to Section 47.7.

41.3. Contractor's Remedies upon CTA Default

- a. If any CTA Default occurs and has not been cured by the expiry of the applicable cure period, the Contractor may, in its discretion:
 - i. terminate the Contract pursuant to Section 42.3; and/or
 - ii. exercise any rights and remedies available to it (under this Contract, at Law or in equity, or otherwise) for so long as such CTA Default continues uncured, including the right to waive such CTA Default in accordance with Section 57, which waiver may be made subject to such conditions as the Contractor may require in its discretion.
- b. Subject to Section 42.1, foregoing remedies under the terms of this Contract are not exclusive of any other remedy. Each and every remedy is cumulative and in addition to any other remedy, existing now or hereafter, at law, or in equity.

42. Termination

42.1. Exclusive Rights to Terminate

This Section 41, together with the other provisions of this Contract expressly referred to in this Section 41, contain the entire and exclusive provisions and rights of the CTA and Contractor regarding termination of this Contract, and any and all other rights to terminate at Law or in equity are hereby waived to the maximum extent permitted by Law, provided that termination of this Contract will not relieve the Contractor, or any Guarantor, insurer or any surety or other financial institution that provides a Bond, of its obligation for any Claims arising prior to termination.

42.2. Termination for Contractor Default

If a Contractor Default occurs and has not been cured within the applicable Contractor Default cure period (if any), the Director, Purchasing may, in its discretion, terminate this Contract at any time that such default is continuing by delivering to the Contractor a notice to such effect.

42.3. Termination for CTA Default

- a. If any CTA Default occurs and has not been cured within the applicable CTA Default cure period, the Contractor may, in its discretion, terminate this Contract at any time that such default is continuing by delivering to the CTA a notice to such effect, provided that such notice confirms that Contractor will comply with Section 43 following termination.
- b. CTA's liability to Contractor following termination will not exceed the portion of the total cost of the Work completed by the Contractor prior to termination, adjusted to account for defective Work not remedied and for permitted set-off pursuant to Section 12, as reduced by the amount of payments otherwise made. The payment to the Contractor determined in accordance with the foregoing constitutes its exclusive remedy for a termination hereunder. Without limiting Section 49.4, under no circumstances is the Contractor entitled to anticipatory, unearned profits or consequential damages as a result of a termination due to CTA Default.

42.4. Termination for Convenience

- a. The CTA may terminate this Contract at its convenience, in whole or in part, at any time. If the CTA decides to terminate the Contract pursuant to this Section 42.4, the Director, Purchasing, will send a written Notice of Termination for Convenience to the Contractor specifying the extent to which performance of Work under the Contract is terminated. Any such Termination for Convenience will be effective 30 Days from the date of the notice on such other date as the CTA may specify in such notice.
- b. The Contractor will then restrict its activities, and those of its Subcontractors, to winding down its work. No payment will be made for Work performed after the Notice of Termination for Convenience becomes effective, except for winding down activities specified in the Notice of Termination for Convenience and as provided in this Section 42.4.

- c. **Obligations of the Contractor upon Termination for Convenience**

Without limiting Section 43, after receipt of a Notice of Termination for Convenience, except as otherwise directed by the CTA, the Contractor must do the following:

- i. complete performance of each part of the Work as will not have been terminated by the Notice of Termination for Convenience in accordance with the Contract;
 - ii. communicate, immediately upon receipt thereof, any Notice of Termination for Convenience issued by the CTA to the affected Subcontractors of any tier; and
 - iii. comply with all other requirements of the CTA as may be specified in the Notice of Termination for Convenience to the extent such compliance does not constitute Changed Work or otherwise modify the Contractor's obligations under this Contract.
- d. **Termination claim**

After receipt of a Notice of Termination for Convenience, the Contractor will submit to the Chief Infrastructure Officer its termination claim in the form and with

certification prescribed by the CTA. Such claim will be submitted promptly but no later than within 150 Days of termination.

e. Agreement as to amount to be paid

i. Subject to Section 42.4.d, the Contractor and the CTA may agree upon the whole or part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work for convenience pursuant to this Section 42.4, which amount or amounts will not exceed the portion of the total cost of the Work completed by the Contractor prior to the Notice of Termination for Convenience, adjusted to account for defective Work not remedied and for permitted set-off pursuant to Section 12, as reduced by the amount of payments otherwise made.

ii. Nothing in Section 42.4.f prescribing the amount to be paid to the Contractor in the event of a failure of the Contractor and the CTA to agree upon the amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section will be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Section 42.4.e.

f. Determination as to amount to be paid

In the event of a failure of the Contractor and the CTA to agree, as provided in Section 42.4.e, upon the whole amount to be paid the Contractor by reason of the termination of Work for convenience pursuant to this Section, the CTA, acting reasonably (and without effect on the Contractor's right to subsequently Dispute such determination and payment), will determine and pay such amount in accordance with the method of calculation referenced in Section 42.4.e.

g. Payments on account of termination payment

The CTA may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on accounts against cost incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the CTA the aggregate of such payments will be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be

due under this Section 42.4, without limitation, such excess will be payable by the Contractor to the CTA upon demand.

h. Preservation of records

In the event of termination of the Contract, the Contractor will maintain all Project Records in the manner and for the duration prescribed in Section 33.3.

i. No other payments; no damages

Without limiting Section 49.4, under no circumstances is the Contractor entitled to anticipatory, unearned profits, or consequential damages as a result of a termination or partial termination under this Section 42.4. The payment to the Contractor determined in accordance with this Section 42.4 constitutes its exclusive remedy for a termination hereunder.

j. No waiver

Anything contained in the Contract to the contrary notwithstanding, a termination under this Section 42.4 will not waive any right or claim to damages that the CTA may have and the CTA may pursue any cause of action that it may have under the Contract.

43. Handover

43.1. Preparations for Handover

- a. During the final 60 Days prior to the anticipated completion of Project Closeout or in connection with early termination of this Contract, as applicable, and in either case for a period of time thereafter as reasonably required by the CTA, the Contractor will, without limiting its other obligations under this Contract, use reasonable efforts to cooperate and coordinate with the transfer, as applicable, of responsibility for the Work to the CTA and/or any Person designated by the CTA.
- b. For purposes of Section 43.1.a, the Contractor's obligations to cooperate and coordinate will include:
 - i. cooperating with the CTA and/or any Person designated by the CTA, and providing reasonable assistance and advice concerning the Work and its transfer to the CTA and/or to such Person;

- ii. pursuant to Section 33, promptly providing to the CTA and/or its designee with access to and, on request pursuant to Section 33.7.b.ii, copies of, all Project Records including all:
 - A. information on the identity, terms and conditions of employment of all employees of the Contractor employed in the provision of the Work at such time or, with respect to any early termination of this Contract, immediately prior to the service of any termination notice;
 - B. manuals;
 - C. equipment logs;
 - D. drawings;
 - E. files; and
 - F. specifications,as reasonably required for the efficient transfer of responsibility of performance of the Project, and the Contractor will warrant that, to the best of its knowledge and belief, the information contained in such Project Records is accurate in all material respects;
- iii. using its best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the CTA, property of the types referred to in Section 43.2.a.i, provided, however, that the Contractor (A) will not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the CTA; provided, further, that the proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by the CTA to the Contractor under the Contract or will otherwise be credited to the price or cost of the Work covered by the Contract or paid in such other manner as the CTA may direct; and
- iv. taking such action as may be necessary, or as the CTA may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the CTA has or may acquire an interest.

43.2. Assignments and Transfers

Without limiting its other obligations under this Contract, at the completion of Project Closeout or upon early termination of this Contract, the Contractor will, unless the CTA elects in writing to the contrary:

- a. assign and transfer to the CTA, and/or any Person designated by the CTA, for no additional payment:
 - i. parts, work in process, completed work, licenses, manufacturers', and others third-party warranties, intellectual property, supplies, and other material procured as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, as well as the completed or partially completed plans, drawings, information, and other property, which if the Contract had been completed, would have been required to be furnished to the CTA;
 - ii. to the extent not effected pursuant to any assignment and transfer made pursuant to Section 43.2.a.i, all Permits; and
 - iii. any and all rights that the Contractor may have in or under its Subcontracts, provided that:
 - A. in the event a conditional assignment has not been executed, the Contractor will promptly execute, or cause to be executed, any assignment, agreement, or other document that may be required by the CTA for compliance with this provision;
 - B. the sole obligation accepted by the CTA under such Subcontracts will be to pay for Work satisfactorily performed after the date of the assignment;
 - C. for any subcontract so assigned and accepted by the CTA, the Contractor will remain liable to the Subcontractors for any payment already invoiced to and paid by the CTA, and for any claim, suit, or cause of action based on or the result of any error, omission, negligence, fraud, willful or intentionally tortious conduct, or any other act or omission, or breach of contract by the Contractor, its officers, employees, agents, and other Subcontractors, arising prior

to the date of assignment to the CTA, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date,

provided that if, for any reason, the Contractor cannot assign and transfer its interest in any of the foregoing, it will declare a trust of all its beneficial interest in the same for the benefit of the CTA and/or its designee, or use reasonable efforts to make equivalent arrangements to provide the CTA with equivalent rights and protections. The Contractor hereby irrevocably and unconditionally appoints the CTA as the Contractor's lawful attorney (and to the complete exclusion of any rights that the Contractor may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this Section 43.2 as the CTA may in its discretion think fit; and

- b. obtain and hand over to the CTA all Project Records and other Work Product owned by the CTA (or complete and accurate copies to the extent originals are not required by the CTA) by whatever means the CTA reasonably require that are in the possession, custody, or power of the Contractor and other Contractor-Related Entities.

43.3. Ongoing Support Services

- a. The Contractor shall enter into agreements with Subcontractors (each, an "Ongoing Support Agreement"), the benefit of which will be assignable to CTA upon CTA request, for work and services as described below, at CTA's election, beginning once CTA assumes its maintenance obligations with respect to a part of the Project pursuant to Part 5, upon completion of Project Closeout, or upon early termination of this Contract in accordance with Section 43.2. Each Ongoing Support Agreement shall be made in accordance with this Section 43.3 and otherwise be in form and substance Accepted by CTA prior to its execution.
- b. Each Ongoing Support Agreement will provide for services ending on the 15th anniversary of the later of the date of receipt of the Certificate of Final Completion and the date of any early termination of this Contract, in all cases subject to early termination 30 Days following a written notice of early termination from the CTA to any Subcontractor then providing ongoing support services to the CTA.

- c. The services to be provided under one or more such Ongoing Support Agreements will include the following:
 - i. all reasonably necessary services, including supply of parts, to support continued operation and maintenance of the Project, including any integration with any Related Transportation Facility or Other CTA Project;
 - ii. customary original equipment manufacturer and warranty service, including for any extended Subcontractor warranty period expressly provided for under Parts 3 and 4;
 - iii. providing and replacing spare parts and consumables which are proprietary in nature or not otherwise available in the market;
 - iv. servicing any proprietary software, systems and equipment with all critical, vulnerability, safety, and security related updates, and providing training for the use of the same; and
 - v. such other services as CTA may reasonably require, including equipment and systems maintenance services.
- d. The parties agree that any Ongoing Support Agreement will require the relevant Subcontractor to perform and be paid for services under the Ongoing Support Agreement unless otherwise agreed or required by the CTA, on terms equivalent to those which apply to any equivalent Work under this Contract, and in accordance with:
 - i. the applicable Project Standards;
 - ii. the Law;
 - iii. all third-party Approvals with respect thereto in effect from time to time;
 - iv. Good Industry Practice; and
 - v. all other requirements that the Parties will agree to in the Ongoing Support Agreement.
- e. Unless otherwise agreed by CTA in its discretion, under the terms of any Ongoing Support Agreement the relevant Subcontractor will only be entitled to charge prices for materials, equipment, and services, and will be obligated to apply discount

structures and grant warranties to the CTA under the Ongoing Support Agreement, that are at least as favorable as the equivalent prices and discount structures and warranties offered or granted to any other party under like or similar circumstances or for like or similar materials, equipment, and services.

43.4. No Contrary Activities

The Contractor will not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate any of the activities contemplated under Section 43.1 or any transfer, assignment or handover contemplated under Section 43.2.

Subpart Q: Governing Law; Service of Process; Jurisdiction; Dispute Resolution

44. Governing Law

This Contract will be governed in accordance with the laws of the State of Illinois, without regard to choice of law principles.

45. Consent to Service of Process and Jurisdiction; Waiver of Jury Trial

- a. The Contractor hereby irrevocably submits, and will cause its Subcontractors to submit, to the original jurisdiction of those State or federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract.
- b. The Contractor agrees that service of process on the Contractor may be made, at the option of the CTA, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor.
- c. EACH OF THE CTA AND THE CONTRACTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING. Each of the CTA and the Contractor hereby:
 - i. certifies that no representative or agent or attorney of any such Person has represented, expressly or otherwise, that any such Person would fail to enforce or would otherwise challenge the foregoing waiver in the event of any suit, action, or proceedings relating to this Contract; and
 - ii. acknowledges that it has been induced to enter into this Contract by, among other things, the mutual waivers and certifications in this Section 45.c.

46. Dispute Resolution Panel

46.1. Establishment of the Dispute Resolution Panel

- a. The Dispute Resolution Panel will consist of three individuals appointed pursuant to this Section 46.1.
- b. The CTA and the Contractor will establish the Dispute Resolution Panel by each appointing a single member satisfying the applicable requirements of Section 46.2 by the earlier of:
 - i. the 30th Business Day following the execution of the Contract; and
 - ii. the 10th Business Day after a Dispute is first referred to the Dispute Resolution Panel in accordance with Section 46.4, which referral may be made pending constitution of such panel.
- c. No later than the 10th Business Day after the appointment of the second of the two members of the Dispute Resolution Panel referenced in Section 46.1.b, such members will by mutual agreement appoint a third member satisfying the applicable requirements of Section 46.2 (the “Chairperson”).
- d. In the event of death, resignation, disqualification, inability or refusal to act by any one of the members of the Dispute Resolution Panel (including the Chairperson), a new member of the Dispute Resolution Panel satisfying the applicable requirements of Section 46.2 will be appointed by the party (or, with respect to the Chairperson, the members) who otherwise have the right to make such appointment no later than the 10th Business Day after the occurrence of such event.
- e. In the event of a failure:
 - i. by either the CTA or the Contractor to timely appoint a person as a member of the Dispute Resolution Panel pursuant to Section 46.1.b or 46.1.d; or
 - ii. by the members of the Dispute Resolution Panel (other than the Chairperson) to timely agree on the appointment of the Chairperson pursuant to Section 46.1.c or 46.1.d,

then the member or Chairperson, as applicable, satisfying the applicable requirements of Section 46.2 will be appointed by the ICC International Court of Arbitration upon the request of either the CTA or the Contractor.

46.2. Dispute Resolution Panel Member Qualifications

- a. Each member of the Dispute Resolution Panel:
 - i. other than the Chairperson, will have:
 - A. at least 10 years' relevant experience on large transit rail projects in the United States of America using a design-build methodology; and
 - B. at least 10 years' professional expertise in design, engineering and/or construction matters relevant to the Project; and
 - ii. that is the Chairperson will be a lawyer in good standing in the State of Illinois and will have been barred in the State for at least 10 years.
- b. Each member of the Dispute Resolution Panel (including the Chairperson) will be and remain:
 - i. independent of the CTA, the Contractor, and the Contractor-Related Entities;
 - ii. impartial; and
 - iii. without any conflict of interest, OCI, or any appearance of a conflict of interest or OCI.

Neither CTA nor the Contractor will take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate such independence, impartiality and absence of conflicts of interest.

46.3. Costs and Expenses of the Dispute Resolution Panel

- a. Subject to the following, the costs and expenses payable to the members of the Dispute Resolution Panel will be agreed by the CTA and the Contractor or, absent agreement, shared equally between the parties.
- b. Responsibility for the fees of the Dispute Resolution Panel members incurred in connection with a Dispute referred to such Dispute Resolution Panel pursuant to

Section 47.7 will be determined by such Dispute Resolution Panel and will be aligned with the determination of the Dispute by such Dispute Resolution Panel.

46.4. Reporting to the Dispute Resolution Panel

- a. The CTA and the Contractor will provide the Dispute Resolution Panel with a high level executive summary monthly progress report, as well as a semi-annual briefing, in order to keep the Dispute Resolution Panel informed of Project related activity; provided that the parties have agreed to provide such materials jointly or to have one party provide such materials on behalf of both parties (subject to prior review and approval (not to be unreasonably withheld) by the other party).
- b. Absent a dispute, the Dispute Resolution Panel will meet by teleconference or videoconference semi-annually, and in person annually, at a time and, as applicable, a location to be determined by Dispute Resolution Panel.

47. Dispute Resolution Procedures

47.1. Resolution of Disputes

Except as expressly set out in this Contract, any Dispute will be resolved in accordance with this Section 47.

47.2. Restrictions on Initiating Court Proceedings

- a. The Contractor will only be entitled to initiate court proceedings in respect of any Dispute that is subject to this Section 47:
 - i. following a referral to the Dispute Resolution Panel as and when provided for in Section 47.7.j;
 - ii. as and when provided for in Section 47.9 with respect to equitable relief;
 - iii. with or without previously referring such Dispute to the Designated Senior Representatives pursuant to Section 47.4, if:
 - A. the Dispute is with respect to the existence or legal validity of this Contract; or
 - B. such party makes a good faith determination that a statute of limitations would expire prior to it becoming so entitled pursuant; or

- iv. after referring first such Dispute to the Designated Senior Representatives pursuant to Section 47.4, if the Dispute is with respect to the CTA's compliance with Sections 46.1 and 46.2; and
 - v. if the CTA has advised the Contractor in writing that it will not proceed with Dispute Resolution under this Section 47 and the Contractor will have to initiate a court proceeding if it does not accept the CTA's position regarding the matter in Dispute.
- b. The CTA will be entitled to initiate court proceedings notwithstanding any other provision of this Section 47, at any other time, unless such Dispute was initiated by the Contractor and the CTA has permitted it to be referred to the Dispute Resolution Panel in accordance with Section 47.7.j in which case the CTA may only initiate a court proceeding after completion of Dispute Resolution.

47.3. Amicable Dispute Settlement

- a. The CTA and the Contractor will attempt to reach an amicable settlement of any Dispute prior to referring such Dispute for resolution pursuant to Section 47.4, provided that either party may at any time elect in its discretion to directly refer such Dispute for resolution pursuant to Section 47.4 if it determines that such a settlement is unlikely to occur, and with respect to Contractor's dispute of a Chief Infrastructure Officer determination under Section 15.9.d.i, the Dispute must be timely referred pursuant to Section 47.4, except as mutually extended by Chief Infrastructure Officer and Contractor in writing.
- b. Any such attempt at amicable settlement may be made by any representatives of the parties, regardless of their level of seniority or position, provided that:
 - i. such representatives have the authority, capacity, and competency to make such attempt; and
 - ii. any resulting written memorandum or similar document referenced in Section 47.3.c is duly executed by such other representatives of the CTA and the Contractor as may be necessary with respect to such a written agreement.
- c. Upon agreement on any such amicable settlement, the CTA and the Contractor will execute a written memorandum or similar document in a form to be prepared

by the CTA (unless the CTA otherwise delegates such preparation to the Contractor, in which case the Contractor will prepare such memorandum or document) setting out the details of such settlement, and such document will be considered a binding settlement agreement.

47.4. Designated Senior Representatives

- a. Upon referral by either the CTA or the Contractor pursuant to Section 47.3, the Designated Senior Representatives will confer and otherwise use reasonable efforts to resolve the Dispute for a period of at least 15 Business Days (or such longer period as is mutually agreed by the CTA and the Contractor in writing).
- b. If the parties succeed in resolving a Dispute following such referral to their Designated Senior Representatives, they will memorialize the resolution by executing a written memorandum or similar document in a form to be prepared by the CTA (unless the CTA otherwise delegates such preparation to the Contractor, in which case the Contractor will prepare such memorandum or document) setting out the details of such resolution, and such document will be considered a binding settlement agreement.
- c. If the Designated Senior Representatives are unable to resolve the Dispute within such 15 Business Day period (or such longer period as is mutually agreed by the parties in writing):
 - i. the CTA may refer the Dispute for resolution by the Dispute Resolution Panels in accordance with Section 47.7, or
 - ii. The Contractor may refer the Dispute for resolution by the Dispute Resolution Panel in accordance with Section 47.7.

47.5. Advisory Opinions

- a. Notwithstanding Section 47.4, the CTA and the Contractor, acting jointly, may, at any time prior to formally referring a Dispute for resolution by the Dispute Resolution Panel, seek an advisory opinion regarding such Dispute from the Dispute Resolution Panel. The parties will do so by submitting a written request to the Dispute Resolution Panel containing:

- i. a concise summary of the nature and background of the Dispute and of the facts relevant to the Dispute;
 - ii. a statement of the question or issue on which the parties are seeking an advisory opinion; and
 - iii. copies of any correspondence, reports, or other documents to which the parties wish to refer.
- b. Any advisory opinion will:
 - i. be given in writing (unless otherwise requested by both parties);
 - ii. be non-binding; and
 - iii. not prejudice any further resolution of such Dispute.

47.6. Treatment of Settlement Negotiations and Settlement Agreements

- a. Statements made by the CTA and the Contractor, including by their representatives and Designated Senior Representatives, during any meetings or in any communications related to efforts to amicably settle or resolve a Dispute pursuant to Sections 47.3, 47.4 and 47.5, and documents containing statements or opinions specifically prepared in connection with the same (including any advisory opinion given in accordance with Section 47.5), will be considered part of settlement negotiations and will not be admissible as evidence in any proceeding between the CTA and the Contractor of any kind (including any subsequent referral to the Dispute Resolution Panels) without the mutual written consent of the CTA and the Contractor, provided that any such party:
 - i. that prepares demonstrative exhibits or summary exhibits of evidence; or
 - ii. that retains experts or other persons employed in a professional capacity to provide expert opinions and/or reports, which opinions and/or reports are prepared for presentation to the Dispute Resolution Panels,will be entitled to submit or otherwise use such work product in any subsequent proceeding.
- b. Unless otherwise agreed in writing by both parties, neither party may submit a settlement agreement entered into by the parties to the Dispute Resolution Panel

in connection with any subsequent proceeding other than to enforce the settlement agreement.

47.7. Dispute Resolution Panel

- a. Subject to Sections 47.3 and 47.4, the CTA and the Contractor may each refer any Dispute to the Dispute Resolution Panel in accordance with this Section 47.7, except for any Dispute with respect to the existence or legal validity of the Contract which the Dispute Resolution Panel will neither consider nor determine. In no case will the Dispute Resolution Panel be deemed to be an arbitrator or arbitrators.
- b. A Dispute will be considered referred to the Dispute Resolution Panel by, and on the date of, service of a notice of reference to such Dispute Resolution Panel by the referring party upon the other party.
 - i. Such service of notice will include:
 - A. an initial concise summary of the nature and background of the Dispute, of the facts relevant to the Dispute and of the issues to be decided;
 - B. an initial statement of the relief (including any compensation) which the referring party is seeking; and
 - C. any reasonable request for the Dispute Resolution Panel to consider, or not consider, such Dispute together with any other previously or simultaneously submitted Dispute.
 - ii. A copy of such notice of reference will also be served by the referring party upon the Chairperson of the Dispute Resolution Panel. Each party will be entitled within ten (10) Business Days following the notice of reference, to deliver to the Dispute Resolution Panel:
 - A. a concise summary of the nature and background of the Dispute, of the facts relevant to the Dispute and of the issues to be decided;
 - B. if applicable, a statement of the relief (including any compensation) which such party is seeking;
 - C. copies of correspondence, reports and such other documents to which the party wishes to refer or upon which it relies; and

- D. any reasonable request for the Dispute Resolution Panel to consider, or not consider, such Dispute together with any other previously or simultaneously submitted Dispute.
- c. Each of the CTA and the Contractor will promptly deliver such other information as the Dispute Resolution Panel may from time to time reasonably require for the purpose of resolving the Dispute.
- d. Subject to the following, the Dispute Resolution Panel will fix its own rules of procedure, either generally or on an ad hoc basis, and will notify the Parties of such rules of procedure (including requesting information where such would assist the Dispute Resolution Panel). In addition to such elective rules, the Dispute Resolution Panel will have the following powers:
 - i. the Chairperson of the Dispute Resolution Panel will decide whether or not to convene a hearing or otherwise to take oral evidence or whether the Dispute Resolution Panel will determine the Dispute on a documents-only basis;
 - ii. the Chairperson may order the evidence of a witness to be presented in written form by way of a signed statement and may order the production of any drawing, certificate, specification, report, study, written information and data and any other document (including a record of such document in digital form) (or copies thereof) in the possession of either the CTA or the Contractor; and
 - iii. the Chairperson may request any samples of materials to be taken and analyzed or tests to be made on site by experts.
- e. Unless the Dispute Resolution Panel decides otherwise, the Chairperson will fix the date, time and place of any hearing (which will be in the City of Chicago) before the Dispute Resolution Panel and the rules of procedure of the hearing, identify the Dispute(s) (or relevant parts thereof) to be considered at such hearing (taking into consideration any Party's request made pursuant to this Section 47.7) and will require the attendance of the CTA and the Contractor. Each party may appear before the Dispute Resolution Panel accompanied by or represented by technical,

financial or other relevant consultants (excluding representation before the Dispute Resolution Panel by legal counsel).

- f. In determining any Dispute referred to it, the Dispute Resolution Panel will act fairly and impartially as between the CTA and the Contractor, giving each party a reasonable opportunity of presenting its case and responding to the case of the other party, and will adopt procedures appropriate to the circumstances of the particular case avoiding unnecessary delay, so as to provide a fair and expeditious means for determination of the Dispute.
- g. All decisions of the Dispute Resolution Panel will be made, and notified in writing (with reasons for the decision) to the CTA and the Contractor as soon as possible but in any event no later than 60 Days (or such other period of time as the Parties may agree in writing) following the later of (i) the Dispute being referred and (ii) the constitution of the Dispute Resolution Panel. Every Dispute Resolution Panel decision will identify the specific issues to which it relates and the bases for such decision, and state whether it is a unanimous decision of the Dispute Resolution Panel. In the event of lack of unanimity, reasons for any dissenting opinion will be given. Unless subsequently incorporated into a settlement agreement entered into by the CTA and the Contractor, a Dispute Resolution Panel decision will not toll any statute of limitations or otherwise limit the time within which any party may avail itself of any remedy under Law or contract.
- h. Within ten (10) Business Days of being notified of such decision, the Contractor will notify the CTA if it intends to accept or reject such decision (in whole or in part), and the CTA will, within ten (10) Business Days after receipt of the Contractor's notification, likewise notify the Contractor if it intends to accept or reject such decision (in whole or in part). Any such notice of intention by either party will be considered a non-binding indication of intent with respect to potential settlement or further Dispute resolution proceedings.
- i. If the Dispute Resolution Panel fails to notify its decision to the Parties within the 60-Day (or such other) period referred to in Section 47.7.g, the Dispute Resolution Panel will be deemed to have failed to reach a decision in the matter. Any decision of the Dispute Resolution Panel notified to the parties after the expiry of such 60-

Day (or such other) period will be ineffective unless the CTA and the Contractor mutually agree otherwise in writing.

- j. Upon the earliest of:
 - i. expiry of such sixty 60-Day (or such other) period without a notification of a decision by a Dispute Resolution Panel to the parties;
 - ii. the CTA's delivery of a notice to the Contractor pursuant to Section 47.7.h; and
 - iii. the expiry of the relevant time period set out in Section 47.7.h without the CTA having delivered a notification to the Contractor pursuant thereto,either Party may refer the Dispute for court resolution.
- k. The CTA and the Contractor may, at any time following notification of a decision by a Dispute Resolution Panel or otherwise, memorialize settlement of the Dispute by executing a written memorandum or similar document in a form to be prepared by the CTA (unless the CTA otherwise delegates such preparation to the Contractor, in which case the Contractor will prepare such memorandum or document) setting out the details of such settlement, and such document will be considered a binding settlement agreement.
- l. Subject to Section 47.6.b, decisions of the Dispute Resolution Panel are admissible in subsequent proceedings but will be prefaced with the following statement (altered only as necessary to account for the use of terms defined in this Contract): "This decision may be taken under consideration with the understanding that (except as was directed otherwise by the Dispute Resolution Panel): (1) The Dispute was a mediation proceeding based on presentations by the CTA and the Contractor. (2) Neither party was represented by legal counsel in front of the Dispute Resolution Panel. (3) No fact or expert witnesses presented sworn testimony or were subject to cross-examination. (4) The CTA and the Contractor were not provided with the right to any discovery, such as production of documents or depositions. (5) There is no record of any Dispute Resolution Panel hearing other than the written decision."

47.8. No Joinder

No proceedings to resolve any Dispute arising out of or relating to the Contract will include, by consolidation or joinder or in any other manner, any additional Person, including any Subcontractor, not a party to the Contract, except with the written consent of the CTA and the Contractor and of any other Person sought to be so joined.

47.9. Equitable Relief

Subject to Section 45, the CTA and the Contractor will each be entitled to seek equitable relief in respect of any dispute before the United States District Court for the Northern District of Illinois or Cook County Circuit Court at any time after the conclusion of the initial referral period referred to in Section 47.4.a (or such longer period as is mutually agreed by the CTA and the Contractor).

47.10. Continuation of Work

During the course of resolving any Dispute pursuant to this Section 47 or otherwise under the Contract, the Contractor will continue with the Work (including any Work that is the subject of the Dispute including as directed by the CTA) in accordance with the Contract.

47.11. Interim Payments

If either CTA or the Contractor is the prevailing party in a Dispute decided by the Dispute Resolution Panel with respect to amounts owed between the parties, which decision either party then refers for court resolution, then the non-prevailing Party will pay to the prevailing party within sixty (60) days of demand an amount equal to fifty percent (50%) of the amount awarded by the Dispute Resolution Panel pending final resolution of the Dispute (for certainty, subject to the obligation of the receiving party to return such amounts as a result of such final resolution).

47.12. Costs of Dispute Resolution

Each party will bear its own costs and expenses, including attorneys' fees, in any Dispute arising out of the Contract, except as expressly provided in Section 46.3 or pursuant to the terms of any binding Dispute resolution.

Subpart R: Miscellaneous

48. Notices

48.1. Methods of Notice Submission, Including Project Website

- a. Project Website
 - i. All document transmittals and written communication from the Contractor to the CTA or to third-party stakeholders on the Project must be made electronically via the Project Website, as described in Sub Part 2.8.1 of Part 2.
 - ii. The Contractor must furnish all hardware, software, and internet connectivity required to establish and maintain access to the Project Website and must comply with all rules and procedures relating to its use, including as set out in the Contract Documents. All personnel who will use the Project Website must complete the training provided by the CTA prior to having access to the system.
- b. Written notices
 - i. Written notice by physical paper documents is not required, unless:
 - A. for transmission of submittals, deliverables, and written communications that are also made on the Project Website, where specified in the Contract or the Contractor is directed otherwise by the CTA;
 - B. for all document transmittals and written communications from the Contractor to the CTA or to third-party stakeholders on the Project, or between the Contractor and its Subcontractors and suppliers, where the Project Website is unavailable, unless directed otherwise by the CTA; or
 - C. for service of process.
 - ii. Where required, all written notices must be delivered personally or by mail to:
 - A. If to the Contractor:

[Insert Contractor name]
[Insert address]
[Insert address]
[Insert address]

B. If to the CTA:

Chicago Transit Authority
Attention: Director, Purchasing
567 West Lake Street
Chicago, IL 60661-1498

With Copies to:

Chicago Transit Authority
Attention: Chief Infrastructure Officer
567 West Lake Street
Chicago, IL. 60661-1498

Except invoices to:

Chicago Transit Authority
Attention: Manager, Financial Audit Oversight
567 W. Lake Street
Chicago, IL. 60661-1498

48.2. Time and Date of Notice Submission

Notices will be deemed effective:

- a. if delivered by the Project Website, when recorded as submitted by the Project Website;
- b. if delivered by mail, upon receipt; and
- c. if delivered personally, upon receipt,

in each case measured from (i) the Business Day of delivery if delivered before 4:00pm Central Time and (ii) the Business Day after delivery if delivered after 4:00pm Central Time.

48.3. Changes in Address

The addresses stated in Section 48.1.b may be revised without need for modification or amendment of this Contract, provided written notification is given in accordance with this Section 48.

49. Limitations on Liability

49.1. Contractor's Sole Remedies

Subject to Section 49.2, the Contractor's sole remedy in relation to matters for which an express right or remedy is stated in this Contract will be that right or remedy and the Contractor will have no additional right or remedy however arising.

49.2. No Double Recovery

Notwithstanding any other provision of this Contract, no Party will be entitled to recover compensation under this Contract or any other agreement in relation to the Project in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Contract or otherwise.

49.3. Non-financial Remedies

Without prejudice to the other rights and remedies under the express terms of this Contract, nothing in Section 49.2 will prevent or restrict the right of the CTA or Contractor to seek any non-financial remedies from the court pursuant to the Dispute Resolution Procedures.

49.4. Waiver of Consequential Damages

- a. Subject to Section 49.4.b, and without effect on any express liquidated damages determined in accordance with the Contract Documents, including pursuant to Sub Part 3.9.5 of Part 3, neither Party will be liable to the other for any punitive, special, indirect, incidental, or consequential damages of any nature (including, for certainty, lost revenue or profit, loss of good will, and the cost of capital or interest) whether arising out of a breach of this Contract, tort (including negligence) or other legal theory of liability, and each party releases the other from such liability.
- b. The limitation set out in Section 49.4.a will not apply to any amounts expressly payable pursuant to this Contract or any amounts entitled to be set-off pursuant to Section 12, or Contractor's liability:
 - i. for Losses to the extent that such Losses are required to have been covered by insurance pursuant to this Contract;
 - ii. under Section 35.2 to the extent such relates to Contractor's indemnification, defense, and hold harmless obligations to an Indemnified

Party with respect to such Indemnified Party's liability for claims asserted and/or Losses suffered by any third party; or

- iii. for Loss arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith, or gross negligence (including that of any Contractor Related-Entity).

49.5. Contractor's Total Liability

- a. Contractor's total aggregate liability to the CTA under this Contract including for default, breach of contract, negligence, any liquidated damages (including pursuant to Sub Part 3.9.5 of Part 3), pursuant to any indemnity obligations related to claims asserted and/or Losses suffered by any Indemnified Parties, or otherwise in connection with the Project, will not exceed an amount equal to 50% of the Contract Price.
- b. The limitation on liability set forth in Section 49.5.a will not apply to:
 - i. Losses to the extent that such Losses required to have been covered by insurance pursuant to this Contract, or are otherwise covered by the proceeds of insurance actually carried by or insuring the Contractor under policies solely with respect to the Project, regardless of whether such policies are required pursuant to this Contract;
 - ii. under Section 35.2 to the extent such relates to Contractor's indemnification, defense, and hold harmless obligations to- an Indemnified Party with respect to such Indemnified Party's liability for claims asserted and/or Losses suffered by any third party, or claims arising from death or bodily injury;
 - iii. for Loss arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith or gross negligence (including that of any Contractor Related-Entity); or
 - iv. costs, liabilities or obligations arising from Contractor's abandonment of the Project.

50. Assignments and Transfers

- a. All of the terms and conditions of this Contract will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees, and assigns. The Contractor may not assign this Contract in whole or in part, or any Contract funds or claims due, or to become due, in each case without the written approval of the Director, Purchasing, provided that no such approval is required with respect to a Permitted Reorganization. In no case will such written approval relieve the Contractor from its obligations or change the terms of the Contract.'
- b. Any Transfer made or purportedly made in violation of the restrictions set out in Section 50.a will be null and void ab initio and, in CTA's discretion, will constitute a Contractor Default for breach.

51. Binding Effect; Successors and Assigns

This Contract will be binding upon and inure to the benefit of the CTA and the Contractor and each of their respective permitted successors and assigns.

52. Joint and Several Liability

In the event that the Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Contractor will be the joint and several obligation or undertaking of each such individual or other legal entity.

53. Survival

The following provisions of this Contract will survive the expiration or earlier termination of this Contract and/or completion of the Work:

- a. Contractor's representations and warranties made in Section 4.5.
- b. Allocation of generator liability under Section 28.3.a.
- c. Contractor's obligation to provide reasonable assistance under Section 32.3.d.
- d. Contractor Indemnifications, waivers, and obligations contained in Section 35.

- e. Contractor obligations regarding Project Records contained in Section 33.
- f. Contractor obligations regarding insurance and Bonds contained in Annex C.
- g. CTA's remedies upon Default or Termination of this Contract and Contractor remedies on termination contained in Sections 40 and 41.
- h. The Contractor's obligations under Section 43.
- i. Any provision of this Contract that expressly or by its content is intended to operate after termination or expiration of this Contract and/or completion of the Work.
- j. Any provision of this Contract that is necessary for interpretation or application or application of the foregoing.

54. Counterparts

This Contract is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

55. Entire agreement

This Contract constitutes the entire agreement between Contractor and the CTA with regard to its subject matter, and no other oral or written understandings, representations, inducements, consideration, promises, or interpretations are part of this Contract.

56. Severability

If any provision of this Contract is held or deemed inoperative or unenforceable because it conflicts with any other provision or provisions hereof, or any constitution, statute, ordinance, rule of law, public policy, or any other reason, the circumstances will not render the provision in question inoperative or unenforceable in any other case or circumstances, or render any other provision herein contained invalid, inoperative, or unenforceable to any extent. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Contract will not affect the remaining portions of this Contract or any part thereof.

57. Amendments and Waivers

57.1. Amendments

No changes, amendments, modifications, cancellation, or discharge of this Contract, or any part thereof, will be valid unless in writing and signed by the authorized representatives of the parties hereto, or their respective successors and assigns, in accordance with all applicable laws.

57.2. Waivers

- a. Any CTA waiver of, or consent to depart from, the requirements of any provision of this Contract with which the Contractor is otherwise obligated to comply shall be approved in the discretion of the CTA and shall be effective only if it is in writing.
- b. Whenever under this Contract the CTA by a proper power so waives the Contractor's performance in any respect, or waives a requirement or condition to either the CTA's or the Contractor's performance (in the case of a waiver of CTA's own performance, only to the extent such does not relate to CTA breach or to any other matter which by its nature would require Contractor's concurrence), the waiver so granted will only apply to the particular instance and for the specific time, subject to the specific conditions and for the specific purpose for which it has been given and will not be deemed a waiver forever or for subsequent instance of the performance, requirement, or condition.
- c. No such waiver will be construed as a modification of this Contract, regardless of the number of times the CTA may have waived the performance, requirement, or condition.

57.3. Further Assurances

The Contractor will promptly execute and deliver to the CTA all such instruments and other documents and assurances as are reasonably requested by the CTA to further evidence the obligations of the Contractor hereunder, including assurances regarding the obligations of Subcontractors referenced herein.

58. No Third-Party Beneficiaries

The parties agree that this Contract is solely for the benefit of the parties and nothing herein is intended to create any third-party beneficiary rights for Subcontractors or other third parties.

59. Independent Contractor

The Contractor must perform the Work under this Contract as a non-exclusive independent contractor, and nothing herein is intended or will be construed to create any partnership, agency, or joint venture relationship between the CTA and the Contractor. Neither the Contractor nor its Subcontractors, or the employees of any of them, will be deemed for any purpose to be employees of the CTA. The Contractor is solely responsible for the withholding or payment of all applicable Federal, State, and local personal income taxes, social security taxes, unemployment and sickness disability insurance, and other payroll taxes with respect to the Contractor's employees.

60. No Personal Liability of Government Officials

In carrying out any of the provisions of this Contract or in exercising any power or authority granted to them thereby, there will be no liability imposed upon the Director, Purchasing, the Chief Infrastructure Officer; their authorized representatives, or any other employee or officer of the CTA, either personally or as officials of the CTA; it being understood that in such matters they act as representatives of the CTA.

Annex A: Abbreviations and Definitions

Common abbreviations used in the Contract:

AAR	American Association of Railroads
AASHTO	American Association of State Highway and Transportation Officials
ADA	American with Disabilities Act
ADAAG	ADA Accessibility Guidelines
AGA	American Galvanizers Association
ARA	American Railway Association
ACI	American Concrete Institute
AHRI	Air-Conditioning, Heating, and Refrigeration Institute
AISC	American Institute for Steel Construction
ISI	American Iron and Steel Institute
AMCA	Air Movement and Control Association
ANSI	American National Standards Institute
APTA	America Public Transportation Association
AREMA	American Railway Engineering and Maintenance-Of-Way Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASQ	American Society for Quality
ASTM	American Society for Testing and Materials
ASSE	American Society of Sanitary Engineering
ATC	Alternative Technical Concept
AWG	American Wire Gauge
AWI	American Woodwork Institute

AWS	American Welding Society
AWWA	American Water Works Association
BFP	Chicago Bureau of Fire Prevention
BHMA	Builders Hardware Manufacturers Association
BIA	Brick Industry Association
BICSI	Building Industry Consulting Service International
CBC	Chicago Building Code
CDOT	Chicago Department of Transportation
CDWM	Chicago Department of Water Management
CEC	Chicago Electrical Code
CFR	Code of Federal Regulations
CQMS	Contractor's Quality Management System
CRSI	Concrete Reinforcing Steel Institute
CSA	Canadian Standards Association
DBE	Disadvantaged Business Enterprises
DBMS	Design-Build Management System
DOB	Department of Buildings
EEO	Equal Employment Opportunity
EIA	Electronics Industries Association
FHWA	Federal Highway Administration
FOIA	Illinois Freedom of Information Act
FTA	Federal Transit Administration
GCR	CTA Government and Community Outreach Relations
IAC	Illinois Accessibility Code
IBC	International Building Code

IBEW	International Brotherhood of Electrical Workers
ICEA	Insulated Cable Engineers Association
IDOT	Illinois Department of Transportation
IEEE	Institute of Electrical and Electronics Engineers
IEPA	Illinois Environmental Protection Agency
IES	Illuminating Engineering Society
IFC	Issued for Construction
IFP	Issued for Permit
IFRS	International Financial Reporting Standards
IGA	Intergovernmental Agreement
ISO	International Organization for Standardization
MCAA	Mechanical Contractors Association of America
MOPD	Mayor's Office for People with Disabilities
MOT	Maintenance of Traffic
MUTCD	Manual on Uniform Traffic Control Devices
MWRDGC	Metropolitan Water Reclamation District of Greater Chicago
N/A	Not Applicable
NAAMM	National Association of Architectural Metal Manufacturers
NACE	National Association of Corrosion Engineers
NCMA	National Concrete Masonry Association
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act, 42 CFR U.S.C. § 4321 et seq.
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association

NRCA	National Roofing Contractors Association
NRHP	National Register of Historic Places
O&M	Operations and Maintenance
OUC	Office of Underground Coordination
OEMC	Chicago Office of Emergency Management and Communications
OSHA	Occupational Safety and Health Administration
pdf	Portable Document Format
PDI	Plumbing and Drainage Institute
PLA	Multi-Project Labor Agreement
QA	Quality Assurance
QC	Quality Control
QMS	Quality Management System
RTA	Regional Transportation Authority
SDI	Steel Deck Institute
SMACNA	Sheet Metal and Air Conditioning Contractor's National Association
SSC	Safety and Security Certification
SSCP	Safety and Security Certification Plan
SSMP	Safety and Security Management Plan
SSPC	Steel Structures Painting Council
SSRBC	Standard Specifications for Road and Bridge Construction IDOT
SUE	Subsurface Utility Engineering
TIA	Time Impact Analysis
TIF	Tax Increment Allocation Financing
TIFIA	Transportation Infrastructure Finance and Innovation Act
TPG	Training Program Graduate

UL	Underwriters' Laboratories
USC	United States Code
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
US GAAP	Generally accepted accounting principles in the United States
USGBC	U.S. Green Building Council
WI	Woodwork Institute

Definitions used in the Contract:

“Acceptance” or “Accept” means written consent, such consent not to be unreasonably withheld after having a reasonably sufficient opportunity to review and comment on the relevant submission or subject matter.

“Advance Utility Relocation” means the CTA-initiated program to relocate certain Utilities as described in Sub Part 3.14.2 of Part 3.

“Affiliate” means in relation to any Person:

- a. any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with that Person;
- b. any Person for which 10 percent or more (or, for purposes of determining common Control for purposes of determining a Permitted Reorganization, 50 percent or more) of the equity interest in that Person is held directly or indirectly, beneficially or of record, by such other Person; or
- c. any Guarantor of that Person,

where for purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by familial relationship, or otherwise.

“Allowance” means each amount separately budgeted for Work in excess of the “Base Lump Sum Price” which is identified as an allowance and set out in Form E-1 (Pricing Proposal) of the

Proposal Extracts, the purposes and payment (subject to satisfaction of certain conditions) of which is identified and governed by Sub Part 3.2 of Part 2 and this Part 1.

“Amendment” means a fully executed amendment to this Contract.

“Application for Payment” means a request for payment submitted in accordance with and as described in Sub Part 2.1.8 of Part 2.

“Approval” or **“Approve”** means a written consent, such consent to be given in the discretion of the relevant Party.

“ATC Extracts” means []⁶ of the Proposal Extracts.

“Base Case” means the drawings in Sub Parts 7.1 through 7.6 in Part 7, which are the preliminary technical blueprint of the essential design elements for the Project.

“Base Lump Sum Price” has the meaning given to it in Section 11.2.a.i.

“Baseline Schedule” means the schedule approved by CTA which will be based on the Preliminary Schedule submitted by the Contractor and meeting the requirements of Sub Part 2.1.6 of Part 2 with modifications required by CTA, and as amended or revised from time to time.

“Board” means the Chicago Transit Board, the governing body of the CTA.

“Bond” means each of the Performance Bond and the Payment Bond.

“Building Trades Council” means the Chicago & Cook County Building and Construction Trades Council.

“Bulletin” means a request submitted by the Chief Infrastructure Officer to the Contractor pursuant to Section 14.1.b.

“Business Day” means any day that is not a Saturday, Sunday or a State or federal holiday.

“Certificate of Final Completion” means a certificate issued by the CTA indicating that the Contractor has achieved Final Completion with respect to the Project.

⁶ The Contract will be revised prior to execution as the CTA determines necessary to directly incorporate approved ATCs to the extent possible (including consequential conforming changes in addition to those necessary to directly incorporate any such ATC), taking into account the relevant terms of the ITP. To the extent direct incorporation is not possible, this provision will cross-reference any parts of the ATCs included in the Proposal Extracts. If there are no such parts of the ATCs, the concept of “ATC Extracts” will be deleted from the Contract prior to execution and no ATCs will otherwise be included in the Proposal Extracts.

“Certificate of Project Element Substantial Completion” means a certificate issued by the CTA indicating that the Contractor has achieved Project Element Substantial Completion with respect to a Project Element.

“Certificate of Substantial Completion” means a certificate issued by the CTA indicating that the Contractor has achieved Substantial Completion with respect to the Project.

“Certified Payroll” means payroll information required and submitted by the Contractor through CTA’s web-based certified payroll application.

“Chairperson” has the meaning given to it in Section 46.1.c.

“Change in Law” means the coming into effect after the Reference Date of:

- a. the enactment, promulgation or adoption of any Law;
- b. a binding change in the judicial or administrative interpretation of any Law; or
- c. any modification (including repeal) of any Law,

in each case, by a Governmental Authority that:

- d. is materially different from or inconsistent with Law as in effect prior to the coming into effect of the relevant change as referenced above; and
- e. was not (in the same or substantially similar form and substance to that which later comes into effect) passed or adopted but not yet effective, as of such date,

provided that Change in Law will exclude any such enactment, promulgation, adoption, change or modification of any (x) Federal, State or local labor Law, (y) Federal, State or local tax Law, or (z) State or local building, construction or zoning codes.

“Change Order” means a written order to the Contractor issued by the CTA in accordance with Section 14.1.c.iv. A fully executed Change Order has been approved by the CTA’s Board and has the signatures of all required parties.

“Changed Work” means a material change (either an increase or decrease) in the quality, quantity, or programmatic requirements of the Work that is either:

- a. directed by the CTA and is not due to an error or omission in the Contractor’s design or otherwise part of the Design/Preconstruction Work; or

- b. required due to a Cost and Delay Event, and which in either case (x) is not identified in the Project Requirements or the Project Standards and (y) does not include Work that is reasonably inferable from the Project Standards or other Contract Documents as being necessary for the proper, timely, and orderly completion of the Work or functioning of the Work in accordance with the requirements of the Contract.

“Chief Infrastructure Officer” means the CTA’s Chief Infrastructure Officer or its authorized representative.

“City” means the City of Chicago, Illinois.

“Closeout Plan” means a plan for Project Closeout as described in Sub Part 2.13 of Part 2. The Closeout Plan will be included in the DBMS.

“CN” means Canadian National Railway Company including its acquisition of Illinois Central (IC).

“Compensable Change in Law” has the meaning given to it in Section 15.1.b.

“Conrail” means the rail carrier jointly owned by NS and CSX Transportation.

“Construction Work” means all Work other than the Design/Preconstruction Work.

“Contract” means this Design-Build Agreement for the Chicago Transit Authority for the Red Line Extension (RLE) Design-Build Project, including each of Parts 1 through 7, entered into between the CTA and the Contractor on the Contract Date.

“Contract Date” means *[insert date on which the Contract is executed by the CTA]*.

“Contract Documents” means those documents consisting of this Contract including without limitation the Instructions to Proposers, Parts 1-7, the Annexes, Appendices, Exhibits and attachments to each of Parts 1-7, the Project Standards, the Final Design (upon approval), Price Proposal Attachments, approved Alternative Technical Concepts, and Technical Appendices attached or referred to by any of the foregoing, the, the insurance policies and evidence of insurance, the Bond or Bonds, if any, securing the Contractor’s obligations, and other documents, if any, made a part of the Contract Documents, including executed Change Orders; provided, that the Proposal only forms a part of the Contract Documents to the extent it is strictly in conformance with all of the foregoing.

“Contract Price” has the meaning given to it in Section 11.2.a.

“Contract Time” has the meaning given to it in Section 8.1.

“Contractor” means *[insert name]*, a *[describe type of legal entity and reference state of incorporation/organization]*, as party to this Contract together with the CTA.

“Contractor Default” means each of the defaults listed in Section 40.

“Contractor Fault Event” means an event that arises directly or indirectly as a result of any breach of Law, Permit, or any Contract Document, or any act or omission, fraud, willful misconduct, criminal conduct, recklessness, bad faith, or negligence by or of the Contractor or any other Contractor-Related Entity.

“Contractor Proposed Change” a change to the Work proposed by the Contractor that adds value to CTA in the cost, schedule, quality, or ability to complete the Project and/or maintain the Work.

“Contractor Proposed Change Form” means Annex F-2.

“Contractor-Related Entity” means:

- a. the Contractor;
- b. any joint-venture member or equity owner of the Contractor;⁷
- c. any Subcontractor (of any tier);
- d. any other persons (except the CTA) performing any of the Work for or on behalf of the Contractor;
- e. any other persons (except the CTA and any members of the general public that use or access the Project) for whom the Contractor may be legally or contractually responsible; and
- f. employees, agents, officers, directors, representatives, and consultants of any of the foregoing.

“Contractual Specifications” are the technical specifications contained in Appendix 4N.

“Control” means control of a Person by another Person in which that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting

⁷ The CTA reserves the right to adjust this category of Contractor-Related Entities based on the Contractor's ownership, holding, and/or contracting structure.

rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises direct or indirect control over that controlled Person's affairs.

"Cost and Delay Event" has the meaning given to it in Section 15.1.b.

"Court Order Delay" has the meaning given to it in Section 15.1.c.

"Critical Path" means the longest sequence, in terms of time, of logically connected tasks or sub-tasks on the Project Schedule ending with Final Acceptance, and, for certainty, the Project Schedule shall include only a single Critical Path.

"CTA" means the Chicago Transit Authority, a municipal corporation and the Project owner, including its Board, duly authorized agents, servants, and employees.

"CTA Breach or Fault Event" has the meaning given to it in Section 15.1.b.

"CTA Default" means each of the defaults listed in Section 41.1.

"CTA Delay" has the meaning given to it in Section 15.1.c.

"CTA Failure to Provide Access" has the meaning given to it in Section 15.1.b.

"CTA Order Delay" has the meaning given to it in Section 15.1.c.

"CTA Pre-Revenue Activity Milestone" means completion of all elements of the Work described in Sub Part 3.9.1.B or Part 3.

"CTA-Provided Materials" means any material, equipment, supplies, components or other products that the CTA has committed to make available to the Contractor pursuant to the Project Requirements.

"CTA-Provided Materials Delay" has the meaning given to it in Section 15.1.b.

"CTA-Provided Permits" means the NEPA Decision Documents.

"CTA Underground Systems Infrastructure" means the subsurface ductbanks, cables, wires and associated casing for the CTA's traction power, communication and signal systems.

"Damages for Delay" means an amount not to exceed the aggregate of:

- a. extra premiums paid by the Contractor on its Bond and insurance as a result of any Excusable Delay;

- b. wages and salaries of employees and other direct expenses of the Contractor that are necessary only for the proper storage and protection of materials and equipment prepared or in the process of being prepared by the Contractor exclusively for use on the Contract during or on account of any Excusable Delay;
- c. cost incurred for temporary power and sanitary facilities as a result of any Excusable Delay; and
- d. Cost of salaried and/or site supervision and management staff who are dedicated full-time to the Project and whose primary work location is either the Project Office or the Site, consisting of the following:
 - i. payments made to such staff in direct charge of the specific operations, estimated number of labor hours for hourly wage labor multiplied by their respective base wages, or pro rata portion of salary;
 - ii. health and welfare benefits for such employees;
 - iii. pension fund benefits for such employees; and
 - iv. other benefits required for such employees by the collective bargaining agreement,

solely to the extent the Excusable Delay, together with all other previously authorized Excusable Delays, extends the Milestone for Substantial Completion of all Work by more than 60 Days, and an extension of the duration such individual is dedicated to the Project is required as a direct result of such time extension necessitated by the applicable Excusable Delay. Such costs will be compensable on a day-for-day basis beginning with the 61th day of such extension, and, for certainty, such compensation will not include the first 60 Days of such extension .

“Day”, “day”, “Days” or “days” means calendar day or days consisting of 24 hours, beginning at midnight Chicago local time.

“Debris” means debris, waste, rubbish or other materials intended or required to be removed from the Site.

“Defect” means a defect affecting the condition, use, functionality or operation of any element of the Work, including (a) defects in design, materials and workmanship, and (b) any defect that is recognized to exist as a matter of Law.

“Deficiency” means an item, condition, process, material or workmanship that is lacking an essential element or is not complete.

“Delay” means any delay on the Critical Path of the Schedule.

“Delay Event” has the meaning given to it in Section 15.1.c.

“Design/Preconstruction Work” means design, architectural, engineering, and other professional services in accordance with the Contract Documents and the Project Requirements, including preparation and revision of construction documentation, budget and schedule preparation, cost-estimating and value engineering services, and preparation of a Final Design that meets all Project Requirements and other requirements of the Contract Documents.

“Designated Senior Representative” means:

- a. in the case of the Contractor, its Chief Executive Officer⁸ (or, if none, an equivalent successor representative as notified by the Contractor to the CTA from time time); and
- b. in the case of the CTA, Chief Infrastructure Officer or its authorized representative.

“Directive Order” means a CTA direction to the Contractor to proceed with Changed Work or otherwise in each case pursuant to Section 14.1.c.iii.

“Director, Purchasing” means the CTA’s Director, Purchasing or an authorized representative thereof.

“Discrepancy” means a difference in normal events associated with the Work that is inconsistent and affects the expected functionality of a system’s communication between hardware and software.

“Discretion” (or **“discretion”**) means with respect to the making or giving of any consent, approval or like assent, the right of a Person to make or give the same in such person’s sole and absolute discretion, including the right to refrain from giving, or to impose conditions on, such consent, approval or like assent. **“Dispute”** means any dispute between the CTA and the Contractor arising out of or in connection with this Contract, including any dispute concerning an adjustment to Contract Price or Contract Time or any other form of relief claimed by a Party.

⁸ To be updated prior to execution to reflect the Contractor’s organizational structure.

“Dispute Resolution Panel” means the dispute resolution panel to be established pursuant to Section 46.

“Dispute Resolution Procedures” means the procedures set out in Section 47.

“Diversity Coordinator” means the person appointed pursuant to Section 25.8, or authorized representative.

“Earned Value” means the value of Work performed in a billing period and all prior billing periods for each element of work permitted by the Schedule of Values.

“Environmental Approvals” means any Permit or other written authorization for the Project and/or the Work, including written changes, amendments modification reevaluations or reauthorizations to any Environmental Approval.

“Environmental Impairment” means any of the following:

- a. any subsurface conditions that evidence or exhibit (visually or otherwise) contamination by Hazardous Material;
- b. any underground storage tanks or evidence of any contamination that may be associated with or caused by any underground storage tanks;
- c. any utility conduits or drains that evidence or exhibit (visually or otherwise) contamination by Hazardous Materials; and
- d. any Hazardous Material on any portion of the Site (including, but not limited to, Hazardous Materials in building components, drums, storage containers, items of personal property, and other materials),

in each case that:

- e. are or may be subject to any Environmental Laws; or
- f. may give rise to any liability on the part of the CTA or the Contractor.

“Environmental Laws”: All federal, state, and local statutes, ordinances, regulations and rules, as now existing, relating to environmental quality, health, safety, contamination and cleanup, including, the Clean Air Act, 42 U.S.C. §7400 *et seq.*, the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §136 *et seq.*; the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*; the Noise Control

Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act (“OSHA”), 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; the Nuclear Waste Policy Act of 1982, 42 U.S.C. §10101 *et seq.*, and all similar or like statutes and/or ordinances in effect in the State of Illinois and/or in the City of Chicago or in any other municipality in which the Project is located.

“Excusable Delay” means delay to the Critical Path of the Schedule, arising from a Relief Event, which delay could not have been avoided or mitigated by the Contractor’s compliance with Section 15.2 or otherwise adequately guarded against by contractual or legal means.

“Final Completion” means the satisfaction all of the conditions referenced in Section 10.3.b.

“Final Design” means the submission by the Contractor of the deliverable identified as the “Final Design” in the General Requirements, including all drawings and specifications. Final Design may refer to Final Design of any portion of the Work or the Project, as the context requires.

“Final Payment” means the final payment to the Contractor from the CTA related to performance under this Contract.

“Final Warning Notice” means a notice from the CTA to the Contractor if there is a breach of this Contract by the Contractor that has continued for more than 30 consecutive Days or occurred three or more times in any six consecutive month period.

“Float” means the amount of time that any given activity on the Critical Path or logically connected sequence of activities on the Critical Path shown on the schedule may be delayed before it delays the occurrence of Project Element Substantial Completion of each Project Element, completion of each Milestone including Substantial Completion and Final Completion by the applicable deadline (including any deadline set out in or determined by reference to Section 40.1.b or Sub Part 3.9 of Part 3) any Milestone, where such Float is determined using the Critical Path method and identified as the amount of time between the early start date and the late start

date, or the early finish date and the late finish date, for each and every activity shown on the schedule.

“Force Majeure” has the meaning given to it in Section 15.1.c.

“GAAP” means Generally Accepted Accounting Principles in the US as in effect from time to time.

“General Requirements” means Part 2 of the Contract.

“Good Industry Practice” means that degree of skill, care, prudence, foresight, and practice that would reasonably and ordinarily be expected from time to time of a skilled and experienced professional designer, engineer, or constructor, as applicable, engaged in the same type of activity in North America as that of the Contractor, or any other person to which such term relates, seeking to comply with all Laws and the same type of obligations and responsibilities in North America as the obligations and responsibilities of the Contractor under this Contract and/or the obligations and responsibilities of such person under the same or similar circumstances (including taking account of the design-build nature of this Contract).

“Governmental Authority” means any United States Federal, State or local government, and any political subdivision of any of them; and any interstate, governmental, quasi-governmental, judicial, public, regulatory or statutory instrumentality, administrative agency, authority, body or entity of, or formed by, any such government or subdivision thereof, in each case other than the CTA.

“Guarantor” means []⁹ as [parent company] guarantor of the Contractor’s obligations under this Contract.

“Guaranty” means [the] [parent company] guaranty made as of [date] by the Guarantor, or any replacement Guaranty Approved by the CTA with respect to its form, substance and guarantor party.

“Guideway Milestone” means completion of each Guideway Project Element in accordance with Sub Part 3.9.1 of Part 3.

“Guideway Project Element” means each Guideway Structure Project Element described in Part 2.13.2 and identified in Proposal Form G-1.

⁹ To identify relevant Guarantor(s) based on Preferred Proposer’s Proposal.

“Hazardous Material” means the following, including mixtures thereof:

- a. any hazardous substance or material, pollutant, contaminant, hazardous waste, special waste, non-special waste, universal waste, hazardous by-product or hazardous constituent as now or hereinafter defined in any Environmental Laws;
- b. oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel;
- c. pesticides;
- d. asbestos and asbestos-containing material;
- e. polychlorinated biphenyls;
- f. source material, special nuclear material, by-product material, and any other radioactive materials or radioactive wastes, however produced, as defined in the Clean Air Act, the Atomic Energy Act, or the Nuclear Waste Policy Act;
- g. chemicals subject to the Occupational Safety and Health Act Hazard Communication Standard, 29 CFR §1910.1200 et seq.; and
- h. any material that cannot be disposed of as clean construction or demolition debris (CCDD) or uncontaminated soil as defined in 35 Ill. Adm. Code 1100. 35 Ill. Adm. Code.

“herein”, “hereof” and “hereunder” will be construed in accordance with Section of 1.1.b of Annex B.

“IHB” means Indiana Harbor Belt, the railroad jointly owned by Conrail and Canadian Pacific Railway.

“include”, “includes”, “including” and “included” will be construed in accordance with Section of 1.2.b of Annex B.

“Indemnified Parties” will have the meaning set out in Section 35.2.a.

“Initial Warning Notice” means a notice from the CTA to the Contractor that a breach specified in an Initial Warning Notice has continued for more than 30 consecutive Days after the date of service of the Initial Warning Notice or reoccurred three or more times in any six consecutive month period after the date of service of the Initial Warning Notice.

“Insolvent” means any person that has and is experiencing any of the following circumstances or events:

- a. any of:
 - i. the commencement of a voluntary case under Federal bankruptcy law;
 - ii. the filing of a petition seeking to take advantage of any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition for adjustment of debts;
 - iii. the application for or the consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign;
 - iv. the admission in writing of its inability to pay its debts as they become due;
 - v. the making of a general assignment for the benefit of creditors; or
 - vi. the taking of any corporate (or equivalent) action for the purpose of authorizing any of the foregoing; or
 - b. the commencement of a case or other proceeding against such person in any court of competent jurisdiction seeking:
 - i. relief under Federal bankruptcy law or under any other law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts; or
 - ii. the appointment of a trustee, receiver, custodian, liquidator or the like for such Person or for all or any substantial part of their respective assets, domestic or foreign,
- and:
- iii. the petition that commenced such case or proceeding is not contested by such person within the amount of time provided under Law; or
 - iv. either: (A) such case or proceeding continues without dismissal or stay for a period of 60 Days; or (B) an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under

such Federal bankruptcy law) is entered and not appealed to the extent that the order for relief is stayed.

“Inspecting Party” has the meaning given to it in Section 33.7.

“Interim Area” means an area that the Contractor will have access to and responsibility for on an interim basis. Interim areas will be shared with the Shop and Yard contractor as described in Sub Part 3.10 of Part 3. Interim areas are shown in Appendix 3E and Appendix 3P.

“ITP” means the Instructions to Proposers for the project, first issued June 28, 2023, as subsequently amended.

“Key Personnel” means the Proposer’s proposed: Project Executive, Project Manager, Deputy Project Manager, Design Manager, Lead Designer, Lead Bridge Structural Designer, Lead Architectural Designer, Lead Systems Integrator, Construction Manager, Community Liaison Lead, Quality Manager, and Safety Manager, each position as further defined in Annex E.

“Law” means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances, or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of this Contract including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Governmental Authority.

“Loss” means all injuries, death, losses, damages, claims, suits, liabilities, judgments, cost, and expenses, including legal fees and costs but excluded any damages to the extent such is otherwise excluded under Section 49.4.

“Lump Sum Price” means the lump sum fixed price for the Work set out in in *Form E-1 (Pricing Proposal)* of the Proposal Extracts, adjusted as necessary to reflect CTA’s election regarding Optional Work under the terms of the ITP, which price is comprised of the sum of the “Base Lump Sum Price” and the Allowances.

“Maintenance Requirements” means Part 5 of the Contract.

“Maintenance Work” means that portion of the Work set out in the Maintenance Requirements.

“MDI Plan” has the meaning given to it in Section 25.6.

“Metra” means the commuter rail division of the Chicago Regional Transportation Division.

“Milestone” means each of the Guideway Structure Milestones, the CTA Pre-Revenue Activity Milestone, and Substantial Completion.

“Milestone Deadline” means with respect to each Guideway Milestone, the deadline set out in Proposal Form G-1, and with respect to the CTA Pre-Revenue Activity Milestone and Substantial Completion, the applicable deadline set out in Sub Part 3.9 of Part 3, as such deadline may be adjusted pursuant to Section 8.2.

“NEPA Decision Documents” means:

- a. the combined Final Environmental Impact Statement and Section 4(f) Evaluation (“Final EIS”) and Record of Decision (“ROD”) published on August 12, 2022 for the Red Line Extension (“RLE”) Project <https://www.transitchicago.com/rle/finaeis/>; and
- b. any written reevaluations, revisions or other supplements or modifications to the foregoing Final EIS/ROD.

“Nonconforming Work” means any part of the Work performed by the Contractor that does not meet or exceed the requirements of this Contract, including as a result of any of the factors listed in Section 26.4.b.vi.B, and including any Defect, Deficiency, or Discrepancy.

“Non-Shared Contingency Allowance” means the Allowances described in Sub Part 3.2 of Part 3 as the Aesthetic Enhancement Allowance, the Revenue Equipment Installation and Utility Service Charges Allowance, the Owners Contingency Allowance, and the Price Adjustment Allowance.

“NS” means Norfolk Southern Railroad, a Class I freight railroad that jointly owns Conrail with CSX Transportation.

“Notice of Claim” or **“Claim”** means a notice submitted in the form of Annex F-1 according to the requirements of Section 15.5.a.

“Notice of Termination for Convenience” means a notice of termination issued pursuant to Section 42.4 that terminates the Contract at the sole discretion of CTA for reasons other than Contractor Default or Court Order.

“Notice to Proceed” means the written notice issued by the CTA to the Contractor authorizing the Contractor to begin the Work, or any specified part thereof in accordance with Section 7.2.b.

“Other CTA Project” means any Related Transportation Facility that is:

- a. constructed and operated and/or maintained by or on behalf of the CTA (other than by the Contractor); and
- b. not otherwise incorporated in the Project or part of the Site made available to the Contractor under the terms of this Contract.

“Owner’s Contingency Allowance” means the Allowance described in Sub Part 3.2.6 of Part 3.

“Part(s)” means any of Parts 1 through 7 of the Contract.

“Payment Bond” means the payment bond required to be in effect and maintained pursuant to Annex C.

“Performance Bond” means the performance bond required to be in effect and maintained pursuant to Annex C.

“Permanent” means Work that will remain at the completion of the Project as distinguished from “Temporary” construction that will be removed before Final Completion.

“Permit” means any consent, permit, clearance, authorization, approval, certification, notification, ruling, exemptions, variance, registration, filing, decision, order, license, right-of-way agreement, concession, grant, registration, franchise or qualification required or advisable under the applicable circumstances to be issued by, granted by, or made with any Governmental Authority in connection with the Work or the performance of any of the Contractor’s obligations under this Contract.

“Permit Fee” means any fee, expense, cost, charge or tax, however characterized, required to be paid in order to obtain any Permit.

“Permissible Area” means any area within which the Contractor is allowed to place structural foundation, substructure, and other elements to construct the Project as identified in Sub Part 3.6.4 of Part 3.

“Permitted Reorganization” means any Transfer which is not prohibited by Law or to a Person disqualified, suspended or debarred, or subject to a proceeding to suspend or debar, from bidding, proposing or contracting with any entity with jurisdiction, and which is or results from a Transfer of interests or reorganization in each case entirely within a group of Persons, including the Contractor, which are all under common Control so long as there is no substantive change in the individual, entity or group of entities that ultimately have (individually or collectively) control of the

Contractor and, following such Transfer or reorganization, the Contractor remains Party to this Agreement.

“Persistent Breach” has the meaning given to it in Section 34.4.

“Person” means any of a natural person, a corporation, a limited liability company, a trust, a partnership, a limited liability partnership, a joint stock company, a consortium, a joint venture, an unincorporated association, or any other entity recognized as having legal personality under the laws of the State, in each case as the context may require.

“PLA” has the meaning given to it in Section 20.1.

“Preferred Proposer” means the successful Proposer (as defined in the ITP) to which the Project was awarded by the CTA pursuant to the terms of the ITP.

“Product” means the materials, equipment and systems provided as part of the Permanent or Temporary Work

“Preliminary Schedule” means the schedule submitted by the Contractor establishing the detailed activities for the first 120 Days of the Project no later than 15 Days after the Notice to Proceed pending approval of the Baseline Schedule and meeting the requirements of Sub Part 2.1.6 of Part 2.

“Price Proposal” means the Contractor’s price proposal, which forms a part of the Proposal.

“Proceed Order” means a direction to the Contractor to proceed with Changed Work pursuant to Section 14.1.c.ii.

“Project” means the Project identified in the Project Requirements and generally described in Sub Part 3.1 of Part 3.

“Project Area” means the Site, and any other site or area impacted by the Work, including the public way and any properties adjacent to the Site.

“Project Closeout” means the last date on which all events required for Project Closeout have occurred in accordance with the Contract Documents, including Section 10.5 of this Part 1 and Sub Part 2.13 of Part 2.

“Project Element” means a distinct element of the Project which will be independently subject to the Project Element Substantial Completion process as such elements are described in Sub Part 2.13.2 of Part 2.

“Project Element Substantial Completion” means the satisfaction of all of the applicable conditions referenced in Section 10.2.b with respect to a Project Element.

“Project Information” means the Reference Documents, including the Base Case, and any other documents, information, reports or materials made available to the Preferred Proposer for information only pursuant to the ITP.

“Project Office” has the meaning given to it in Section 16.1.f.

“Project Records” has the meaning given to it in Section 33.3.

“Project Requirements” means Part 3 of the Contract.

“Project Standards” means:

- a. the requirements for materials, equipment, construction systems, standards and workmanship for the Work, for performance of related services, and technical and other specifications, codes and standards applicable to the Work, included or referenced in the Contract Documents;
- b. upon approval of the Final Design, all such requirements, specifications, codes and standards included or referenced therein; and
- c. any other requirements, specifications, codes and standards that applies to the Work as a result of the Contractor’s methods for performing the Work,

in each case excluding any Laws or Permits, or Reference Documents that are not expressly referenced by any other Contract Document.

“Project Website” means a project-dedicated electronic platform on the internet, provided and administered by the CTA, that utilizes the CTA’s web-based project management system for facilitating communications, collaboration and the exchange of data among project participants. The address of the site will be provided to the Contractor.

“promptly” will be construed in accordance with Section 1.2.c of Annex B.

“Proposal” means the Contractor’s Response to the RFP.

“Proposal Extracts” means those portions of the Contractor’s Proposal for the Project attached as Exhibit 1 to this Contract.¹⁰

“Proposal Schedule” means the preliminary project schedule, submitted as Part of the Proposal in response to the ITP.

“Punchlist” means each Punchlist with respect to a Project Element and Substantial Completion in the form Approved and transmitted by CTA to Contractor in accordance with Sub Part 2.13.3 of Part 2.

“Railroad” means the entities identified in Sub Parts 6.27 through 6.32 of Part 6, as the context may require.

“Railroad Infrastructure” means the tracks, bridges, and systems used for rail traffic in the vicinity of the Site owned and/or operated by the Railroads.

“Railroad Utilities” means the overhead and underground lines owned by the Railroads and used for power, signal and communication purposes by the Railroads.

“Record Documents” means plans and specifications, updated by the “Responsible Professional” (as referenced in Sub Part 2.4.7 of Part 2) in searchable pdf format to incorporate changes made or reported by the Contractor on the “Issued for Construction” (as referenced in Sub Part 2.4.2.F of Part 2) documents including design advanced by Contractor after such Issued for Construction documents were completed. Record drawings also include as-built versions of all shop drawings approved by the Responsible Professional. Record documents developed using CAD will also be provided in their native format.

“Record of Third-Party Coordination” means each record of coordination, including contract or agreement, with a third-party related to the Project and the Work, the terms of which are set out in Part 6 (including its Appendices) or provided as a Reference Document, or which are otherwise added, modified, or amended pursuant to Section 18.4.b.

“Reference Date” means *[insert the Proposal Deadline or, if after such deadline, the date on which the Proposer submitted its final update to its Proposal (if any) in response to a CTA request]*.

“Reference Document” means those documents listed in Part 7 of the Contract.

¹⁰ The extent of incorporation of the selected Contractor’s Proposal (and associated ATCs) submitted in response to the ITP will be determined by the CTA acting reasonably, taking into account (but not being bound by) input from the Contractor.

“Related Transportation Facility” means any existing and future track, station, bridge structure or other road or rail transportation facility, including:

- a. directly related component facilities (including Railroad Infrastructure); and
- b. upgrades and expansions thereof,

that, in any such case, are or will be connecting with, or crossing under or over, the Project, but which is not (at the relevant time) a part of the Project under the Contractor’s control or subject to its rights of access and use pursuant to this Contract.

“Relief Event” has the meaning given to it in Section 15.1.a.

“Responsible Professional” means a licensed professional engineer or architect in the State of Illinois for the type of design work being performed under their supervision.

“Revenue Service” means the operation of trains by CTA for the transportation of passengers.

“RFP” means the Request for Proposals including all attachments, exhibits and addenda.

“Red Line Extension” or **“RLE-DB”** means the Project.

“Responsible Professional” means the persons described in Sub Part 2.4.6 of Part 2.

“RLE Mitigation Tracking Matrix” means the matrix of NEPA mitigation measures that the Project is required to provide as a condition of federal funding identified in Appendix 3L.

“Schedule” or **“schedule”** or **“schedules”** means, initially, the Preliminary Schedule and, once approved pursuant to Sub Part 2.1.6 of Part 2, the Baseline Schedule and any CTA approved update thereto.

“Schedule of Values” or **“SOV”** means the detailed cost breakdown of all items of work, labor and materials described in Sub Part 2.1.8. of Part 2.

“Schedule Recovery Plan” means the plan submitted by the Contractor pursuant to Section 9.4 to ensure that all Work will be completed by the applicable Milestone Deadlines, except as otherwise provided in Section 9.4.c.

“Shared Contingency Allowance” means the Allowances described in Sub Part 3.2.5 of Part 3 as the Third Party and Railroad Delay Event Shared Contingency Allowance and in Sub Part 3.2.3 of Part 3 as the Railroad Shared Allowance.

“Site” means all areas made available to the Contractor by the CTA as identified in Sub Part 3.6 and Appendix 3E of Part 3, and any Interim Areas.

“State” means the State of Illinois.

“Stored Material” has the meaning given to it in Sub Part 2.1.8.D.3.a.i of Part 2.

“Subcontract” means either an agreement between the Contractor and a Subcontractor, or between two Subcontractors with respect to the Work.

“Subcontractor” means any trade contractor or other person or entity with whom the Contractor subcontracts to provide any part of the Work and all Subcontractors of any tier, suppliers, and material suppliers, whether or not in privity with Contractor, including architects, engineer or other design professional retained to provide architectural, design, engineering or similar professional services for the Project.

“Submittal” means any Contractor submission to the CTA made pursuant to this Contract as further described in Sub Part 2.8 of Part 2.

“Substantial Completion” means the satisfaction of all the applicable conditions referenced in Section 10.2.b.

“Substation Occurrence” means each of the occurrences described in Sub Part 3.11.7 of Part 3.

“Technical Requirements” means Part 4 of the Contract.

“Temporary” means Work that will not remain at Final Completion of the Project but will be utilized for CTA operations during some point in the Project. Temporary elements must sustain the rigors of operating transit for the duration of use. Requirements for “temporary” construction are the same as those for “permanent” unless otherwise expressly described.

“Third Party Coordination” means Part 6.

“Third Party Delay” has the meaning given to it in Section 15.1.c.

“Time Impact Analysis” means a Schedule analysis which demonstrates the impact of the Changed Work to the Milestones and to the Schedule which will use the current Schedule as the basis for assessment of the time impacts of Changes or Delays. The Time Impact Analysis will include a fragnet diagram that shows how the Contractor proposes to incorporate the changed work in the schedule, and how it impacts the current Schedule’s critical path. The Contractor will

be responsible for requesting time extensions based on the fragnets impact on the critical path. The diagram must be tied to the main sequence of schedule activities, to enable the CTA to evaluate the impact of the changed work on the scheduled critical path.

“Track Access Occurrences” means each of the occurrences described in Sub Part 3.11.2 of Part 3.

“Training Program Graduate” or **“TPG”** has the meaning given to it in Section 25.5.

“Transfer” means:

- a. any sale, transfer, assignment, conveyance, or other disposal of any direct or indirect legal, beneficial, or equitable ownership interests in a Person or changes in economic interests; or
- b. any agreement, whether or not subject to the occurrence of any condition or exercise of any right or option, to effect any transaction specified in a. of this definition, including any pledge, mortgage, grant of any security interest, lien or other encumbrance.

“Unexpected Endangered Species” has the meaning given to it in Section 15.1.b.

“Unexpected Historically Significant Remains” has the meaning given to it in Section 15.1.b.

“Unexpected Rail Interruption” means each of the occurrences described in Sub Part 3.11.2 of Part 3.

“Unforeseen Environmental Impairment” has the meaning given to it in Section 15.1.b.

“Unforeseen Geological Impairment” means any subsurface geological, groundwater or structural condition or obstruction encountered within a Permissible Area:

- a. that differs materially from those specified or expressly anticipated in:
 - i. the “Geotechnical Data Report” and related attachments contained in Appendices 4K and 4L to Part 4; and
 - ii. “Geotechnical Baseline Report” initially in the form contained in Appendix 4K to Part 4 and, once completed and approved, in the form of the “Geotechnical Baseline Report for Construction” described in Sub Part 4.3 of Part 4;

- b. that was not otherwise disclosed to or known by the Preferred Proposer or a Contractor-Related Entity; and
- c. is not a kind of condition for which assumptions are established in either the "Geotechnical Baseline Report" in the form contained in Appendix 4K to Part 4 or, once completed and approved, in the form of the "Geotechnical Baseline Report for Construction" described in Sub Part 4.3 of Part 4 and which otherwise could not have reasonably been anticipated by the Preferred Proposer or any Contractor-Related Entity undertaking due diligence pursuant to Good Industry Practice on the basis of the RFP, the Reference Documents, and following approval of the "Geotechnical Baseline Report for Construction" described in Sub Part 4.3 of Part 4, under the terms of this Agreement,

in each case prior to the Reference Date or, if later, the date of approval of the "Geotechnical Baseline Report for Construction" described in Sub Part 4.3 of Part 4, provided that, for certainty, the Contractor shall bear the risk, including of cost and delay, for any deviations it makes in its assumptions regarding conditions relative to the assumptions for such conditions established in either the "Geotechnical Baseline Report" in the form contained in Appendix 4K to Part 4 or, once completed and approved, in the form of the "Geotechnical Baseline Report for Construction" described in Sub Part 4.3 of Part 4.

"Unforeseen Utility Impairment" means any Utility or CTA Underground Systems Infrastructure encountered within a Permissible Area, which prevents or limits the Contractors ability to construct a physical component of the Work after considering other practicable alternative locations and:

- a. that differs materially from that shown in Appendix 3I (Existing Utility Matrix and Drawings) or in the Reference Documents;
- b. that was not moved or installed at a time when Contractor had responsibility for such portion of the Site;
- c. that:
 - i. was not otherwise disclosed to or known by the Preferred Proposer or a Contractor-Related Entity; and

- ii. could not have reasonably been anticipated by the Preferred Proposer or any Contractor-Related Entity undertaking due diligence pursuant to Good Industry Practice on the basis of the RFP and the Reference Documents, in each case prior to the Reference Date; and which for such purposes the following will be deemed to have been known where such Utility:
 - A. is located at or less than 6 in. distance from the horizontal centerline to the horizontal centerline for SUE Level A; 24 in. distance from the horizontal centerline to the horizontal centerline for SUE Levels B and C, or 60 in. distance from the horizontal centerline to the horizontal centerline for SUE Level D, for each by reference to the location indicated therefore in Appendix 3I (Existing Utility Matrix and Drawings) or in the Reference Documents; and/or
 - B. is located at or less than 18 in. distance from the vertical centerline to the vertical centerline from a depth of 60 in. for water, 18 in. distance from the vertical centerline to the vertical centerline from a depth determined from a line between the adjacent MHs for sewer, 24 in. distance from the vertical centerline to the vertical centerline from a depth of 36" for electric and telecom, all being subject to reasonable variations due to known obstructions, for each by reference to the location indicated therefore in Appendix 3I (Existing Utility Matrix and Drawings) and in the Reference Documents; and/or
 - C. has an actual nominal diameter within 2 nominal pipe sizes of the size indicated for single pipes and conduits or 20% of the number of conduits in ductbanks, for each by reference to the size and number indicated therefore in Appendix 3I (Existing Utility Matrix and Drawings) and in the Reference Documents; and/or
 - D. is not of a fundamentally different material or construction of the type indicated therefore in Appendix 3I (Existing Utility Matrix and Drawings) and in the Reference Documents; and

- E. with respect to CTA Underground Systems Infrastructure, was not located by the CTA as provided in Sub Part 2.6.4 of Part 2.

“Unreasonably Withheld” means the unreasonably withholding, delaying or making subject to the imposition of unreasonable conditions of any consent, approval or like assent by a person, and “unreasonably withhold” will be similarly construed.

“UP” means the Union Pacific Railroad Company, an operating company of the Union Pacific Corporation.

“Utility” or **“Utilities”** means any public or private utility and facility, including any facility relating to electrical energy, telephone and telecommunications, radio, television, and/or public transportation installations, and the conveyance, distribution and supply of water, sewer, heat, gas, steam, petroleum products, and all piped installations (excluding, for avoidance of doubt, any CTA Underground Systems Infrastructure and Railroad Infrastructure).

“Warranty Period” means, with respect to any Project Element (or, as applicable with respect to an extended period under paragraphs b., c., or d. of this definition, any part thereof), a period commencing on the date of Project Element Substantial Completion of such Project Element and ending on the latest of:

- a. the first anniversary of Substantial Completion;
- b. where the Contract Documents provide for a longer period with respect to all or any part of a Project Element, the initial Warranty Period will be such longer period with respect to such Project Element or relevant part thereof;
- c. with respect to any correction, addition, repair or replacement work performed by the Contractor pursuant to this Contract, the first anniversary of the completion of such work in full satisfaction of the Contractor’s obligations; and
- d. with respect to latent Defects (including Defects in any correction, addition, repair or replacement work previously completed by the Contractor pursuant to this Contract), the Warranty Period will be the longest period allowed by Law.

“Weather Day” means a Day on which severe weather (other than a tornado) directly affecting any part of the Site reduces by 50% or more Contractor's scheduled Work and on which such weather prohibits work on Critical Path activities.

“Work” means all of the design, construction and other work to be undertaken by the Contractor for the Project as set out in the Contract Documents including, Design/Preconstruction Work, demolition and construction services, supervision, administration and coordination services, and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, insurance, bonds, obtaining Permits, changes due to building codes and Permits, licenses, tests, inspections, surveys, studies, and other items, work and services that are necessary or appropriate for the full performance and completion of the requirements of the Contract. Work also includes that which is produced, constructed or built pursuant to the Contract, and may be used to refer to the whole or a part of the Project. The Work also includes completion of any and all off-site work and improvements that are reasonably required in order for the Contractor to complete the Work including any work that is not specifically identified in the Project Requirements, the Project Standards, the Contract, the Proposal, the Final Design, or any design submittal, but is reasonably inferable therefrom.

“Work Product” has the meaning set out in Section 39.1.a.

“Workforce Initiatives Special Conditions” has the meaning set out in Annex D-1.

“Workforce Goals” has the meaning set out in Annex D-1.

“Worklist” means the Worklist with respect to all Work on the Project maintained by the Contractor in accordance with Sub Part 2.12.6 of Part 2.

Annex B: Construction of Contract

1. Rules of Contract Document Interpretation

1.1. Headings and Other Internal References

For purpose of this Contract:

- a. headings are inserted for convenience of reference only and will not affect interpretation of this Contract;
- b. except as the context may otherwise require, the words “herein”, “hereof,” and “hereunder”, and words of similar import, will be construed to refer to this Contract in its entirety and not to any particular provision of it;
- c. when the term “Part” is used and followed by a number only, it refers to one of the following as applicable: “Part 1” references this Design-Build Agreement; “Part 2” references the General Requirements; “Part 3” references the Project Requirements; “Part 4” References the Technical Requirements; “Part 5” references the Maintenance Requirements; “Part 6” references Third-Party Coordination; and “Part 7” references the Reference Documents and
- d. except as the context may otherwise indicate or require, a reference to any Section, Annex, Sub Part, Exhibit, Schedule or Appendix made within a particular Part is a reference to such Section, Annex, Sub Part, Exhibit, Schedule or Appendix of such Part.

1.2. Common Terms, Phrases and Forms of address

For purpose of this Contract:

- a. except as the context may otherwise require, the singular includes the plural and vice versa;
- b. words preceding “include”, “includes”, “including” and “included” will be construed without limitation by the words that follow;
- c. the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances; and
- d. except as otherwise expressly provided or as the context may otherwise require, wherever the imperative form of address is used, such as (by way of example only)

“perform the excavating,” “provide equipment required,” “remove obstructions encountered,” and “furnish and install reinforcing steel bars,” it is understood and agreed that such direction is addressed to the Contractor.

1.3. References to Agreements, Documents, Law, and Permits

For purpose of this Contract, except as otherwise expressly provided in and subject to Section 3 of the Contract, or as necessary to determine the occurrence of a Change in Law, a reference:

- a. to any Contract Document, or any other agreement or document (in each case including any schedules, annexes or exhibits thereto, or the equivalent), including any Project Standards, will be construed to be a reference to such Contract Document, or other such agreement or document, as it may be amended, varied, novated, modified, supplemented or replaced from time to time pursuant to its terms and, as applicable, the terms of this Contract; and
- b. to any Law or Permit will be construed as a reference to such Law or Permit as amended, modified, replaced, interpreted, consolidated or re-enacted (as applicable) from time to time.

1.4. References to Persons

For purpose of this Contract, except as otherwise expressly provided or as the context may otherwise require:

- a. words importing persons will include firms, associations, partnerships, trusts, corporations, joint ventures, and other legal entities, including Governmental Authorities and other public bodies, as well as natural persons;
- b. references to any person (taking into account the foregoing) will be deemed to include any person succeeding to the rights, duties, and obligations of such persons or entities, as applicable, in accordance with the terms and conditions of this Contract;
- c. words of gender will be deemed and construed to include correlative words of other genders; and

- d. the words “they”, “them”, “themselves,” and “their” when used to refer to a single Person or a grammatically singular antecedent will be construed to mean an individual of unknown gender or whose gender is irrelevant.

1.5. References to Currency and Media

For purpose of this Contract, except as otherwise expressly provided or as the context may otherwise require:

- a. all statements of, or references to, dollar amounts or money, including references to “\$” and “dollars”, are to the lawful currency of the United States of America; and
- b. all references to “digital” or “electronic” media or communications will include all technology or services having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities that are used to facilitate the storage or dissemination of data and information as of the Contract Date, and all other successor forms of technology that serve the same or equivalent purposes which come into existence or widespread use after the Contract Date.

1.6. References to Responsibility for Costs and Expenses

- a. For purpose of this Contract, except as otherwise expressly provided or as the context may otherwise require, references to a person being required to perform a service or obligation “at its cost and expense” (or words of substantially similar meaning) will be deemed to:
 - i. include as costs and expenses all relevant internal costs and all relevant third-party fees, costs and expenses incurred by such person, including for those of external legal counsel and other external advisors; and
 - ii. refer to such person bearing all such costs and expenses, without being entitled to reimbursement by the other party, including in the case of the Contractor on the basis that the Contract Price includes full compensation for any and all such costs and expenses.
- b. Except as otherwise expressly provided in this Contract, each of the CTA and the Contractor will bear its own costs and expenses in connection with the preparation, negotiation, execution, and performance of this Contract and all other related agreements and documents.

1.7. Deadlines Occurring on Non-Business Days

Except:

- a. to the extent otherwise expressly provided in this Contract or required by the CTA acting in accordance with the Contract;
- b. with regard to deadlines, the failure to achieve which would expressly result in a Contractor Default or would result in the imposition of liquidated damages pursuant to Sub Part 3.9.5 of Part 3; or
- c. with regard to field work or other activities that by their nature must occur on non-Business Days,

whenever this Contract requires either party to make any payment, or provide or deliver any consent, approval or like assent, notice, deliverable, comment or any information or material, or otherwise complete any action or performance, in each case on or no later than a date that is not a Business Day, then such deadline will automatically be extended to the next Business Day to occur after such otherwise applicable deadline.

2. Rules Governing Consents, Approvals and Like Assents

2.1. Default Standards for Consents, Approvals and Like Assents

Where this Contract requires one party to provide a consent, approval, or like assent to the other party and no express standard for such consent, approval, or like assent is given (including through the use of the terms “Accept”, “Approve”, “unreasonably withheld”, “discretion”, or the equivalent), then such consent, approval or like assent will be in writing and:

- a. with respect to the Contractor, not be unreasonably withheld; and
- b. with respect to the CTA, be in its discretion.

2.2. Limited Contractor Reliance

- a. The Contractor may rely on Acceptances and Approvals, any other consent, approval or like assent, and any notice, only for the limited purpose of establishing that the Acceptance or Approval, or any other consent, approval or like assent, occurred, or any notice was given.
- b. Except as otherwise expressly provided in this Contract, no:

- i. Acceptance or Approval, other consent, approval or like assent, or notice;
 - ii. comment, review, certification, concurrence, verification or oversight;
 - iii. payment for, or acceptance of, the whole or any part of the Work;
 - iv. any extension of time; or
 - v. any possession taken by the CTA,
- or the absence of any of the foregoing, will in any case:
- vi. constitute acceptance of materials or any part of the Work as satisfying the requirements of this Contract;
 - vii. relieve the Contractor from its obligations, or diminish the Contractor's liability, under this Contract, including with respect to any Nonconforming Work, Defect or Loss;
 - viii. prevent the CTA from subsequently exercising its rights under this Contract without being bound by the manner in which they previously exercised (or refrained from exercising) such rights; or
 - ix. constitute a waiver of any rights under this Contract of any legal or equitable right of the CTA or any other person.

3. Resolution of Conflicts Among, and Prioritization of, Contract Documents and Terms

3.1. General Standards for Contract Document Interpretation and Application

The Contractor is bound by all Parts of the Contract, and all annexes and exhibits thereto, whether or not expressly referenced in this Annex B or other Parts of the Contract. The parties intend that the various Contract Documents will be complementary, each with itself and with each other Contract Document, and to describe the construction of the completed Project. Therefore, where provisions in two or more of the Contract Documents are expressly or in accordance with their context complementary, the more detailed provision will control over the more general provision.

3.2. Order of Precedence

- a. Notwithstanding anything to the contrary contained in any Contract Document, in the event of any conflict, ambiguity or inconsistency between or among any

applicable requirement under Law and any other requirement of any Contract Document, the applicable requirement under Law will take precedence.

- b. In case of any conflict, ambiguity or inconsistency that cannot otherwise be resolved between or among the provisions of any of the Contract Documents, in each case by reading all relevant provisions as mutually explanatory of one other, and subject to Sections 3.2.c and 3.3 of this Annex B, the following order of precedence will govern:¹¹
- i. executed Change Orders approved by the Chicago Transit Board and Amendments will prevail over such portions of the Contract Documents that they modify or amend, and among Change Orders and Amendments with respect to the same matters or provisions the more recently executed Change Order or Amendment will prevail;
 - ii. this Part 1 (General Terms) excluding the Proposal Extracts;
 - iii. the ATC Extracts except to the extent otherwise expressly provided in accordance with their terms and the terms of the CTA's ATC approvals;
 - iv. Part 3 (The Project Requirements) and its appendices;
 - v. Part 2 (The General Requirements) and its appendices;
 - vi. Part 4 (The Technical Requirements) and its appendices;
 - vii. Part 5 (The Maintenance Requirements);
 - viii. Part 6 (Third Party Coordination) and its appendices;
 - ix. the Final Design;
 - x. the Baseline Schedule; and
 - xi. all other Proposal Extracts.
- c. Furthermore, except as otherwise expressly provided or as the context may otherwise require, with respect to the Contract Documents:

¹¹ The following order of precedence assumes that ATC concepts will be directly integrated into the Contract provisions they amend, and that the remainder of the ATC Extracts will be procedural in nature and therefore can be included at a lower order of priority. CTA reserves the right to require some or all ATC Extracts to appear at a higher order of priority (but below the level of Change Orders) to the extent necessary to reflect the intent of the relevant ATC.

- i. in the event of any conflict, ambiguity or inconsistency between or among the provisions of any Contract Document with an equal order of precedence, the most stringent requirement will take precedence as determined pursuant to Section 3.2.a of this Annex B, the most stringent requirement will take precedence;
- ii. in the event of any conflict, ambiguity or inconsistency between a Project Standard and the provisions of the Contract Document within which such Project Standard is referenced, the Contract Document will govern;
- iii. additional or supplemental requirements that the Contractor is required to comply with pursuant to any Contract Document with a lower order of precedence relative to other parts of the Contract Documents as determined pursuant to Section 3.2.b of this Annex B will be given effect (except to the extent such requirements conflict or are inconsistent with, or otherwise would create an ambiguity in relation to, the provisions contained in a part of any Contract Document with a higher order of precedence); and
- iv. in case of a discrepancy between:
 - A. a picture or diagram in a drawing and the written dimensions written thereon, the written dimensions will govern; and
 - B. between small and large-scale drawings, the larger scale drawing will govern.

3.3. Special Provisions with Respect to Proposal Extracts, ATCs and Final Design

- a. Incorporation into this Contract of any part of the Proposal, including the Proposal Extracts, will not be deemed as Acceptance or Approval of any part of the Proposal by CTA as conforming with the requirements of this Contract.
- b. If any part of the Proposal Extracts (including the ATC Extracts) and/or the Final Design includes statements, terms, concepts or designs that can reasonably be interpreted as commitments or offers acceptable on award of the Project:
 - i. to provide higher quality items, materials or products than otherwise required by this Contract;

- ii. to adhere to more stringent requirements than otherwise required by this Contract; or
- iii. to perform services or meet standards in addition to or better than those otherwise required under this Contract,

then the Contractor's obligations hereunder will include compliance and performance in accordance with such statements, terms, concepts and designs.

- c. The Contractor is responsible for any discrepancies between the Project Standards and the Proposal Extracts, for any omissions from the Final Design and for any misdescription of details of Work that are necessary to carry out the intent of the Contract Documents.
- d. Furthermore, omissions from the Project Standards or the misdescription of details of Work that are necessary to carry out the intent of the Contract, or that are customarily performed by a contractor under equivalent circumstances, will not relieve the Contractor from the obligation to perform such omitted Work or otherwise entitle the Contractor to additional time for performance or compensation.
- e. With respect to any ATC:
 - i. the Contractor acknowledges that it will not be entitled to make any claim against or otherwise seek any extension of time, additional compensation, or relief from CTA, which it would otherwise be entitled to make or seek in connection with any risk, cost, liability or obligation that arises due to the Contractor's use and implementation of an ATC, to the extent the associated risk was made the Contractor's liability pursuant to a stated condition given in CTA's approval of such ATC;
 - ii. statements, terms, concepts or designs set out in any ATC apply solely with respect to the specific locations noted or the detailed components expressly defined;
 - iii. statements, terms, concepts or designs set out in any ATC are subject to any stated conditions given in CTA's approval of such ATC; and

- iv. the Contractor acknowledges that elements of ATCs are conceptual and agrees it is responsible for any errors, omissions or inconsistencies in, among or resulting from any ATCs and for any additional Work required as a result of design development in order to meet all Contract requirements as a result of the implementation of such ATC.

3.4. Interpretation and Resolution of Conflicts

- a. Each Party will notify the other Party promptly after it identifies or becomes aware of any conflict, ambiguity, or inconsistency of a type described in Section 3.2 or 3.3 of this Annex B;
 - i. between or among any Contractor submittal made in accordance with this Contract and the provisions of any Contract Document; or
 - ii. regarding the interpretation of any Contractor submittal made in accordance with this Contract.
- b. In the event of any conflict, ambiguity, or inconsistency:
 - i. of a type described in Section 3.2 or 3.3 of this Annex B that requires resolution pursuant to the Dispute Resolution Procedures, the parties agree that the relevant terms of this Contract (excluding the Proposal Extracts) will not be construed against the person that prepared them and the parties waive any Law with contrary effect which would otherwise be applicable in connection with the construction and interpretation of this Contract; and
 - ii. of a type described in Section 3.4.a.i or 3.4.a.ii of this Annex B that relates to a “Design Submittal” or “Construction Submittal” (as such terms are described in, respectively, Sub Parts 2.8.11 and 2.8.12 of Part 2), the CTA may in its discretion notify the Contractor of its determination regarding such reconciliation, which determination will be binding.

Annex C: Insurance and Bonding Requirements

Part A: General Insurance Requirements:

Contractor, on behalf of itself and all other Contractor-Related Entities, will take out and maintain, or cause to be taken out and maintained:

- (a) a Contractor-Controlled Insurance Program (“CCIP”) wrap-up policy as described in Part B (*Contractor’s Wrap-Up Insurance Program*) of this Annex C; and
- (b) insurance for coverage not included in the CCIP for standard and customary items as described in Part C (*Coverages Outside of CCIP*) (“Other Insurance”) of this Annex C as and when required in accordance with such Part C.

The following Part A requirements apply to all such required insurance. In the case of any conflict, ambiguity or inconsistency between the language in Part A of this Annex C and the language in Parts B or C of this Annex C, the most restrictive requirement applies.

1. Insured.

1.1. CCIP Requirements

CTA must be included as a Named Insured on all CCIP insurance policies except workers compensation from policy inception.

Contractor will require all Subcontractors to be covered by the CCIP on the same terms as Contractor itself, excluding Subcontractors performing only the following Work (provided that the CTA reserves the right to revise the foregoing in its discretion):

- (a) Work that is performed exclusively off Site;
- (b) Professional services of architects, engineers, surveyors, and soil and other testing or inspection companies;
- (c) Asbestos abatement;
- (d) Hazardous Materials remediation and removal;
- (e) Drop off and pick up of sanitary disposal facilities;
- (f) Suppliers, fabricators, dealers, truckers, haulers, drivers and others who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment to or from the Site; or
- (g) Any other entity, or category of Subcontractors, approved by the CTA in writing (such consent not to be unreasonably withheld, delayed or conditioned).

For any Subcontractor excluded from the CCIP, Contractor must send, at least 15 days in advance of such Subcontractor commencing work, certificates of all Other Insurance in compliance with the requirements of Part C (*Coverages Outside of the CCIP*) of this Annex C and Section 10 (*Certificates, Policies and Verification of Coverage*) of Part A of this Annex C. If such exclusion requires CTA consent, then such certificate will be accompanied with a written justification for why such Subcontractor should be excluded from the CCIP, and Contractor will further supply any such other information and materials as the CTA may reasonably require.

CTA reserves the right to require project specific limits (such as a per project aggregate) for Other Insurance provided by any Subcontractor excluded from the CCIP.

All entities listed as required additional insured in Section 16 ("Required Additional Insureds") must be named as an Additional Insured on all CCIP insurance policies except workers compensation, under coverage at least as broad as the 07/2004 Insurance Services Office (ISO) forms CG2010 and CG2037, or their equivalent, and contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the insurance policy generally, including, for certainty, any limitation, condition, restriction or exception to coverage due to the absence of a direct contractual relationship between the additional insured and the named insured or, if different, the Person that obtained the insurance.

1.2. Other Insurance Requirements (Insurance not included in the CCIP)

For the Other Insurance, except workers compensation and professional liability, each of the CTA, the City of Chicago and the Indemnified Parties and all entities listed as Required Additional Insureds must each be an Additional Insured under coverage at least as broad as the 07/2004 ISO forms CG2010 and CG2037, or their equivalent (except as approved by CTA), and contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the insurance policy generally, including, for certainty, any limitation, condition, restriction or exception to coverage due to the absence of a direct contractual relationship between the additional insured and the named insured or, if different, the Person that obtained the insurance.

2. Term

Contractor must continuously keep in force insurance policies from and after Contract execution through Final Completion, unless otherwise specified, including the applicable

ongoing and completed operations endorsements. Contractor must not commence Work until and unless it has obtained and maintained all required CCIP and Other Insurance, has furnished original certificates of insurance evidencing the required coverage and such insurance has been verified by Contractor and CTA as complying with these requirements, nor may Contractor allow any other Contractor-Related Entity to commence work under its Subcontract (as applicable) or otherwise until such other Contractor-Related Entity is covered by the CCIP, except for those Contractor-Related Entities permissibly excluded from the CCIP which have supplied certificates of insurance evidencing the required Other Insurance coverage and Contractor has verified the coverage by review of such certificates.

3. Carriers

All insurance coverage placed through the CCIP and as Other Insurance must be placed and maintained with insurance carriers that:

- (a) are authorized or approved to do business in the State of Illinois;
- (b) for the CCIP or the project professional liability policy, have a rating of at least "A X" in the last available A.M. Best's Rating Guide, and for any Other Insurance except the project professional liability policy, have a rating of at least "A VIII" in the last available A.M. Best's Rating Guide;
- (c) are not Insolvent or the subject of a government order or directive limiting its business activities as related to or affecting any insurance policies placed or to be placed with such insurer; and
- (d) with respect to the Required Additional Insureds, meet any applicable requirements of such Required Additional Insured.

If an insurance carrier providing any insurance policy ceases to satisfy all the above requirements, then the Contractor must:

- (x) promptly notify the CTA;
- (y) within five (5) days of such event provide such additional insurance as is reasonable under the circumstances to adequately protect the CTA and the Project on an interim basis, including the extension of the corporate policies of a Contractor-Related Entity to the Project; and

- (z) within thirty (30) days of such event, substitute other and sufficient carrier(s) that satisfy such requirements unless the CTA otherwise Approves the continued maintenance of such policy with the existing insurer.

4. Primary and Non-contributory Limits

The limits provided in any insurance policy, including policies placed through the CCIP and as Other Insurance, will not be deemed to constitute a limitation of the Contractor's liability for any claim. Limits of insurance in excess of Contract requirements may be obtained at the discretion of the Contractor without cost or expense to CTA. Such additional insurance coverages and/or higher limits will also inure to the benefit of the CTA and other named and additional insureds required herein.

All coverage specified in the CCIP or required as Other Insurance must provide coverage that is primary insurance with respect to the named insureds, additional insureds, and loss payees, and their respective members, directors, officers, employees, agents and consultants, as their interests may appear, and must continue through the relevant ongoing and completed operations period. For the avoidance of doubt, this includes that the excess liability coverage under the CCIP is primary with respect to the CTA.

Any Other Insurance or self-insurance that is held or maintained by such Persons outside of that required pursuant to this Contract will be in excess of such insurance and will not contribute to it.

5. Cancellation

All insurance policies must provide that the insurer cannot cancel, terminate, suspend or lapse, or, with respect to the CCIP, reduce or materially change, the insurance afforded by the policy unless 60 days for the CCIP, or 30 days for Others Insurance written notice of such cancellation, termination, suspension, lapse, reduction or changes has been mailed to the CTA and, with respect to the City of Chicago or any other Required Additional Insured, such Required Additional Insured. This provision must be endorsed to all policies. Such endorsement must not include any limitation of liability of the insurer for failure to provide such notice.

6. Occurrence Policies

Each policy must provide coverage on an "occurrence" basis and not a "claims made" basis, except for professional liability or as expressly Approved by the CTA, and no policy

issued on an occurrence basis will have any sunset clause requiring reporting within a specified period of time.

7. Support of Indemnification

No insurance requirement under this Contract will be interpreted to relieve Contractor of any obligation under any Contract Document. In particular, (a) the insurance coverage that the Contractor is required to obtain and maintain supports but does not limit Contractor's indemnification obligations under this Contract and (b) the Contractor's indemnification obligations under this Contract do not limit the rights of the insured parties to the coverage afforded by their insured status. The insurance to be carried will in no way be subject to limitations, if any, expressed in any indemnity provision in the Contract.

8. Waiver of Subrogation

All named or additional insureds under the CCIP waive all rights of subrogation and recovery, each against the other, to the extent of any loss or damage, which is insured under the CCIP, except such rights as they may have to the proceeds of such insurance.

All of the Other Insurance policies, except professional liability, must explicitly waive subrogation rights against the CTA, Indemnified Parties and the City of Chicago and other Required Additional Insureds, and in each case their employees, elected officials (as applicable), agents or representatives.

Endorsements showing waivers of subrogation must be provided.

Contractor will require all other Contractor-Related Entities to similarly waive their rights of subrogation and recovery in each of their respective Subcontracts (or otherwise as applicable) with respect to the Work.

9. Premiums, Deductibles and Self-Insured Retentions

Contractor will be responsible for payment of all premiums for all insurance required hereunder; neither CTA, the City of Chicago, any Required Additional Insured nor any their applicable Indemnified Parties will have an obligation to pay any premium. There shall be no recourse against the CTA, the City of Chicago, any Required Additional Insured nor any of their applicable Indemnified Parties for payment of premiums or other amounts with respect to the insurance required to be or otherwise provided by Contractor hereunder, except as specified herein.

The selection of an appropriate deductible with respect to all insurance required hereunder is the Contractor's responsibility, subject to the restrictions herein. All deductibles must be declared to CTA on the applicable insurance certificate. Contractor further agrees that for each claim, suit or action made against insurance required hereunder, to the maximum extent permitted by law, Contractor is solely responsible for all deductibles, self-insured retentions and amounts in excess of the coverage provided for all named and additional insured parties, including Contractor, Contractor Related Entities and Indemnified Parties. Any self-insured retentions must not exceed \$500,000 (per occurrence) without CTA's prior consent, and must not exceed any limitations of a Required Additional Insured with respect to that Required Additional Insured. At CTA's discretionary option, the insurer must either reduce or eliminate such self-insured retentions with respect to CTA and other named or additional insured parties, or otherwise Contractor will procure a bond in form and substance Approved by the CTA guaranteeing payment of losses and related investigations, claims administration and defense expenses.

10. Certificates, Policies and Verification of Coverage

10.1. CCIP (and Project Professional Liability Policy)

Upon binding of the CCIP, and at each subsequent renewal term, the Contractor must no later than (a) ten Business Days prior to the effective date of any required insurance or (b) ten Business Days following written request from the CTA, deliver to the CTA a written certificate of insurance for CTA to approve and verify as complying with these requirements. The required certificates must be either personally and manually signed by the authorized representative of the insurance company shown on the certificate, or signed by electronic signature in accordance with industry standard electronic versions of the ACORD certificate, and either bear a notation evidencing payment of the premium thereof, or either be accompanied by evidence of payment of premium or such evidence to be submitted within 30 days.

Within 90 days of the effective date of the CCIP or the project professional liability policy, or within 90 days of the effective date of any renewal term, certified true and exact copies of each of the insurance policies including all coverage endorsements must be provided to CTA.

Contractor is responsible for ensuring all covered parties are appropriately enrolled for coverage under the CCIP and the project professional liability policy.

10.2. Other Insurance (Insurance not included in the CCIP)

Contractor must no later than (a) ten Business Days prior to the effective date of any required Other Insurance policy or commencement of renewal term and/or (b) ten Business Days following written request from the CTA deliver to the CTA a written certificate of insurance for CTA to approve and verify as complying with these requirements. The required certificates must be either personally and manually signed by the authorized representative of the insurance company shown on the certificate, or signed by electronic signature in accordance with industry standard electronic versions of the ACORD certificate, and either bear a notation evidencing payment of the premium thereof, or either be accompanied by evidence of payment of premium or such evidence to be submitted within 30 days.

Within the later of 30 days of any request from CTA, and 90 days of the effective date of the policy, certified true and exact copies of each of the insurance policies including all coverage endorsements must be provided to CTA, with such request by CTA to review policy terms only in the event of an occurrence or potential occurrence under the policy, a claim or potential claim under the policy, the issuance of a reservation of rights with respect to the policy, or as may arise during discovery during the claims process.

For Other Insurance coverage, Contractor is responsible for ensuring all Contractor-Related Entities have the appropriate insurance.

Through submitting any certificate of Other Insurance to the CTA, Contractor certifies that it has reviewed and verified that the insurance certificate and applicable endorsements, whether from the Contractor, a Subcontractor, or other Contractor-Related Entity, meet all applicable requirements.

10.3. Independent Obligation

In no event will the failure of the CTA to receive any insurance certificate or to demand receipt thereof be construed as a waiver of Contractor's obligations to obtain any insurance. The obligation of the Contractor to procure and maintain any required insurance is a separate responsibility of the Contractor and independent of the duty to furnish a certificate of insurance of any such insurance policies.

11. Prosecution of Claims

Unless otherwise directed by CTA in writing, Contractor is responsible for reporting and processing all potential claims. Contractor will report timely to the insurer(s) any and all matters which may give rise to an insurance claim and promptly and diligently pursue any and all insurance claims on behalf of all named and additional insureds, whether for defense or indemnity or both. CTA agrees to promptly notify Contractor of CTA's incidents, potential claims, and matters which may in CTA's reasonable opinion give rise to an insurance claim by CTA, to tender its defense or the claim to Contractor, and to cooperate with Contractor as necessary for Contractor to fulfill its duties hereunder.

12. Contractor's Failure to Comply

If Contractor or any other Contractor-Related Entity fails to provide and maintain insurance as required herein, then in addition to any other rights CTA may have under the Contract with respect to such default, CTA shall have the right, but not the obligation, to purchase such insurance at the Contractor's sole cost and expense or to suspend Contractor's right to proceed with the Work until proper evidence of insurance is provided to the reasonable satisfaction of the CTA. Any amounts paid by CTA for the insurance under this section must be reimbursed by Contractor upon demand, plus interest thereon from the date of payment by CTA to the reimbursement date, at the lesser of (1) 10% per annum or (2) the maximum rate allowable under applicable Law.

If on account of Contractor's failure to comply with the provisions of this Article, CTA is adjudged to be a co-insurer or otherwise held responsible for all or any portion of a judgment, loss or settlement (through admission or stipulation by Contractor or court decision) that would have been covered by insurance but for Contractor's non-compliance with the Contract, then, without limiting the Contractor's indemnification obligations under Section 35 (Indemnity) of Part 1 the Contract, any loss or damage CTA shall sustain by reason thereof shall be borne by Contractor, and Contractor shall immediately pay the same to CTA, upon receipt of written demand and evidence of such loss or damage.

13. Disclaimer

Contractor and each other Contractor-Related Entity shall have the responsibility to make sure that its and their insurance programs fit its and their particular needs, and it is its and their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. CTA makes no representation or warranty that

the minimum insurance coverage, limits of liability or other terms specified herein, including any CTA approved variation therefore, are adequate to protect Contractor against its undertakings under the Contract Documents, including any performance or non-performance of its obligations, its assumptions of risks or resulting liability to any third party. Furthermore such insurance requirements, including any CTA approved variation, will not preclude CTA from taking any actions as are available to it under the Contract or otherwise at law. CTA is not limited to the amount of the insurance premium not paid in the proof of any damages it may claim against Contractor arising out of or by reason of failure of Contractor to provide and keep in force the insurance policies required by and on the terms hereof.

Contractor is responsible for ensuring all Contractor-Related Entities have the appropriate insurance through review of applicable insurance certificates prior to the commencement of their Work.

14. Due Care and Safety

Nothing contained in these insurance requirements relieves Contractor or any other Contractor-Related Entity of the obligation to exercise due care in the performance of the Work and to complete the Work in strict compliance with the Contract. Contractor is solely responsible for safety on the worksite, and must comply in all respects with all safety, security and other applicable requirements of the Contract, including without limitation those obligations described in Section 27 (Health, Safety, and Security Obligations) of Part 1.

15. No Waiver

Each required insurance policy must be written or endorsed, to the extent not prohibited by Law, such that:

- (a) the insurance applies separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability; and
- (b) any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty by any named insured or additional insured, any action or inaction of a named insured or additional insured, any foreclosure relating to the Project or any change in ownership of all or any

portion of the Project will not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents and consultants).

- (c) No cross-liability exclusions are permitted that would apply to the additional insureds, and there may not be any restrictions in any policy that limits coverage for a claim brought by an additional insured against a named insured.
- (d) All hazards to be covered shall not exclude the so-called "XCU" coverage for explosion, collapse and damage where work is to be done over or under Railroad property.
- (e) Policies shall not contain any punitive damages exclusion.

16. Required Additional Insureds

The following parties are required to be named as additional insured where described herein:

- (a) City of Chicago;
- (b) Railroads;
- (c) Utility owners;
- (d) Any other entity described in the Record of Third Party Coordination;

Provided; with respect to any entity other than the City of Chicago, such entity will be considered a Required Additional Insured only to the extent that the portion of the Work impacts or involves such entity or its property.

Part B: Contractor's Wrap-up Insurance Program

1. Commercial General Liability Insurance

The CCIP must include Commercial General Liability (CGL) insurance coverage. The CGL policy or policies must be provided on an "occurrence" form under a master liability policy form that is no less comprehensive and no more restrictive than the coverage provided by the ISO form CG00 01 0413, or the equivalent, with exclusions only as are typical for a construction project of this magnitude and Acceptable to the CTA.

Coverage will apply for all insureds reflecting the following Limits of Liability, Coverage, and Terms as follows:

- (a) Limits of Liability (all specifically reserved to the Project)
 - i. \$ 4,000,000 General Aggregate (Per Project and Reinstated Annually)
 - ii. \$ 4,000,000 Products-Completed Operations Aggregate
 - iii. \$ 2,000,000 Personal and Advertising Injury (Any One Person or Organization)
 - iv. \$ 2,000,000 Each Occurrence
- (b) Coverage and Terms to include the following:
 - i. Occurrence Basis policy trigger
 - ii. Products/Completed Operations (Includes 10 Years of Extended Completed Operations)
 - iii. Products/Completed Operations Aggregate Reinstates for Completed Operations extension
 - iv. Coverage form to include the following:
 - A. Independent Contractor's Liability
 - B. Bodily injury and property damage
 - C. Personal and Advertising Injury
 - D. Premises operations
 - E. Broad Form Contractual Liability

- F. Products/Completed Operations
 - G. Broad Form Property Damage
 - H. Hazards commonly referred to as “x, c and u” (explosion, collapse and underground) exposures
 - I. Cross Liability and severability of interests
 - J. All of the coverage included in coverage A, B, and C contained in the Standard Commercial General Liability Policy Form.
-
- v. Per project General Aggregate at least as broad as ISO CG2503 0397
 - vi. Unintentional Errors & Omissions Endorsement
 - vii. Delete Fellow Employee Exclusion
 - viii. No exclusion for employees of any Contractor-Related Entity
 - ix. Terrorism (through the Terrorism Endorsement under Terrorism Risk Insurance Act, or if that act is not in effect a policy with equivalent coverage or an equivalent endorsement if commercially available)
 - x. Delete the employee exclusion from Personal and Advertising Injury
 - xi. No exclusion for cross suits or insured versus insured
 - xii. No endorsements or modifications to ISO form CG00 01 0413 Section 1.A.2.Exclusions (j) Damage To Property, (k) Damage To Your Product or (l) Damage To Your Work, or Section IV.7.Separation of Insureds
 - xiii. An endorsement deleting the contractual exclusion for work on, near, adjacent to, or within 50’ of any applicable rail right of way (ISO CG2417)
 - xiv. Waiver of Transfer of Rights of Recovery Against Others to Us – blanket where required by contract
 - xv. A Waiver of Subrogation endorsement in favor of the CTA, the City of Chicago and all other Required Additional Insureds (CG2404)
 - xvi. Blanket additional insured for leased/rented equipment (CG2034), municipalities/permits (CG2012), architects/engineers (CG2032), triggered where required by written contract, agreement or permit.

- xvii. Limited Exclusion – Contractors – Professional Liability Endorsement (CG2280)
- xviii. Additional Insured Endorsement (07/2004 ISO forms CG2010 and CG2037) for the City of Chicago and other Required Additional Insureds
- xix. Additional Insured Endorsement (07/2004 ISO form CG2010, CG2038, and 07/2004 ISO form CG2037) where required by written contract agreement or permit
- xx. The policy will contain an endorsement that states the coverage afforded the additional insureds under this policy is primary and non-contributing to coverage maintained by the additional insured. This requirement will remain in force throughout the term of the completed operations extension of coverage.
- xxi. Endorsement naming the CTA as a named insured
- xxii. 60 day (or 10 day for non-payment of premium) notice of cancellation , non-renewal or material change to CTA and City of Chicago
- xxiii. The definition of bodily injury should include mental anguish
- xxiv. Any workers compensation exclusion does not apply to payments related to the Federal Employers Liability Act or a Railroad Wage Continuation Program or similar programs, and any payments made are deemed not to be either payments made, or obligations assumed under any workers' compensation, disability benefits, or unemployment compensation law or similar law.

2. Workers' Compensation and Employer's Liability Insurance

The CCIP must include, for Contractor and all enrolled Subcontractors, Workers' Compensation/Employer's Liability in accordance with applicable State Laws.

Coverage will apply for all insureds reflecting the following Limits of Liability, Coverage, and Terms as follows:

- (a) Limits of Liability (all specifically reserved to the Project)
- (b) Workers' Compensation—Applicable State Statutory Benefits
 - i. Employer's Liability:

- A. \$1,000,000 Bodily Injury by Accident—Each Accident
- B. \$1,000,000 Bodily Injury by Disease—Policy Limit
- C. \$1,000,000 Bodily Injury by Disease—Each Employee

(c) Coverage and Terms to include the following:

- i. Waiver of Subrogation in favor of the CTA, City of Chicago and all other Required Additional Insureds under form WC 00 03 13 or its equivalent.
- ii. Waiver of Subrogation – blanket as required by written contract, agreement or permit
- iii. Voluntary Workers Compensation.
- iv. Terrorism (through the Terrorism Endorsement under Terrorism Risk Insurance Act, or if that act is not in effect a policy with equivalent coverage or an equivalent endorsement if commercially available)
- v. Waiver of *Kotecki* Cap
- vi. An Alternate Employer Endorsement naming CTA
- vii. 60 day (or 10 day for non-payment of premium) notice of cancellation, non-renewal or material change to CTA, City of Chicago and all other Required Additional Insureds

3. Excess Liability Insurance

The CCIP must include an Excess Liability insurance policy which will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above including Commercial General Liability and Employer's Liability.

Coverage will apply for all insureds reflecting the following Limits of Liability, Coverage, and Terms as follows:

(a) Limits of Liability (all specifically reserved to the Project)

- i. \$500,000,000 Any one occurrence and general aggregate
- ii. \$500,000,000 Products and Completed Operations Aggregate

(b) Coverage and Terms to include the following:

- i. General aggregate policy limit must reinstate at least once over term of policy
- ii. Reinstatement of Products and Completed Operations aggregate at Substantial Completion of all Work
- iii. Completed Operations (Includes 10 Years of Extended Completed Operations)
- iv. Policy will be endorsed to follow-form to underlying General Liability and Employers Liability
- v. Additional Insured will follow-form to underlying General Liability
- vi. Terrorism (through the Terrorism Endorsement under Terrorism Risk Insurance Act, or if that act is not in effect a policy with equivalent coverage or an equivalent endorsement if commercially available)
- vii. Policy will be endorsed to include primary and non-contributory wording in favor of the additional insureds where required by contract.
- viii. Waiver of Subrogation will follow-form to underlying General Liability and Employers Liability
- ix. Policy will be endorsed to delete the contractual exclusion for work within 50 feet of any railroad (ISO CU2431)
- x. Pay on behalf of wording (reimbursement is not acceptable)
- xi. No exclusion for cross suits or insured versus insured
- xii. No endorsements or modifications to ISO form CG00 01 0413 Section 1.A.2.Exclusions (j) Damage To Property, (k) Damage To Your Product or (l) Damage To Your Work, or Section IV.7.Separation of Insureds
- xiii. An Endorsement naming CTA as named insured
- xiv. 60 day (or 10 day for non-payment of premium) notice of cancellation, non-renewal or material change to CTA, City of Chicago and all other Required Additional Insureds

4. Contractors Pollution Liability Insurance

The CCIP must include contractor's pollution liability (CPL) insurance. The CPL policy will provide coverage for cleanup costs, third-party bodily injury and property damage resulting from pollution conditions caused by Contractor and other Contractor-Related Entity operations.

Coverage will apply for all insureds reflecting the following Limits of Liability, Coverage, and Terms as follows:

- (a) Limits of Liability (all specifically reserved to the Project)
 - \$50,000,000 Any one occurrence and in the aggregate
- (b) Coverage and Terms to include the following:
 - i. Occurrence Basis Policy Trigger
 - ii. Policy term shall be for a policy term inclusive of the entire period of construction
 - iii. Completed Operations (Includes 10 Years of Extended Completed Operations)
 - iv. An endorsement naming CTA as named insured
 - v. A Waiver of Subrogation endorsement in favor of the CTA and all Required Additional Insureds
 - vi. Waiver of Subrogation will apply where required by written contract, permit or agreement
 - vii. Additional Insured will apply where required by written contract, permit or agreement
 - viii. Terrorism (through the Terrorism Endorsement under Terrorism Risk Insurance Act, or if that act is not in effect a policy with equivalent coverage or an equivalent endorsement if commercially available)
 - ix. City of Chicago and all other Required Additional Insureds shall be included as an additional insured

- x. 60 day (or 10 day for non-payment of premium) notice of cancellation, non-renewal or material change to CTA, City of Chicago and all other Required Additional Insureds

5. All Risk Builders Risk Insurance

Builders Risk Insurance will be provided under a master policy for all insureds reflecting the following Limits and coverages:

- (a) Limits of Liability (all specifically reserved to the Project)
 - i. \$ Project Completed Value/Hard Cost of Construction - Any one occurrence; or
 - ii. the probable maximum loss (PML) amount for the Work and the Project as determined pursuant to a PML study submitted for the CTA's prior Approval.
- (b) Coverage and Terms to include the following:
 - i. Coverage to commence at the time of construction activities at the Site
 - ii. Special Causes of Loss policy form
 - iii. Named insured will include Chicago Transit Authority, Contractor and all subcontractors of every tier, Contractor Related Entities and Indemnified Parties
 - iv. City of Chicago shall be named as a loss payee/mortgagee if applicable
 - v. Waiver of subrogation shall apply for all named insureds and Required Additional Insureds and where required by written contract
 - vi. Except as approved by CTA, maximum deductible or self-insured retention of \$250,000, or 3% value at risk at time of loss (VARTOL) for earthquake or flood
 - vii. Completed Value replacement cost valuation – no deduction for depreciation
 - viii. There shall be no coinsurance penalty provision
 - ix. Coverage shall include at a minimum, damage or loss caused by:
 - A. Any type of earth movement, subsidence sinkhole

- B. Flood
- C. Fire
- D. Theft
- E. Collapse
- F. Explosion
- G. Vandalism and malicious mischief
- H. Machinery accidents and operational testing
- x. Coverage for loss resulting from design errors & omissions or faulty workmanship, supplies or materials
- xi. Coverage for removal of debris (with a sublimit not less than \$5,000,000 for debris removal)
- xii. Terrorism (through the Terrorism Endorsement under Terrorism Risk Insurance Act, or if that act is not in effect a policy with equivalent coverage or an equivalent endorsement if commercially available)
- xiii. Insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties incorporating and becoming a permanent part of the Project (including temporary structures and facilities which are utilized by CTA)
- xiv. Off Site and Transit Coverage with sublimits sufficient to insure the full replacement value of any property or equipment stored either on or off of the site
- xv. 60 day (or 10 day for non-payment of premium) notice of cancellation, non-renewal or material change to CTA, City of Chicago and all other Required Additional Insureds

Part C: Coverages Outside of CCIP (“Other Insurance”)

1. Automobile Liability Insurance

To be provided by all Contractor Related Entities.

(a) Limits of Liability

- i. \$5,000,000 combined single limit per occurrence for bodily injury and property damage combined including uninsured and underinsured motorist coverage, medical payment protection, and loading and unloading.

(b) Coverage and Terms to include the following:

- i. Coverage applies on an “any auto” (Symbol 1) basis, including coverage for all vehicles used in connection with the Work or Services on the property, including but not limited to Owned, Non-owned, Hired and Borrowed Vehicles. Mobile equipment must be covered to the extent it is not covered by general liability.
- ii. The policy shall be endorsed to include Transportation Pollution Liability Broadened Coverage ISA CA9948 0306 or MCS-90 if vehicles are subject to Federal jurisdiction.
- iii. Chicago Transit Authority, City of Chicago and other Required Additional Insureds, and all Indemnified Parties will be included as additional insureds
- iv. The coverage afforded the additional insureds under this policy will state that it is primary and non-contributing to coverage maintained by the additional insured
- v. A combination of primary and excess/umbrella liability may be used to satisfy this Automobile Liability requirement. If Excess/Umbrella liability is used to satisfy the minimum limits of Automobile Liability by a combination of primary and umbrella/excess policies they must follow form of the underlying policy or, if they do not follow form, must otherwise provide coverage equal to or as broad as the primary Automobile Liability policy, and must be extended to “drop-down” to become primary in the event the primary policy is exhausted.

- vi. Contractor and all Contractor Related Entities waive and will require their commercial automobile insurers to waive their rights of subrogation against Chicago Transit Authority, City of Chicago and other Required Additional Insureds, and Indemnified Parties and others as required from time to time
- vii. Policy will be endorsed to delete the contractual exclusion for work within 50 feet of any railroad (ISO CA2070)

2. Workers' Compensation and Employer's Liability Insurance

For Contractor Related Entities enrolled in the CCIP, to be provided for offsite activities only; for Contractor Related Entities not enrolled in the CCIP, for both on-site and offsite activities.

(a) Limits of Liability

- i. Coverage A – Workers Compensation:
Statutory: In form and in accordance with Illinois law

(b) Coverage B – Employers Liability:

- i. \$1,000,000 Bodily Injury by Accident
- ii. \$1,000,000 Bodily Injury by Disease, Each Employee
- iii. \$1,000,000 Bodily Injury by Disease, Policy Limit

(c) Coverage and Terms to include the following:

- i. Terrorism (through the Terrorism Endorsement under Terrorism Risk Insurance Act, or if that act is not in effect a policy with equivalent coverage or an equivalent endorsement if commercially available)
- ii. Waiver of *Kotecki* Cap for Contractor
- iii. Contractor and Subcontractors waive and will require its workers compensation insurer to waive their rights of subrogation against Chicago Transit Authority, City of Chicago, any other Required Additional Insureds and all Indemnified Parties.

3. Commercial General Liability Insurance

For Contractor Related Entities enrolled in the CCIP, the coverages to be provided under this section are to be provided for offsite activities only. For Contractor Related Entities not enrolled in the CCIP (as described in Section 1.1 of Part A (*General Insurance Requirements*) of this Annex C) the coverages to be provided under this section are for both on-site and offsite activities and should be specifically reserved to the Project (such as a per project aggregate).

(a) Limits of Liability

- i. \$10,000,000 General Aggregate (Per Project)
- ii. \$5,000,000 Products/Completed Operations Aggregate
- iii. \$5,000,000 Personal Injury and Advertising Injury
- iv. \$5,000,000 Per Occurrence

(b) Coverage and Terms to include the following:

- i. Occurrence Basis policy trigger
- ii. Products/Completed Operations to be maintained in full force and effect for a period of 5 years following final completion of the work under the Contract
- iii. Coverage form to include the following:
 - A. Independent Contractor's Liability
 - B. Bodily injury and property damage
 - C. Personal and Advertising Injury
 - D. Premises operations
 - E. Broad Form Contractual Liability
 - F. Products/Completed Operations
 - G. Broad Form Property Damage
 - H. Hazards commonly referred to as "x, c and u" (explosion, collapse and underground) exposures
 - I. Cross Liability and severability of interests

- J. All of the coverage included in coverage A, B, and C contained in the Standard Commercial General Liability Policy Form.
- iv. Unintentional Errors & Omissions Endorsement
- v. Delete Fellow Employee Exclusion
- vi. No exclusion for employees of any Contractor-Related Entity
- vii. Terrorism (through the Terrorism Endorsement under Terrorism Risk Insurance Act, or if that act is not in effect a policy with equivalent coverage or an equivalent endorsement if commercially available)
- viii. Delete the employee exclusion from Personal and Advertising Injury
- ix. An endorsement deleting the contractual exclusion for work within 50' of the rail right of way (ISO CG2417)
- x. Waiver of Transfer of Rights of Recovery Against Others to Us – blanket where required by contract
- xi. A Waiver of Subrogation endorsement in favor of the CTA, City of Chicago and other Required Additional Insureds (CG2404)
- xii. Blanket additional insured for leased/rented equipment (CG2034), municipalities/permits (CG2012), architects/engineers (CG2032), triggered where required by written contract, agreement or permit.
- xiii. Additional Insured Endorsement (07/2004 ISO form CG2010, CG2038, and 07/2004 ISO form CG2037) where required by written contract agreement or permit
- xiv. Additional Insured Endorsement (07/2004 ISO forms CG2010 and CG2037) naming CTA, City of Chicago and all other Required Additional Insureds
- xv. Endorsement that states the coverage afforded the additional insureds under this policy is primary and non-contributing to coverage maintained by the additional insured. This requirement will remain in force throughout the term of the completed operations extension of coverage.
- xvi. Contractor and Contractor-Related-Entities waive and will require their Commercial General Liability insurer to waive their rights of subrogation

against CTA, City of Chicago, all other Required Additional Insureds and all Indemnified parties and others as required from time to time.

A combination of primary and excess/umbrella liability may be used to satisfy this Commercial General Liability requirement (whether for per occurrence or aggregate limits). If Excess/Umbrella liability is used to satisfy the minimum limits of Commercial General liability by a combination of primary and umbrella/excess policies they must follow form of the underlying policy or, if they do not follow form, must otherwise provide coverage equal to or as broad as the primary Commercial General liability policy, and must be extended to “drop-down” to become primary in the event the primary policy is exhausted.

For Contractor-Related Entities not enrolled in the CCIP, when work is to be performed within fifty (50) feet of CTA’s rail right-of-way the Contractor-Related Entity will be enrolled as a participant in the CTA Blanket Railroad Protective program. The GL limit must be equal to the Railroad Protective Liability per occurrence limit of \$2,000,000 per occurrence, an endorsement must be provided deleting the contractual exclusion for work within 50’ of the rail right of way, and CTA must be named as an Additional Insured (07/2004 ISO forms CG2010 and CG2037).

For all contractors whether or not enrolled in the CCIP, when work is to be performed within fifty (50) feet of any other Railroad, Contractor shall comply with each railroad’s Railroad Protective Liability Insurance (RRP) requirements.

4. Project Professional Liability Insurance

Contractor must procure or cause to be procured a project professional liability policy insuring all architects, engineers, construction managers, testers, inspectors, landscape architects, land surveyors, program managers, interior designers, soil engineers, and other professionals, professional consultants and subconsultants, for claims that they become legally obligated to pay due to the actual or alleged breach of professional duties, including their acts, errors, or omissions, arising from those services that the insured is legally qualified to perform.

- (a) Limits of Liability (all specifically reserved to the Project)
 - i. \$50,000,000 Per Claim
 - ii. \$50,000,000 Aggregate
- (b) Coverage and Terms to include the following:

Coverage must not include any limitation, condition, restriction or exception to coverage due to the absence of a direct contractual relationship, and otherwise have exclusions only as are typical for a project professional liability policy covering the types of Work to be performed and reasonably Acceptable to the CTA. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. The policy term must be for the duration of the Project and include a minimum extended reporting period of four (4) years. Notwithstanding the inclusion of all “construction managers” above, for any Contractor Related Entity that is acting as a construction manager at risk, including the Contractor, such entity may be excluded from the project professional liability policy, and evidence of coverage under such entity’s separate professional liability policy (with a per project aggregate limit) must be provided that is reasonably Acceptable to CTA.

5. Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this agreement by any Contractor Related Entity, whether for on-site or offsite activities, valuable papers insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay or the re-creation and reconstruction of such records.

6. Other Legally Required Coverages

To the extent required by Law in connection with Work to be performed during the term of this Contract, the Contractor shall obtain and maintain, or cause to be obtained and maintained by or for each other Contractor-Related Entity, in addition to the CCIP and the Other Insurances specified in Sections 1 through 5 of this Part C of this Annex C, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law.

Part D: Performance and Payment Bond Requirements

1. Bonds

The Contractor shall as a condition to entering into the Contract furnish, and thereafter maintain, separate Performance and Payment Bonds, each in the amount of 100% of the Contract Price, subject to adjustment pursuant to this Part D of this Annex C. The Performance and Payment Bonds must stay in effect through the original term of the Contract, any extensions thereto, and during the guarantee and warranty periods, subject only to adjustment provided pursuant to this Part D of Annex C. Contractor shall not commence Work until and unless it has obtained and supplied the Performance and Payment Bonds and such Performance and Payment Bonds has been approved and verified by CTA as complying with these requirements.

Any Performance Bond shall be for faithful performance of the Contract.

Any Payment Bond shall be for security for the payment of all persons for furnishing materials, provisions, or other supplies, or items used in, upon, for, or about the performance of the Work contracted to be done, or for performing any Work or labor thereon of any kind.

Each form of Performance Bond and Payment Bond will be subject to the CTA's Approval.

2. Sureties

All Performance Bonds and Payment Bonds must be issued by and maintained with sureties that:

- (a) are authorized to issue such bonds in the State of Illinois;
- (b) are rated (i) AA-/Aa3 by two nationally recognized statistical rating organizations registered with the Office of Credit Rating of the U.S. Securities and Exchange Commission or (ii) at least A-X by A.M. Best and Company;
- (c) are listed in the most recently published "Listing of Approved Sureties" of the U.S. Department of the Treasury Circular 570 and have a Certified T-Listing Value equal to or greater than the Bond Amount ; and
- (d) are not Insolvent or the subject of a government order or directive limiting its business activities as related to or affecting any insurance policies placed or to be placed with such insurer.

In the case that a surety ceases to satisfy all the above requirements, then the Contractor must notify the CTA and substitute other and sufficient surety or sureties, at Contractor's sole cost and expense, within thirty (30) days.

3. Change Orders

If the net total amount of all permitted increases to the Contract Price equals or exceeds 5% of the original Lump Sum Price, then the CTA may, in its Discretion, require the Contractor to provide to the CTA riders to the Performance Bond and Payment Bond which increase the respective bond penal sums to the new Contract Price. Additional bond riders may be required by the CTA, in its Discretion, for each additional 5% increase relative to the original Lump Sum Price.

Any such riders must be executed by the bond surety and the bond principal (Contractor) and must be in form and substance Approved by the CTA.

Annex D: DBE, Labor and Wage Provisions

Annex D-1: DBE and Workforce Initiatives Special Conditions

**SPECIAL CONDITIONS
DISADVANTAGED BUSINESS ENTERPRISE
REQUESTS FOR PROPOSALS (RFP)
LETTERS OF INTEREST AND QUALIFICATIONS (LIQ)**

CONTRACT NUMBER: C22FT102829986

I. POLICY AND TERMS

- A. The policy of the Chicago Transit Authority (CTA or Authority) is to create a level playing field on which Disadvantaged Business Enterprises (DBE) as defined in United States Department of Transportation (USDOT) Regulation 49 CFR Part 26, as revised from time to time, can compete fairly for CTA contracts, regardless of funding source.
- B. The Authority has established the following DBE participation goal for this contract:

Disadvantaged Business Enterprise Goal: Design - 25% / Construction - 22%

- C. The CTA may establish separate DBE goals for the design work and construction work on this Project ("split DBE goals"). The design goal would pertain to all architectural, engineering, construction management, surveying and other professional services work pertaining to design. The construction goal would pertain to all work pertaining to building the structure that is designed. If the CTA has established split DBE goals for this Contract, it will be so noted in the box above next to the relevant percentage.

In the event the CTA establishes split DBE goals, the bidder must submit two separate, clearly marked Schedule Ds, one each for the design and construction portions of the contract. Each schedule must identify the total value of each portion of work, which includes but is not limited to overhead & profit, options, contingency, and allowances. The split DBE goal is intended to cover all of the work under the contract, and the two Schedule Ds should, when added together, constitute the contract price of all work. If the Contractor has any questions about whether any work constitutes design work or construction work, please ask CTA for clarification.

Split DBE goals are independent goals for each portion of the Work, and the Contractor will be independently evaluated for its performance in meeting each of the two goals.

- D. In the case that the Proposer cannot provide completed schedules due to the nature of the Proposal (e.g. Design/Build), the submitted proposal is to include completed schedules, to the extent the proposer can identify DBE participation (e.g. design team) and a written commitment that the Proposer will comply with the DBE goal.
- E. The DBE contract goal is expressed as a percentage of the total contract price (except for split DBE goals, described above). The Bidder may meet the DBE goal by evidencing

participation by one or more certified DBE firm(s). The Bidder may also meet the goal by documenting good faith efforts to meet the goal as described in 49 CFR Part 26 and as set forth in Section V hereof and/or by a combination of DBE participation and good faith efforts documentation. In either of the above scenarios, Bidder must implement the initiatives provided in its Diversity Outreach Plan to generate DBE participation to meet the goal.

- F. The DBE contract goal shall apply to the total dollar value of this contract, inclusive of all goods, work or services added to the contract by amendments, modifications, options, or change orders. The Bidder agrees to make good faith efforts to include DBE participation equal to the goal percentage applied to the dollar amount of any goods, work or services so added. Failure to do achieve such DBE participation or make such good faith efforts and document them to the satisfaction of the Authority will be deemed an event of default under the contract.
- G. The goal may be met, as further explained in Section IV hereof 1) by the Bidder's status as a DBE firm, 2) by participation in a Joint Venture by one or more DBE firm(s), 3) by subcontracting a portion of the work to one or more DBE firm(s), 4) by the purchase of materials used in the performance of the contract from one or more DBE firm(s) or 5) by any combination of the above or through sufficient documentation of its good faith efforts to meet the DBE goal as defined in Section V hereof.
- H. A Bidder who fails to meet the DBE goal and fails to demonstrate sufficient and reasonable good faith efforts to meet the goal shall not be eligible to be awarded the contract. **All evidence of good faith efforts by a Bidder must be included in the envelope or package with the submitted bid.**
- I. The Authority prohibits agreements between a Bidder and a DBE in which the Bidder prohibits the DBE from providing subcontracting quotations to other Bidders. Such agreements will render the Bidder ineligible for contract award.

II. DEFINITIONS

- A. **"Area of Specialty"** means the description of the DBE's business, which has been determined by the DBE Liaison Officer Programs to be most reflective of the DBE's claimed specialty or expertise as stated in their certification in the IL UCP DBE Directory. Credit toward the DBE contract goal for this contract shall be limited to the participation of firms performing within their Area of Specialty. The Authority reserves the right to investigate and determine active DBE participation and applicable DBE credit specifically identified for this contract prior to award.

NOTICE: The Authority does not make any representations concerning the ability of any DBE to perform work within its Area of Specialty. It is the responsibility of the Bidder to determine the capability and capacity of the DBE firms to satisfactorily perform the work proposed.

- B. **"Authority"** means the Chicago Transit Authority.

- C. **“Bid”** includes the following Authority purchasing requests: Invitation for Bids (IFB).
- D. **“Bidder”** includes bidders and contractors. The terms **“Bidder”** and **“Contractor”** are used interchangeably in these Special Conditions.
- E. **“Commercial Useful Function”** or **“CUF”** means that a DBE is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and/or supervising the work involved. With respect to materials and supplies used on a contract, the DBE must be responsible for negotiating price, determining quantity and quality, ordering materials and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will evaluate the amount of work subcontracted, industry practices, and other relevant factors. However, it is not a commercially useful function when a DBE’s role is limited to that of an extra participant through which funds are passed to obtain the appearance of DBE participation on the contract.
- F. **“Disadvantaged Business Enterprise”** or **“DBE”** means a small business certified by the Illinois Universal Certification Program (IL UCP) as a business owned and controlled by socially and economically disadvantaged individuals in accordance with USDOT Regulation 49 CFR Part 26.
- G. **“Directory”** means the Directory of Certified Disadvantaged Business Enterprises maintained and published by IL UCP and entitled the **“IL UCP DBE Directory.”** The directory is available at <https://webapps.dot.illinois.gov/UCP/ExternalSearch>. Bidders are responsible for verifying the current certification status of all proposed DBE’s.
- H. **“Funding Source”** means any source of funds used for an Authority contract. It includes, but is not limited to, funds provided by the US Department of Transportation (DOT), the Federal Transit Administration (FTA), the Illinois Department of Transportation (IDOT), the Regional Transportation Authority (RTA), the City of Chicago (City), the Federal Emergency Management Agency (FEMA), the Illinois Emergency Management Agency (IEMA), the US Department of Homeland Security (DHS) or the Department of Commerce and Economic Opportunity (DCEO).
- I. **“Good Faith Efforts”** means efforts to achieve a DBE contract goal as specified in 49 CFR Part 26 and Section V hereof.
- J. **“IL UCP”** means the Illinois Unified Certification Program.
- K. **“Joint Venture”** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Bidders may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between a DBE firm and non-DBE firm.

In order to qualify for credit as a DBE, the DBE must be responsible for a distinct, clearly defined portion of the work and the DBE must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

L. “Purchasing Agent” means the Authority employee who holds the position of Vice President, Purchasing, or designee.

M. “Socially and Economically Disadvantaged Individuals” means any individual who is a citizen of the United States (or lawfully admitted permanent residents) and who is in the following groups, the members of which are rebuttably presumed to be socially and economically disadvantaged:

1. **“Black Americans”**, which includes persons having origins in any of the Black racial groups of Africa;
2. **“Hispanic Americans”**, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
3. **“Native Americans”**, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
4. **“Asian-Pacific Americans”**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Thailand, Malaysia, Indonesia, Vietnam, Laos, Cambodia (Kampuchea), the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific (Republic of Palau), and the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Jauvlu, Nauru, Federated States of Micronesia or Hong Kong; and
5. **“Subcontinent Asian Americans”**, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
6. **“Women”**
7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

The DBE Liaison Officer may determine on a case-by-case basis that individuals who are not members of one of the above-listed groups are socially and economically disadvantaged.

N. “Subcontractor” means the individual or firm that has a subordinate contract to that of the Contractor under which the materials or equipment are supplied or services or labor is performed.

O. “USDOT” or “DOT” refers to the U.S. Department of Transportation.

III. JOINT VENTURES

The DBE Liaison Officer will evaluate the Joint Venture agreement submitted on behalf of the proposed Joint Venture and all related documents to determine whether these DBE requirements have been satisfied. In addition, the DBE Liaison Officer will consider the record of the joint venturers as joint venturers on other Authority contracts, if any.

NOTE: DBE/non-DBE Joint Ventures are creditable at any tier. Whenever a Joint Venture is proposed as the prime Contractor, Authority requires that each joint venturer sign the bid submitted to the Authority.

IV. COUNTING DBE PARTICIPATION TOWARD THE CONTRACT GOAL

The inclusion of any DBE by the Bidder in its bid documents shall not conclusively establish the Bidder’s eligibility for full DBE credit for the firm’s participation in the contract. The amount of DBE participation credit shall be based upon an analysis by the DBE Liaison Officer of the specific duties which will be performed by the DBE.

The Bidder may count toward its DBE goal only expenditures to firms which are currently certified by the IL UCP and which perform a CUF.

To determine whether a firm is performing a CUF, the DBE Liaison Officer will evaluate the amount of work subcontracted, industry practices and other relevant factors. The DBE Liaison Officer reserves the right to deny or limit DBE credit to the Bidder where any DBE is found to be engaged in substantial pass-through activities with others.

DBE participation shall be counted toward the DBE goal in the contract as follows:

- A.** Once a DBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the DBE may be counted toward the DBE goal except as indicated below.
- B.** A Bidder may count toward its DBE goal that portion of the total dollar value of a contract with an eligible Joint Venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces. The Joint Venture agreement must clearly state the work to be performed by the DBE and the method of allocating a dollar value to that work for counting toward compliance with the DBE goal.
- C.** Consistent with normal industry practices, a DBE may enter into its own subcontracts. If a DBE subcontracts more than thirty percent (30%) or a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. Evidence may be presented by the Bidder involved to rebut this presumption.

- D. When a DBE subcontracts a part of the work under the contract to another firm, the value of the subcontracted work may only be counted towards the DBE goal if the DBE's Subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- E. The Bidder may count one-hundred percent (100%) of its expenditures for materials and supplies required under the contract and which are obtained from a DBE manufacturer towards the DBE goal. The Bidder may count sixty percent (60%) of its expenditures for material and supplies under the contract obtained from a DBE regular dealer towards its DBE goal. The terms "manufacturer" and "regular dealer" are defined in 49 CFR Part 26.55(e)(1)(ii) and (2)(ii).
- F. The Bidder may count towards its DBE goal expenditures to DBEs which are not manufacturers or regular dealers, such as fees or commissions charged for services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies and transportation charges as set forth in 49 CFR Part 26. However, the DBE Liaison Officer must determine the fee or charge to be reasonable and not excessive as compared with fees or charges customarily allowed for similar services.
- G. The Bidder must use good business judgment when negotiating with Subcontractors and take a DBE's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason to fail to meet the DBE goal set forth in the contract, as long as such costs are reasonable.

V. GOOD FAITH EFFORTS

In order to be responsive, a Bidder must make good faith efforts to meet the DBE contract goal set forth in the contract. The Bidder must document the good faith efforts it made in that regard. Thus, the Bid submitted to the Authority must be accompanied by written documentation prepared by the Bidder evidencing all of its sufficient and reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, and ones, which could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE contract goal. Mere *pro forma* efforts are not acceptable and will be rejected by the DBE Liaison Officer.

Good Faith Efforts require that the Bidder consider all qualified DBEs who express an interest in performing work under the contract. This means that the Bidder cannot reject a DBE as unqualified unless the Bidder has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of DBE bids in the Contractor's efforts to meet the contract DBE contract goal.

The following list, which is not exclusive or exhaustive, sets forth the types of actions, which indicate good faith efforts on the part of a Bidder to meet the DBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for

submitting a bid and the type of contract involved.

- A.** Implementation of the outreach activities and utilization efforts as described in Contractor's Diversity Outreach Plan, as evidenced in the reports and documentation provided in accordance with Section VII.
- B.** Attendance at a pre-bid meeting, if any, scheduled by the Authority to inform DBEs of subcontracting opportunities under a given solicitation.
- C.** Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before bids are due. If 20 days are not reasonably available due to the timing of the Authority's bid opening date, publication for a shorter reasonable time is acceptable.
- D.** Written notification to capable DBEs that their interest in the contract is solicited.
- E.** Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:
 - 1.** The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact;
 - 2.** A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and
 - 3.** A statement explaining why additional agreements with DBEs were not reached.
- F.** For each DBE the Bidder contacted but rejected as unqualified, the reason for the Bidder's conclusion.
- G.** Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the Bidder or the Authority.
- H.** Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs.
- I.** Documentation that the Bidder has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.
- J.** Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner.
- K.** Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services from third parties.

VI. GOOD FAITH EFFORTS RECONSIDERATION

If it is determined that the apparent successful low Bidder(s) has failed to show good faith efforts to meet the contract DBE goal through participation, documentation of good faith efforts to meet the contract goal and/or a combination of the two, the Authority will provide it with **ONE** opportunity for administrative reconsideration before the Authority awards the contract to another Bidder. This reconsideration will include the following:

- A.** The Bidder will be permitted to either provide written evidence or to present oral argument at a pre-scheduled time that the documentation it submitted with its bid met the DBE goal and/or documented good faith efforts to do so. **No new evidence of good faith efforts may be presented after the bid submission deadline.**
- B.** The Authority's Reconsideration Officer will review the evidence presented by the Bidder and issue a written determination that the Bidder has: 1) met the DBE goal; 2) not met the DBE goal but has made adequate good faith efforts to do so; or 3) has not met the DBE goal and the good faith efforts made were not adequate.
- C.** The decision of the Authority's Reconsideration Officer is final and may not be appealed to the Authority or its funding agencies.
- D.** The Authority will not award a contract to any Bidder who does not meet the contract DBE contract goal through participation by DBEs on the proposed contract or documentation of sufficient good faith efforts to meet that goal or a combination of the two. Thus, it is essential that all Bidders submit **ALL** relevant documentation concerning DBE participation on the proposed contract and/or good faith efforts to meet the DBE goal in the envelope or package containing their sealed bids.

VII. PROCEDURE TO DETERMINE BID COMPLIANCE

- A.** If the Bidder is a Joint Venture, the Bidder as well as the Joint Venture partner **MUST** complete and sign a Schedule B.
- B.** A DBE Subcontractor of any tier, DBE Joint Venture partner and/or the Bidder if it is a DBE **MUST** complete and sign a Schedule C.
- C.** The Bidder **MUST** complete and sign a Schedule D.
- D.** All applicable, completed Schedules **MUST** be submitted at the same time as or prior to submittal of the sealed bid. In addition, any documentation evidencing the Bidder's good faith efforts to meet the contract DBE goal must be submitted with the bid. Any bids submitted without completed and executed Schedules as indicated above and/or evidence of good faith efforts will be deemed non-responsive and their bids will be rejected by the Authority.

E. Letters of Certification

1. A copy of each proposed DBE firm's current Letter of Certification or No Change Affidavit ("NCA") from the DBE's certifying agency should be submitted with the bid.

ALL CERTIFICATIONS MUST BE PRE-CERTIFICATIONS. This means that the DBE's certification must be issued before the due date for bids.

2. All Letters of Certification or NCA issued by the DBE's certifying agency must include a statement of the DBE firm's area of specialization, relevant North American Industry Classification System ("NAICS") codes, and appropriate DBE goal credit (see Section IV. COUNTING DBE PARTICIPATION TOWARD THE CONTRACT GOAL). The DBE's scope of work set forth on Schedule C must conform to its stated area of specialization. Where a DBE is proposed to perform work not covered by its area of specialization, the DBE must request an expansion of its area of specialization from its certifying agency in writing prior to the time set by the Authority for bid opening. Further, the DBE's request for a new area of specialization must be approved by the certifying agency so that the DBE is certified in the expanded area of specialization prior to the award of the contract.

F. Joint Ventures

1. Where the Bidder is a Joint Venture that includes a DBE joint venturer, the Bidder must submit a fully executed copy of the Joint Venture agreement with its bid. The Joint Venture agreement must show that the DBE firm will be responsible for a clearly defined portion of the work to be performed, and that the DBE firm's capital contribution, control, management, risks and profits are commensurate with its ownership interest.
2. Further, if the Bidder is counting the DBE joint venturer's participation in the Joint Venture toward meeting the DBE goal on Schedule B, the Joint Venture agreement must include specific details related to: 1) contributions of capital and equipment by each Joint Venture member; 2) work items to be performed by the DBE's own forces and the dollar value thereof; 3) work items to be performed under the supervision of the DBE; 4) the DBE's management, supervisory and operating personnel to be dedicated to the performance of the project and the dollar value thereof; and (5) the authority of each joint venturer to contractually obligate the Joint Venture and to expend funds. Failure to submit a copy of a Joint Venture agreement that addresses each of the foregoing requirements will result in the DBE participation in the Joint Venture being ineligible for counting toward the DBE goal and cause the Joint Venture to be considered by the Authority to be non-responsible and its bid to be non-responsive.

G. Bidders List

The Bidder must also create a Bidders List, consisting of information about all Subcontractors that submitted a Bid or quote. The Bidders List will include the name, address, DBE/non-DBE status, age of firm and the appropriate range of annual gross receipts. A form for creating the Bidder's List included in this IFB.

VIII. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT

- A. The Bidder shall, within seven (7) calendar days of contract award, or prior to any work being performed by any Subcontractor of any tier, execute written subcontracts or purchase orders with the Subcontractors included in the Bid. In the event the Bidder cannot complete the agreement with one or more Subcontractors within this seven (7) day period, the Bidder must provide a written explanation for the delay and an estimated date by which the written agreement will be completed to the DBE Liaison Officer. These written agreements shall be made available to the DBE Liaison Officer upon request. **All contracts between the Bidder and its Subcontractors must contain the following clauses as set forth in section IX and XI herein: prompt payment clause, retainage clause, and non-discrimination clause.**
- B. The Contractor must utilize the Authority's Diversity Management System ("B2GNow"), <https://cta.dbesystem.com/>, which provides the Contractor an easy-to-use, web-based service for reporting payments rendered to **all Subcontractors**.

The Contractor will receive an electronic alert for every payment received from the Authority and must report all Subcontractor payments in B2GNow no later than seven (7) calendar days after paying the Subcontractor(s). **Failure to follow these directions may delay payment.**

- C. The Contractor will be expected to respond to desk audits performed at the contract's quarterly milestones. Requests for information will include, but are not limited to, subcontractor invoices and proof of payment (i.e. cancelled check or electronic fund transfer ("EFT") statement).

IX. PROMPT PAYMENT TO SUBCONTRACTORS

- A. The Contractor is required to pay each first tier Subcontractor for all Work that the Subcontractor has performed to the satisfaction of the CTA no later than fourteen (14) days after the Contractor has received payment from the CTA for that Work, and each tier of Subcontractors must likewise pay the next lower tier of Subcontractors within fourteen (14) calendar days after receiving payment. **The Contractor agrees to include these assurances in all subcontracts, and require its Subcontractors to include these assurances in their subcontracts.**
- B. If this Contract provides for retainage, the CTA will make partial payments of retainage amounts for distinct portions of the Work that have been satisfactorily completed; the Contractor must then remit to each first-tier Subcontractor its share of any retainage within

fourteen (14) days after receipt of such retainage from CTA, and each tier of Subcontractors must likewise remit retainage to the next lower tier of Subcontractors within fourteen (14) calendar days after receiving payment. If this Contract does not provide for retainage, then neither Contractor nor any Subcontractor may withhold retainage from a Subcontractor. Retainage must be reported in B2GNow. **The Contractor agrees to include these assurances in all subcontracts, and require its Subcontractors to include these assurances in their subcontracts.**

- C. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the Authority.
- D. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
- E. The Authority will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the Authority of lien waivers, canceled checks (if requested) and the Contractor's sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit (form to be provided by the Authority) which identify each Subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such Subcontractor, with every payment request filed with Authority, except for the first payment request, on every contract with the Authority.
- F. Failure to comply with these prompt payment requirements is a breach of the Contract which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment. In addition, Contractor's failure to promptly pay its Subcontractors may also be subject to the provisions of 50 ILCS 505/9.

X. DBE SUBSTITUTIONS

- A. Arbitrary changes by the Bidder of the DBE participation commitments previously indicated in **Schedule D** are prohibited. No changes may be made by the Bidder to the DBE firms listed on Schedule D after the opening of Bids but prior to contract award. However, in the event the Purchasing Agent, after consulting with the Diversity Programs Department, determines that a critical DBE Subcontractor is non-responsible, the Authority may require that Bidder replace the non-responsible DBE Subcontractor prior to contract award. In that event, Bidder must replace the non-responsible DBE Subcontractor with a responsible, certified DBE Subcontractor or document adequate good faith efforts as set forth in Section V hereof, must submit all information required in subsection C.5 hereof, and must receive the prior written approval of the DBE Liaison Officer for such substitution.
- B. Further, after contract award, the Contractor shall neither terminate a DBE subcontract for convenience, nor reduce the scope of the work to be performed by a DBE, nor decrease the price to a DBE, without receiving prior written approval of the DBE Liaison Officer. Such

approval is required even if the DBE agrees with the change to the DBE's Subcontract desired by the Contractor.

C. It may become necessary, at times, for the Contractor to substitute a Subcontractor in order to complete the contract work. The substitution procedure to be followed when the Subcontractor being substituted is a DBE is:

1. The Contractor must immediately notify the Purchasing Agent and the DBE Liaison Officer, in writing, of the proposed substitution of Subcontractor. The Contractor's notification must include the specific reasons it intends to reduce the scope of or terminate a DBE subcontract; adequate documentation to support the Contractor's proposed action; and a proposed substitute firm to complete the DBE's portion of work.
2. Before transmitting the request for substitution to the Director, Diversity Programs, the contractor must give notice in writing to the DBE subcontractor of its intent to terminate and/or substitute and the reason for the request. The Contractor must give the DBE five (5) calendar days to respond to the request and advise the Authority and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract. If required in a particular case as a matter of public necessity (e.g., safety), the Contractor may provide a response period shorter than five days.
3. The following is a non-exclusive list of the types of reasons, which justify substitution: the DBE was found not to be able to perform, or not to be able to perform on time; the DBE's work product was not acceptable; the DBE demands an unreasonable escalation of its price.
4. The following is a non-exclusive list of the types of reasons which do not justify substitution: a replacement firm has been recruited by the Contractor to perform the same work under more advantageous terms; performance issues by the DBE were disputed and every reasonable effort to have the dispute resolved or mediated has not been taken; the DBE has requested a reasonable price escalation which may be justified due to unforeseen circumstances (e.g., a change in scope of DBE's work).
5. If the Subcontractor to be substituted for the DBE is not a DBE, the Contractor must document adequate good faith efforts as set forth in Section V hereof.
6. The Contractor's request for approval of a substitution must include the name, address, and principal official of the proposed substitute Subcontractor and the dollar value and scope of work of the proposed subcontract. If the new Subcontractor is a DBE, all DBE affidavits and documents required by **Schedule C** shall be attached.
7. The Authority will evaluate the submitted documentation and respond within fifteen (15) calendar days to the request for approval of the substitution. The Authority's response may approve the request, seek more information, and request an interview to clarify the problem or reject the proposed DBE substitution, with the reasons for the

rejection stated in the Authority's response. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the Authority will respond as soon as practicable.

8. Actual substitution by the Contractor may not be made prior to the Authority's approval. Once notified of the Authority's approval, the substitute subcontract must be executed within five (5) calendar days, and a copy submitted to the DBE Liaison Officer.

- D. The Authority will not approve extra payment for escalated costs incurred by the Contractor when a substitution of Subcontractors becomes necessary in order to comply with the DBE requirements of the contract.

XI. NON-COMPLIANCE

- A. Failure to comply with the DBE requirements of the contract or with the DBE substitution procedures, failure to use DBEs as stated in the Bid or failure to implement the Diversity Outreach Plan constitutes a material breach of contract. The DBE Liaison Officer shall have the discretion to recommend to the Authority's Purchasing Agent that the Authority apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the DBE requirements. Such sanctions include, but are not limited to, withholding payment to the Contractor until corrective action is taken; suspension and/or termination of the contract, in whole or in part; declaring the Contractor non-responsible; and debarring or suspending the Contractor from entering into future contracts with the Authority.
- B. The failure by the Contractor to use a DBE Subcontractor to the extent the Contractor committed to use said DBE gives the underutilized DBE specific contract remedies, including the right to damages, the right to resolve the dispute by binding arbitration before an independent arbitrator and the right to recover its reasonable expenses, including attorneys' fees, if the DBE is the prevailing party, as follows:
 1. Damages. In the event the Contractor has not complied with the contractual DBE percentage and the change to the contractual DBE usage has not been approved by the Authority, an affected DBE may recover from the Contractor damages suffered by said DBE as a result of being underutilized. This provision is intended for the benefit of any DBE affected by underutilization and grants such entity third party beneficiary rights under the contract. Any rights conferred by this provision are non-waivable and take precedence over any conflicting provisions in the agreement between the Contractor and the DBE.
 2. Arbitration procedures. If requested by the DBE, the DBE shall have the right to initiate binding arbitration of any dispute concerning damages suffered as a result of being underutilized. A DBE desiring to arbitrate must notify the Contractor in writing to initiate the arbitration process. Unless the affected parties agree to a different schedule in writing, within ten (10) days of receipt by the Contractor of the intent to arbitrate from the DBE, the above-described disputes must be arbitrated in accordance

with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601. All such arbitrations must be initiated by the DBE filing a demand for arbitration with the AAA; must be conducted by the AAA; and must be held in Chicago, Illinois.

3. Fees. All fees of the arbitrator are the initial responsibility of the DBE; provided, however, that the arbitrator is authorized to award reasonable expenses, including attorneys’ and arbitrator fees, as damages to a prevailing DBE.
4. Entry of judgment. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

C. In addition, federal and state laws apply to false representations, deception and fraud:

1. Illinois Law. Under Illinois law, it is a Class 2 felony to make certain false representations as to the status of a person or entity in obtaining a governmental contract. In addition, any person convicted of this felony offense must pay to the governmental unit that issued the contract a penalty equal to one and a half times the amount of the contract. (720 ILCS 5/17-29)
2. Federal Law. False, fraudulent, or deceitful statements made in connection with DBE participation in DOT assisted programs could also result in liability under 49 CFR Part 31, Program Fraud and Civil Remedies and possible prosecution under 18 U.S.C. 1001.

D. If the Contractor does not pay any Subcontractor listed on a pay request or return a Subcontractor’s retainage within the time limits required under the Prompt Payment provision of the contract, the Contractor must pay the Subcontractor an additional amount for interest at the lower of one percent (1%) per month or the highest lawful rate on the outstanding balance, for each month, prorated per diem for any partial month, that the Contractor fails or refuses to pay the Subcontractor. **All agreements between the Contractor and its Subcontractors must provide for interest as set forth herein for all contracts.**

E. The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate, which may include but is not limited to:

- 1) Termination of contract;
- 2) Assessing sanctions;

- 3) Withholding monthly progress payments;
- 4) Liquidated damages; and/or
- 5) Disqualifying the contractor from future bidding as non-responsible.

The Contractor agrees to include this assurance in all subcontracts and require its Subcontractors to include these assurances in their subcontracts.

- F. The Contractor and Subcontractor shall comply with the requirements of the Illinois Human Rights Act (775 ILCS 5/1-100, et seq.) and the Illinois Public Works Employment Discrimination Act (775 ILCS 5/10/0.01, et seq.) and shall refrain from unlawful discrimination under Illinois law in the performance of this contract. The failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate. The Contractor agrees to include this assurance in all subcontracts and require its Subcontractors to include these assurances in their subcontracts.**
- G. The Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the Authority's requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the Authority.**

XII. RECORD KEEPING

The Contractor shall maintain records of all relevant data with respect to the utilization of DBEs and shall retain these records for a period of at least three (3) years after final acceptance of the work. Full access to said records shall be granted to the Authority, its Federal and/or State funding agencies, the U.S. Department of Justice, the USDOT, the Illinois Office of Inspector General and any duly authorized representatives thereof.

XIII. MINORITY FINANCIAL INSTITUTIONS

The Bidder will utilize financial institutions owned and controlled by socially and economically disadvantaged individuals and community banks as described in its Diversity Outreach Plan and in accordance with other applicable provisions of the Contract. Information about such institutions is available on-line at

<http://www.federalreserve.gov/releases/mob/current/default.htm> and
<https://www.fdic.gov/regulations/resources/cbi/data.html>.



GUIDANCE CONCERNING GOOD FAITH EFFORTS (49 CFR – 26.53)

In order to be responsive, a bidder must make good faith efforts to meet the DBE/SBE participation goal set forth in the contract. The bidder must document the good faith efforts it made in that regard. Thus, the Bid/Proposal submitted to the Authority must be accompanied by written documentation prepared by the bidder/proposer evidencing all of its sufficient and reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, and ones, which could reasonably be expected to lead to sufficient DBE/SBE participation to meet the contract DBE/SBE participation goal. Mere *pro forma* efforts are not acceptable and will be rejected by the DBE Liaison Officer (DBELO). Good Faith Efforts require that the bidder/proposer consider all qualified DBE/SBE firms, who express an interest in performing work under the contract. This means that the bidder/proposer cannot reject a DBE/SBE as unqualified unless the bidder has sound reasons based on a thorough investigation of the DBE/SBE firm's capabilities. Further, the DBE/SBE firm's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the contract DBE/SBE participation goal. The following list, which is not exclusive or exhaustive, sets forth the types of actions, which indicate good faith efforts on the part of a bidder/proposer to meet the DBE/SBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for submitting a bid and the type of contract involved.

- Attendance at a pre-bid meeting, if any, scheduled by the Authority to inform DBE/SBE firms of subcontracting opportunities under a given solicitation.
- Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before bids are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.
- Written notification to capable DBE/SBE firms that their interest in the contract is solicited.
- Documentation of efforts to negotiate with DBE/SBE firms for specific sub-contracts including at a minimum:
 - The names, addresses, and telephone numbers of DBE/SBE firms that were contacted and the date(s) of contact.
 - A description of the information provided to DBE/SBE firms regarding the plans and specifications for portions of the work to be performed.
 - A statement explaining why additional agreements with DBE/SBE firms were not reached.
- For each DBE/SBE the bidder/proposer contacted but rejected as unqualified, the reason for the conclusion.
- Documentation of efforts made to assist the DBE/SBE firms contacted that needed assistance in obtaining bonding or insurance required by the bidder/proposer or the Authority.
- Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBE/SBE firms.
- Documentation that the bidder/proposer has broken out contract work items into economically feasible units in fields where there are available DBE/SBE firms to perform the work.
- Evidence that adequate information was provided to interested DBE/SBE firms about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner.
- Documentation of any efforts made to assist interested DBE/SBE firms in obtaining necessary equipment, supplies, materials or related assistance or services.



DBE – SCHEDULES

INSTRUCTION PAGE

1. **Do not submit the *Instructions Page*.**
2. Joint ventures that intend to count participation by a **DBE** as a joint venture partner toward the **DBE** goal must complete a **Schedule B** and attach a copy of the joint venture agreement. The **DBE** joint venture partner(s) must also complete a **Schedule C** and be included on the **Schedule D**.
3. All **DBE** firms included on the **Schedule D** must complete a **Schedule C**.
 - a. **Schedule C-1** is to be used for **CONSTRUCTION** contracts, **excluding** Design/Build.
4. Identify **all DBE** firms (1st tier, 2nd tier, etc.) for total DBE utilization on **Schedule D**. If you need to use additional pages, number pages accordingly.
5. Verify that **all Schedules** are filled out completely; compliance staff cannot make assumptions for blank spaces.
6. Attach a copy of each **DBE's** most recent **Letter of Certification** and include the date of the **DBE's** next **No-Change Affidavit (NCA)**.
7. When calculating DBE participation percentage, use total bid amount (including overhead and profit) as the denominator.

Use the chart below for counting credit based on the work the DBE firm will be performing. Subcontracting firms performing labor or services on the contract that are not identified in the work categories below will receive 100% credit pending review by the Authority:

DBE WORK CATEGORIES

Work Categories	Credit (%)
Joint Venture partner	100% of work performed
Manufacturer	100%
Trucking	100%
Regular Dealer	60%
Broker	Fees and/or commission

Definitions

- Joint venture:** An association of a **DBE** firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the **DBE** is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- Manufacturer:** A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- Trucking:** A firm that owns and operates at least one fully licensed, insured, and operational truck. If the **DBE** leases trucks from a **non-DBE** firm, credit will only be assessed for the total value of transportation services provided by **non-DBE** leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by **DBE-owned** trucks or leased trucks with **DBE** employee drivers.

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.



DBE – SCHEDULES

INSTRUCTION PAGE

- Regular Dealer:** A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- Broker dealers:** A supplier that is neither a manufacturer nor a regular dealer.
- Schedule B:** Refers to the **Affidavit of Joint Venture**, which confirms the association of a **DBE** firm and one or more other firm(s) to carry out a single, for-profit business enterprise.
- Schedule C:** Refers to the **Participant Statement** that is completed by the certified **DBE** firm(s) and **Bidder** that is included on the **Schedule D**.
- Schedule D:** Refers to the **DBE Utilization Plan**, completed by the **Bidder** showing the overall breakdown of each **DBE** firm: their tier, work category and scope of work and the contract dollar amount or their participation percentage of the contract.

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.



DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

JOINT VENTURE INFORMATION

- a. **NAME OF JOINT VENTURE:** _____
- b. **ADDRESS:** _____
- c. **PHONE NUMBER:** () -

JOINT VENTURE PARTNERS INFORMATION (attach additional pages if necessary)

a. **FIRM A**

- i. **FIRM NAME:** _____
- ii. **ADDRESS:** _____
- iii. **PHONE NUMBER:** () -
- iv. **DBE CERTIFIED:** YES NO

b. **FIRM B**

- i. **FIRM NAME:** _____
- ii. **ADDRESS:** _____
- iii. **PHONE NUMBER:** () -
- iv. **DBE CERTIFIED:** YES NO

c. **FIRM C**

- i. **FIRM NAME:** _____
- ii. **ADDRESS:** _____
- iii. **PHONE NUMBER:** () -
- iv. **DBE CERTIFIED:** YES NO

ROLE(S) OF DBE FIRM(S) (attach additional pages if necessary)

Describe the role(s) of the DBE firm(s) in the joint venture: _____

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

JOINT VENTURE AGREEMENT

☐ Attach a copy of the joint venture agreement.

In order to demonstrate the DBE venture(s)'s share in the ownership, control management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the DBE's own forces, (3) work items to be performed under the supervision of the DBE venture(s); and (4) the commitment of management, supervisory and operative personnel employed by the DBE to be dedicated to the performance of the project.

DBE CERTIFICATION

☐ Attach a copy of the DBE firm(s) certification letter which shows the date of their next No Change Affidavit (NCA).

JOINT VENTURE OWNERSHIP

a. AGREEMENTS

☐ Attach a copy of all written agreements between the firms concerning this project.

b. PERCENTAGE OF OWNERSHIP

i. DBE OWNERSHIP PERCENTAGE(S): _____ %

ii. NON-DBE OWNERSHIP PERCENTAGE(S): _____ %

c. PROFIT & LOSS

i. DBE OWNERSHIP PERCENTAGE(S): _____ %

ii. NON-DBE OWNERSHIP PERCENTAGE(S): _____ %

d. CAPITAL CONTRIBUTIONS (attach additional pages if necessary)

Provide a detailed description of the initial and anticipated on-going financial contributions for each firm participating in this joint venture.

e. CONTRIBUTION OF EQUIPMENT (attach additional pages if necessary)

Provide a detailed description of equipment to be provided by each firm participating in this joint venture. Description should include the type, quality, and quantities.

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

f. OTHER APPLICABLE OWNERSHIP INTERESTS (attach additional pages if necessary)

Provide a detailed description of any other applicable ownership interests including, but not limited to, ownership options and agreements which restrict or limit ownership and/or control.

g. CURRENT CTA CONTRACTS (attach additional pages if necessary)

Provide a detailed description of ALL current CTA contracts and completed CTA contracts during the past two (2) years by any of the firms participating in this joint venture.

CONTROL OF THE JOINT VENTURE

Identify name and firm of the individuals who are, or will be, responsible for and have the authority to engage in the following management functions and policy decisions. Indicate any limitations to their authority such as dollar limits and co-signatory requirements.

a. **CHECK SIGNING:** _____

b. **AUTHORITY TO ENTER INTO CONTRACTS:** _____

c. **SIGNING, CO-SIGNING, AND/OR COLLATERALIZING LOANS:** _____

d. **ACQUISITIONS OF LINE(S) OF CREDIT:** _____

e. **ACQUISITION AND INDEMINIFICATION OF PAYMENT AND PERFORMANCE BONDS:** _____

f. **NEGOTIATING AND SIGNING LABOR AGREEMENTS:** _____

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

MANAGEMENT OF CONTRACT PERFORMANCE (Identify name(s) and firm(s) only)

i. **SUPERVISION OF FIELD OPERATIONS:** _____

ii. **MAJOR PURCHASES:** _____

iii. **ESTIMATING:** _____

iv. **ENGINEERING:** _____

FINANCIAL CONTROLS OF JOINT VENTURE

a. **WHICH INDIVIDUAL(S) AND/OR FIRM(S) WILL BE RESPONSIBLE FOR KEEPING THE BOOKS OF ACCOUNTS?**

b. **IDENTIFY THE “MANAGING PARTNER”, IF ANY, AND DESCRIBE THE MEANS AND MEASURE OF THEIR COMPENSATION:**

c. **WHAT AUTHORITY DOES EACH FIRM PARTICIPATING IN THIS JOINT VENTURE HAVE TO COMMIT OR OBLIGATE THE OTHER TO INSURANCE AND BONDING COMPANIES, FINANCIAL INSTITUTIONS, SUPPLIES, SUBCONTRACTORS, AND/OR OTHER PARTIES PARTICIPATING IN THE PERFORMANCE OF THIS CONTRACT OR THE WORK OF THIS PROJECT?**

PERSONNEL

Identify the number of personnel (by trade and profession) from each firm needed to perform the joint venture’s work under this contract. Attach additional pages if necessary.

TRADE	FIRM A:	FIRM B:	FIRM C:
	_____	_____	_____

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

PROFESSION	FIRM A: _____	FIRM B: _____	FIRM C: _____
PROFESSIONAL			
ADMINISTRATIVE			
UNSKILLED LABOR			

- a. **ARE ANY PROPOSED JOINT VENTURE EMPLOYEES CURRENTLY EMPLOYED BY ANY FIRM PARTICIPATING IN THIS JOINT VENTURE?** ☐ YES ☐ NO

NO. EMPLOYED BY FIRM A: _____

NO. EMPLOYED BY FIRM B: _____

NO. EMPLOYED BY FIRM C: _____

- b. **IDENTIFY NAME AND FIRM OF THE INDIVIDUAL WHO WILL BE RESPONSIBLE FOR JOINT VENTURE HIRING?**

ADDITIONAL INFORMATION

Please state any other material facts and additional information pertinent to the control and structure of this joint venture.

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

The undersigned affirm that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each firm in the undertaking. Further, the undersigned covenant and agree, under which work is done for CTA by the firm, to provide to CTA current, complete and accurate information regarding actual joint venture work and the payment therefor, and any proposed changes to any provision of the joint venture, or those of each firm relevant to the joint venture by authorized representatives of CTA or any of its funding agencies.

Any misrepresentation regarding the status of a person or an entity in order to qualify for DBE status may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Material misrepresentation on any matter will also be grounds for terminating any contract which may be awarded, and for initiating action under federal or state laws concerning false statements.

NOTE: If, after filing this Schedule B and before the completion of the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the Director of Diversity Programs directly in writing or through the prime contractor if the joint venture is a subcontractor.

The Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the Authority's requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the Authority.

Signature of Owner, President, or Authorized Agent of Firm A

Name of Firm A

Printed Name of Owner, President, or Authorized Agent of Firm A

Printed Title

Date

Phone

PUBLIC NOTARY SECTION

On this _____ day of _____, 20____, the above-signed Officer of

Name of Firm A: _____

personally, known to me as the person(s) described in the foregoing Affidavit, acknowledged that h/she executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS OF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

OFFICIAL NOTARY SEAL

Signature of Notary Public

My Commission Expires:

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

The undersigned affirm that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each firm in the undertaking. Further, the undersigned covenant and agree, under which work is done for CTA by the firm, to provide to CTA current, complete and accurate information regarding actual joint venture work and the payment therefor, and any proposed changes to any provision of the joint venture, or those of each firm relevant to the joint venture by authorized representatives of CTA or any of its funding agencies.

Any misrepresentation regarding the status of a person or an entity in order to qualify for DBE status may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Material misrepresentation on any matter will also be grounds for terminating any contract which may be awarded, and for initiating action under federal or state laws concerning false statements.

NOTE: *If, after filing this Schedule B and before the completion of the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the Director of Diversity Programs directly in writing or through the prime contractor if the joint venture is a subcontractor.*

The Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the Authority's requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the Authority.

Signature of Owner, President, or Authorized Agent of Firm B

Name of Firm B

Printed Name of Owner, President, or Authorized Agent of Firm B

Printed Title

Date

Phone

PUBLIC NOTARY SECTION

On this _____ day of _____, 20____, the above-signed Officer of

Name of Firm B: _____

personally, known to me as the person(s) described in the foregoing Affidavit, acknowledged that h/she executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS OF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

OFFICIAL NOTARY SEAL

Signature of Notary Public

My Commission Expires:

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE B

AFFIDAVIT OF JOINT VENTURE

The undersigned affirm that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each firm in the undertaking. Further, the undersigned covenant and agree, under which work is done for CTA by the firm, to provide to CTA current, complete and accurate information regarding actual joint venture work and the payment therefor, and any proposed changes to any provision of the joint venture, or those of each firm relevant to the joint venture by authorized representatives of CTA or any of its funding agencies.

Any misrepresentation regarding the status of a person or an entity in order to qualify for DBE status may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Material misrepresentation on any matter will also be grounds for terminating any contract which may be awarded, and for initiating action under federal or state laws concerning false statements.

NOTE: If, after filing this Schedule B and before the completion of the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the Director of Diversity Programs directly in writing or through the prime contractor if the joint venture is a subcontractor.

The Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the Authority's requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the Authority.

Signature of Owner, President, or Authorized Agent of Firm C

Name of Firm C

Printed Name of Owner, President, or Authorized Agent of Firm C

Printed Title

Date

Phone

PUBLIC NOTARY SECTION

On this _____ day of _____, 20____, the above-signed Officer of

Name of Firm C _____

personally, known to me as the person(s) described in the foregoing Affidavit, acknowledged that h/she executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS OF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

OFFICIAL NOTARY SEAL

Signature of Notary Public

My Commission Expires:

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.



DBE - SCHEDULE C-2

Participant Statement

FOR NON-CONSTRUCTION &
NON-TASK ORDER BASED
CONTRACTS ONLY

INSTRUCTIONS

This form must be completed for each DBE firm participating in the Utilization Plan. Failure to complete and submit all pages of this form with the bid documents may result in the bid being rejected in its entirety. If additional space is needed, attach an additional form.

LETTER OF INTENT FROM DBE TO PERFORM AS (WORK CATEGORY):

SUBCONTRACTOR/SUBCONSULTANT (Non-trucking) ____ TRUCKING ____

MANUFACTURER ____ REGULAR DEALER (60%) ____ BROKER DEALER (Identify commission and/or fees) ____

SUBCONTRACTING LEVEL: ____ TIER (i.e. 1st Tier, 2nd Tier, 3rd Tier, etc.)

CONTRACT TITLE: _____

CONTRACT NUMBER: _____

DBE FIRM: _____

The DBE status of the undersigned is confirmed by the attached Letter of Certification. Date of next NCA: _____

PRIME CONTRACTOR: _____

DBE SCOPE OF WORK (attach additional pages if necessary): _____

DBE CONTRACT AMOUNT (minimum level of effort): \$ _____

DBE CONTRACT AMOUNT (maximum level of effort): \$ _____

DBE SUB-SUBCONTRACTING LEVELS

_____% of the dollar amount of the DBE's subcontract will be sublet to non-DBE contractors.

_____% of the dollar amount of the DBE's subcontract will be sublet to DBE contractors.

NOTICE: IF THE DBE WILL NOT BE SUB-SUBCONTRACTING ANY OF THE WORK DESCRIBED IN THIS SCHEDULE, A ZERO (0) MUST BE SHOWN IN EACH BLANK ABOVE.

NOTICE: If ANY dollar amount of the DBEs' scope of work will be sublet, a brief explanation and description of the work to be sublet must be attached to this schedule. The DBE MUST perform at least 30% of its scope of work.

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE C-2

Participant Statement

NOTICE: Any misrepresentation regarding the status of a person or an entity in order to qualify for DBE status may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Material misrepresentation on any matter will also be grounds for terminating any contract which may be awarded, and for initiating action under federal or state laws concerning false statements.

The undersigned will enter into a formal written agreement for the above work with you as Prime Contractor, conditioned upon your execution of a contract with the Chicago Transit Authority, and will do so within (7) seven calendar days of your receipt of a signed contract from the Chicago Transit Authority or prior to any work being performed by the DBE subcontractor.

The Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the Authority's requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the Authority.

Signature of Owner, President, or Authorized Agent of DBE

Name of DBE Firm

Printed Name of Owner, President, or Authorized Agent of DBE

Printed Title

Date

Phone:

PUBLIC NOTARY SECTION

On this _____ day of _____, 20____, the above-signed Officer of

Name of DBE firm: _____
personally, known to me as the person(s) described in the foregoing Affidavit, acknowledged that h/she executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS OF, I hereunto set my hand and official seal.

OFFICIAL NOTARY SEAL

Signature of Notary Public

My Commission Expires:

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within **five (5)** business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.



DBE - SCHEDULE D

DBE Utilization Plan

INSTRUCTIONS

This form must be completed by the Prime Contractor. Failure to complete and submit all pages of this form with the bid documents will result in the bid being rejected in its entirety. If additional space is needed, attach an additional form.

CONTRACT TITLE: _____

CONTRACT NUMBER: _____

TASK ORDER NUMBER: _____ **CATEGORY NUMBER:** _____
(IF APPLICABLE) (IF APPLICABLE)

TOTAL BID AMOUNT: _____

I, acting in my capacity as an officer of the undersigned bidder (or bidders, if a joint venture), hereby assure the Chicago Transit Authority that on the above referenced project my company:

☐ **Meets or exceeds** the Disadvantaged Business Enterprise goal assessed and has provided documented participation of ____%. Attached are the signed participant statements (Schedule C-1/C-2/C-3) required by the Special Conditions evidencing availability and use of each business participating in this plan and assuring that each business will perform a commercially useful function in the work of the contract.

☐ **Failed** to meet the Disadvantaged Business Enterprise goal assessed through DBE participation, but included good faith effort documentation to meet the goal and provided documented participation of ____%. Attached are the signed participant statements (Schedule C-1/C-2/C-3) required by the Special Conditions evidencing availability and use of each business participating in this plan and assuring that each business will perform a commercially useful function in the work of the contract.

DBE FIRM (If 2 nd tier or lower, identify sub-prime)	TIER	WORK CATEGORY (e.g. Regular Dealer)	DESCRIPTION OF WORK	TOTAL AMOUNT OF DBE CONTRACT
				\$
				\$
				\$
				\$
				\$
				\$
				\$

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within five (5) business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

DBE - SCHEDULE D

DBE Utilization Plan

I hereby acknowledge that I have been advised of the following:

Any misrepresentation regarding the status of a person or an entity in order to qualify for DBE status may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Material misrepresentation on any matter will also be grounds for terminating any contract which may be awarded, and for initiating action under federal or state laws concerning false statements.

To the best of my knowledge, information and belief, the facts and representations contained in the aforementioned attached Schedules are true and no material facts have been omitted.

The undersigned will enter into a formal agreement with all listed DBE firms for work as indicated by this Schedule D and accompanying Schedule Cs, and will enter into such agreements within (7) seven calendar days after receipt of the contract executed by the Chicago Transit Authority or prior to any work being performed by the DBE subcontractor(s). In the event the Prime contractor cannot meet said seven (7) day schedule, it must provide a written explanation for the delay and an estimate date by which the written agreement will be completed.

If awarded a contract, I agree to promptly and directly provide the CTA on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

Further, I shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. I shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by me to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the CTA deems appropriate.

The Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the Authority's requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the Authority.

Signature of Owner, President, or Authorized Agent of Prime Contractor

Name of Prime Contractor

Printed Name of Owner, President, or Authorized Agent of Prime Contractor

Printed Title

Date

Phone

PUBLIC NOTARY SECTION

On this _____ day of _____, 20____, the above-signed Officer of

Name of Prime Contractor: _____
personally, known to me as the person(s) described in the foregoing Affidavit, acknowledged that h/she executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS OF, I hereunto set my hand and official seal.

OFFICIAL NOTARY SEAL

Signature of Notary Public

My Commission Expires:

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within five (5) business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.



DBE - SCHEDULE D – Additional Page

DBE Utilization Plan

CONTRACT NUMBER: _____

PRIME CONTRACTOR: _____

DBE FIRM (If 2 nd tier or lower, identify sub-prime)	TIER	WORK CATEGORY (e.g. Regular Dealer)	DESCRIPTION OF WORK	TOTAL AMOUNT OF DBE CONTRACT:
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$
				\$

The Authority reserves the right to request additional information or documentation for the purpose of evaluation or clarification. The additional information or clarification must be provided within five (5) business days of request. Failure to respond may result in the bid being deemed non-responsive and may be excluded from further consideration.

BIDDERS LIST

PRIME CONTRACTOR: _____

CONTRACT NUMBER: _____

JOB ORDER NUMBER (IF APPLICABLE): _____

CONTACT PERSON _____ **PHONE NUMBER:** _____

Included on the following list are all firms who responded to a solicitation by submitting a bid or quote as a subcontractor. Under gross receipt column list range using the following: **Under \$500,000, \$500,000-\$1,000,000, \$1,000,000-\$2,000,000, \$2,000,000-\$2,500,000, \$2,500,000-\$3,000,000, \$3,000,000-\$3,500,000, \$3,500,000-\$4,000,000, over \$4,000,000.**

[illegible]



TECHNICAL ASSISTANCE AGENCIES

The following agencies are available to prospective bidders for assistance.

<p>Arquitectos</p> <p>Loop Station, PO Box 2587 Chicago IL 60690 Contact: Jose Espejo Phone: (773) 716-6042 Email: arqincchicago@gmail.com Website: www.arquitectoschicago.org</p> <p>Services</p> <ul style="list-style-type: none"> ✓ Business Development ✓ Technical Assistance 	<p>Association of Asian American Construction Enterprises (AACE)</p> <p>712 W. Root St Chicago, IL 60609 Contact: Christine Chung Phone: (312) 595-2010 Email: admin@aacechicago.com Website: www.aacechicago.com</p> <p>Services</p> <ul style="list-style-type: none"> ✓ Business Development ✓ Technical Assistance
<p>Austin African American Business Networking Association (AAABNA) 5820 W. Chicago Ave.</p> <p>Chicago, IL 60651 Contact: Malcolm Crawford Phone: (773) 626.4497 Email: aaabna@yahoo.com Website: www.aaabna.org</p> <p>Services</p> <ul style="list-style-type: none"> ✓ Business Development ✓ Technical Assistance 	<p>Black Contractors, Owners, and Executives (BCOE) 7811 S. Stony Island Ave.</p> <p>Chicago, IL 60649 Contact: Angela Drexel Phones: (708) 535-.6001 ext 304 Email: adrexel@livewire-systems.com Website: www.bcoechicago.org</p> <p>Services</p> <ul style="list-style-type: none"> ✓ Business Development
<p>Black Contractors United (BCU) 12000 S. Marshfield Ave.</p> <p>Calumet Park, IL 60827 Contact: Ed McKinnie Phone: 708-389-5730 Email: mckinnie@blackcontractorsunited.com Website: www.blackcontractorsunited.com</p> <p>Services</p> <ul style="list-style-type: none"> ✓ Business Development ✓ Technical Assistance ✓ Bidding Assistance 	<p>Chatham Business Association (CBA), Small Business Development, Inc. 800 E. 78th St. Chicago, IL 60619 Contact: Pattilyn Beals Phone: (773) 994.5006 Email: pattilynbeals@cbaworks.org Website: www.cbaworks.org</p> <p>Services</p> <ul style="list-style-type: none"> ✓ Business Development ✓ Certification Assistance ✓ Technical Assistance ✓ Bidding Assistance



TECHNICAL ASSISTANCE AGENCIES

The following agencies are available to prospective bidders for assistance.

<p>Chicago Urban League (CUL) – Center for Entrepreneurship & Innovation 4510 S. Michigan Ave.</p> <p>Chicago, IL 60653 Contact: Kevin Davenport Phone: (773) 451.3559 Email: kdavenport@thechicagourbanleague.org Website: www.chiurbanleaguecei.com</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical Assistance✓ Bidding Assistance	<p>Chicago Minority Supplier Development Council (CMSDC) 105 W. Adams St. Suite 2300 Chicago, IL 60603 Contact: Neda Sharp Phone: (312) 755.8880 Email: nsharp@chicagomsdc.org Website: www.chicagomsdc.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical Assistance✓ Bidding Assistance
<p>Contractor Advisors Business Development Inc. 1507 E. 53rd St. Suite 906 Chicago, IL 60615 Contact: Suzaane F. Stanley Phone: (312) 436.0301 Email: sfstanley@contractoradvisors.us Website: www.contractoradvisors.us</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Bidding Assistance	<p>Cosmopolitan Chamber of Commerce 1633 S. Michigan Ave.</p> <p>Chicago, IL 60616 Contact: Rhonda McGowan Phone (312) 971.9594 Email: rmcgowan@coscmochamber.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Bidding Assistance
<p>Federation of Women Contractors (FWC) 4210 W. Irving Park Rd.</p> <p>Chicago, IL 60641 Contact: Jaemie Neely Phone: (312) 360.1122 Email: jneely@fwcchicago.com Website: www.fwcchicago.com</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development	<p>Greater Englewood Community Development Corporation (GECDC) 815 W. 63rd St. Chicago, IL 60621 Contact: Tamora Hughes Phone: (773) 651.2400 Email: thughes@gecdc.org Website: www.gecdc.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development



TECHNICAL ASSISTANCE AGENCIES

The following agencies are available to prospective bidders for assistance.

<p>Hispanic American Construction Industry Association (HACIA) 650 W. Lake St. Unit 415 Chicago, IL 60661 Contact: Juan Calahorrano Phone: (312) 575.0389 Email: jcalahorrano@haciaworks.org Website: www.haciaworks.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical Assistance✓ Bidding Assistance	<p>HIRE 360 2301 S. Lake Shore Drive, Lakeside Center Chicago, IL 60616 Contact: Ashley Nicoson Phone: (312) 575-2515 Email: anicoson@hire360chicago.com Website: www.HIRE360Chicago.com</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical Assistance✓ Bidding Assistance
<p>Illinois Hispanic Chamber of Commerce (IHCC) 222 W. Merchandise Mart Plaza Suite 1212 c/o 1871 Chicago, IL 60654 Contact: Angie Alonso-Cone Phone: (312) 425.9500 Email: aalonso@ihccbusiness.net Website: www.ihccbusiness.net</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical AssistanceBidding Assistance	<p>LGBT Chamber of Commerce 3179 N. Clark St. 2nd Floor Chicago, IL 60657 Contact: Jerome Holston Phone: (773) 303.0167 Email: jholston@lgbtcc.com Website: www.lgbtcc.com</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Technical Assistance
<p>Latin American Chamber of Commerce (LACC) 3512 W. Fullerton Ave. Chicago, IL 60647 Contact: D. Lorenzo Padron Phone: (773) 252.5211 Email: d.lorenzopadron@laccusa.com Website: www.laccusa.com</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Technical Assistance✓ Bidding Assistance	<p>National Association of Minority Contractors Chicago (NAMCC) 4455 S. Martin Luther King Dr. Chicago, IL 60653 Contact: Curtis Thompson Phone: (708) 439.4517 Email: curtis@namcchicago.org Website: www.namcchicago.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Technical Assistance



TECHNICAL ASSISTANCE AGENCIES

The following agencies are available to prospective bidders for assistance.

<p>MBDA Business Center Chicago 105 W. Adams St.</p> <p>Chicago, IL 60603 Contact: David Thomas Phone: (312) 755.8880 Email: dthamoas@chicagombdacenter.com Website: www.mbda.gov</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance	<p>U.S. Minority Contractors Association (USMCA) 1250 South Grove Ave. Suite 200 Barrington, IL 60010 Contact: Ashley Washington Phone: (847) 852.5010 Email: admin@usminoritycontractors.org Website: www.usminoritycontractors.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical Assistance <p>Bidding Assistance</p>
<p>National Organization of Minority Engineers (NOME) 33 W. Monroe St. Suite 1540 Chicago, IL 60603 Contact: Diana Hennington Phone: (312) 960.1239 Email: grandevents1@sbcglobal.net Website: www.nomeonline.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Technical Assistance	<p>Women's Business Development Center (WBDC) 8 S. Michigan Ave. 4th Floor Chicago, IL 60603 Contact: Freida Curry Phone: (312) 853.3477 Email: fcurry@wbdc.org Website: www.wbdc.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical Assistance✓
<p>Women Construction Owners & Executives (WCOE)</p> <p>308 Circle Ave. Forest Park, IL 60130 Contact: Mary Kay Minaghan Phone: (708) 366.1250 Email: mkm@mkmservices.com Website: www.wcoeusa.org</p> <p>Services</p> <ul style="list-style-type: none">✓ Business Development✓ Certification Assistance✓ Technical Assistance✓ Bidding Assistance	



TECHNICAL ASSISTANCE AGENCIES

The following agencies are available to prospective bidders for assistance.

SPECIALTY ASSISTANCE AGENCIES

Lambent Risk Management Services Inc. 33 N. LaSalle St. Suite 1150 Chicago, IL 60602 Contact: Junior Pierre Phone: (312) 220.9200 Email: junior_pierre@lambent-rms.com Website: www.lambent-rms.com Services ✓ Risk Management	Reyes Kurson, Ltd. 328 S. Jefferson St. Suite 909 Chicago, IL 60661 Contact: Lauren Mack Phone: (312) 332.0055 Email: lmack@rkchicago.com Website: www.rkchicago.com Services ✓ Legal Assistance
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CTA CONTACT INFORMATION

Project information and current DBE directory of certified local and out-of-state companies are available.

Chicago Transit Authority Project Information Purchasing Department 567 W. Lake St. Chicago, IL 60661-1465 Fax: (312) 681-2405 Ellen McCormack Vice President Purchasing and Supply Chain Phone: (312) 681-2400 E-mail: emccormack1@transitchicago.com	Chicago Transit Authority Diversity Programs Information Diversity Programs Department 567 W. Lake St. Chicago, IL 60661-1465 Fax: (312) 681-2495 JuanPablo Prieto Director, Diversity Programs DBE Liaison Officer (DBELO) Phone: (312) 681-2600 E-mail: jprieto@transitchicago.com
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**SPECIAL CONDITIONS
WORKFORCE INITIATIVES**

C22FT102829986 DESIGN-BUILD SERVICES FOR THE
CONTRACT NUMBER: RED LINE EXTENSION (Design Services)

I. POLICY AND TERMS

- A. The policy of the Chicago Transit Authority (CTA or Authority) is to implement actions and policies to increase the participation of economically disadvantaged and/or dislocated workers in the labor force of its contractors and create training and skill improvement opportunities on its projects where possible.
- B. To achieve this, the CTA has established the following goals, as each is defined herein and hereinafter together referred to as the “Workforce Goals”, for certain percentages of the total billable contract hours (“contract hours”) to be performed by certain qualified workers on the Contract.

Careers Opportunity Goal:

0%

**Economically
Disadvantaged Area Goal:**

10%

- C. The Workforce Goals is expressed as a percentage of the total contract hours logged on the Contract, inclusive of all amendments, modifications, options and change orders, by the Contractor and all Subcontractors.
- D. The Workforce Goals will be evidenced in a manner to be designated by the CTA.
- E. The Bidder may also meet a Workforce Goals by documenting good faith efforts, as described in Section VII hereof, to the extent that, at the end of the Contract, the Bidder does not meet the Workforce Goals.

II. DEFINITIONS

- A. **“Authority”** means the Chicago Transit Authority.
- B. **“Bid”** means a Contractor’s response to a solicitation from the CTA Purchasing Department, including, as applicable, Invitation for Bids (IFB), Letters of Interest and Qualifications (LIQ), Request for Proposal (RFP), Request for Qualifications (RFQ), Work Order Solicitations, or Task Order Solicitations.
- C. **“Bidder”** means a firm or organization that submits as a prime contractor for a Bid; includes bidder and contractors. The terms **“Bidder”** and **“Contractor”** are used interchangeably in these Special Conditions.
- D. **“Economically Disadvantaged Area” or “EDA”** means a zip code with a median household income of \$40,000 or less, as included in the list made available on the CTA

website at the time of the Bid, at [https://www.transitchicago.com/assets/1/6/National_Economically_Disadvantaged_Area_\(EDA\)_Zip_Codes_January_1,_2022_-_Present.pdf](https://www.transitchicago.com/assets/1/6/National_Economically_Disadvantaged_Area_(EDA)_Zip_Codes_January_1,_2022_-_Present.pdf).

- E. **“EDA Resident”** means an individual who lives in a zip code listed as an EDA zip code based on the individual’s identification or other proof of residency. An individual’s hours will be recognized for credit under the EDA Goal as long as they reside within an EDA.
- F. **“Good Faith Efforts”** means efforts to achieve the Workforce Goals as specified in Section VII hereof.
- G. **“Section 3 Worker”** means any worker who currently fits or when hired within the past five years fit at least one of the following categories: 1) the worker’s income for the previous or annualized calendar year is below the income limit established by the U.S. Department of Housing and Urban Development (HUD), 2) the worker is employed by a Section 3 business concern, or 3) the worker is a YouthBuild participant, in each case as described and defined in 24 CFR 75.5. An individual’s hours will be recognized for credit under the Careers Opportunity Goal as long as they qualify as a Section 3 Worker under the Section 3 Regulations.
- H. **“Subcontractor”** means the individual or firm that has a subcontract of any tier to that of the Contractor to provide materials, equipment, supplies or services or labor is performed.
- I. **“WIOA Worker”** means an economically disadvantaged or dislocated worker who meets the eligibility requirements under the Workforce Innovation and Opportunity Action (“WIOA”), 29 USC § 3102 and its implementing regulations 20 CFR 680, as determined by a WIOA workforce center.
- J. **“Workforce Partner”** means one or more consultants procured by CTA to assist with the implementation of the Workforce Goals.
- K. **“Workforce Plan”** means any commitments in the Contractor’s Bid with respect to its workforce outreach and training programs or meeting the Workforce Goals.

III. CAREERS OPPORTUNITY GOAL

- A. The aforementioned percentage of contract hours should be attained by hiring and utilizing WIOA Workers or Section 3 Workers.
- B. The Contractor is responsible for submitting verification documentation from a WIOA workforce center to CTA for each WIOA Worker through LCPtracker in order to receive credit by no later than 5 business days after the end of the WIOA Worker’s first week of work. WIOA verification documentation is valid for five (5) years from date of enrollment. WIOA verification renewal documentation must be submitted thirty (30) prior to expiration.
- C. The Contractor is responsible for submitting verification documentation to CTA for each

Section 3 Worker through LCPtracker in order to receive credit by no later than 5 business days after the end of the Section 3 Worker's first week of work. Section 3 Resident's verification documentation must be re-submitted in the event of a change in Section 3 status.

IV. ECONOMICALLY DISADVANTAGED AREA GOAL

- A.** The aforementioned percentage of contract hours should be attained by hiring and utilizing EDA Residents.
- B.** The Contractor and their subcontractor(s) are responsible for submitting verification documentation to CTA for the status of each EDA Resident in order to receive credit by no later than 5 business days after the end of the EDA Resident's first week of work.

V. TRACKING

- A.** Contractor and their subcontractor(s) must report contract hours for the Workforce Goals in a manner to be designated by the CTA.
- B.** Each report of contract hours (in a manner to be designated by CTA) will be deemed to include a certification by the Contractor and any Subcontractor, as applicable, that the contract hours reported are true and correct, and that the status of any worker who qualified under the Workforce Goals continues to hold the relevant status as of the date the hours are reported.
- C.** The Contractor and their subcontractor(s) are responsible for verifying workers' addresses and inputting accurate addresses for each worker into the tracking mechanism, on or before any time for that worker is submitted.
- D.** CTA staff will conduct site visits throughout the Contract to interview employees. Contractors and their subcontractor(s) are responsible for making employees available for interviews including, but not limited to, confirming their name, address, position, and rate of pay.

VI. WORKFORCE PARTNERS

- A.** The CTA, from time to time, may procure one or more Workforce Partners to assist with outreach and recruitment efforts to inform qualified candidates about job opportunities on CTA projects. Workforce Partners are intended to assist with the creation of a pool of candidates that are eligible to be hired by the Contractor.
- B.** The Contractor and their subcontractor(s) as applicable will partner with any Workforce Partner to host community outreach and recruitment events as needed and will utilize any Workforce Partners candidate pools as a hiring resource to meet the Workforce Goals.
- C.** Notwithstanding the efforts of any Workforce Partners, or any successes or failures of any Workforce Partners, it is the Contractor's obligation to (1) meet the Workforce Goals and (2)

recruit and hire a workforce with the technical abilities and skills to achieve all requirements of the Contract.

VII. REPORTING

- A.** No later than 30 Days after Notice to Proceed, the Contractor will provide a projection of the actual number of contract hours for the Workforce Goals that are expected to be created and/or retained by this Contract, whether from the Contractor's own workforce or any Subcontractor.

VIII. GOOD FAITH EFFORTS

- A.** The Contractor and its subcontractor(s) agree to make sufficient and reasonable good faith efforts to achieve the Workforce Goals for this Contract. Good faith efforts require that the Contractor and its subcontractor(s) consider all qualified applicants who are EDA residents.
- B.** In the event the Contractor and its subcontractors do not meet the Workforce Goals, Contractor must provide documented evidence of sufficient and reasonable good faith efforts to CTA.
- C.** The following, which is not exclusive or exhaustive, are examples of the types of actions which indicate good faith efforts to meet the Workforce Goals:
 - 1.** Implementation of outreach, training, and utilization efforts and documentation of such efforts.
 - 2.** Publicized notification of work opportunities on the project.
 - 3.** Collaborate with Workforce Partner(s) and utilize any Workforce Partner's candidate pool as a hiring resource to achieve the Workforce Goals.
 - 4.** To the extent that the Contractor submitted a Workforce Plan:
 - i.** Contractor will comply with the commitments made in its Workforce Plan. Contractor's failure to implement the efforts described in its Workforce Plan is considered a material breach of the Contract.
 - ii.** Contractor will use the methods detailed in its Workforce Plan to reach out to, utilize, and train a diverse pool of individuals and achieve its Workforce Goals.
 - iii.** Contractor must report to the CTA on the implementation of Workforce Plan efforts.

IX. NON-COMPLIANCE

- A.** As the actual amount of damages resulting from such failure would be difficult or impossible

to ascertain, Contractor's failure to meet the Workforce Goals and failure to demonstrate sufficient and reasonable good faith efforts as determined by CTA may result in the assessment of liquidated damages in addition to other remedies available as described in the Contract.

- B.** Liquidated damages will be calculated as follows: The number of contract hours shortfall for the applicable Workforce Goals multiplied by the average of the hourly wages for the positions on the contract.
- C.** Assessment of liquidated damages, if any, shall occur at the time of the final progress payment, except as otherwise determined by CTA's Director, Purchasing.

SPECIAL CONDITIONS WORKFORCE INITIATIVES

CONTRACT NUMBER: C22FT102829986 – DESIGN-BUILD SERVICES FOR THE RED LINE EXTENSION
MAINLINE DESIGN BUILD (RLE-MLDB) PROJECT (Construction Services)

I. POLICY AND TERMS

- A.** The policy of the Chicago Transit Authority (CTA or Authority) is to implement actions and policies to increase the participation of economically disadvantaged and/or dislocated workers in the labor force of its contractors and create training and skill improvement opportunities on its projects where possible.
- B.** To achieve this, the CTA has established the following goals, as each is define herein and hereinafter together referred to as “Workforce Goals”, for certain percentages of the total construction and craft labor hours (“labor hours”) to be performed by certain qualified workers on the Contract.

Apprentice Goal: 15%	Careers Opportunity Goal: 10%	Service Area Economically Disadvantaged Area Goal: 35%
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- C.** The Workforce Goals are expressed as a percentage of the total labor hours logged on the Contract, inclusive of all amendments, modifications, options and change orders, by the Contractor and all Subcontractors.
- D.** The Workforce Goals are evidenced through certified payrolls submitted to the CTA by the Bidder on behalf of itself and any Subcontractors. A worker’s labor hour may qualify for multiple Workforce Goals to the extent that such worker qualifies in each such category.
- E.** The Bidder may also meet a Workforce Goal by documenting good faith efforts, as set forth in Section VII hereof, in the event that, at the end of the contract, the Bidder does not meet one or more of the Workforce Goals.

II. DEFINITIONS

- A. “Authority”** means the Chicago Transit Authority.
- B. “Apprentice”** means a worker who meets the requirements of the definition of an “Apprentice” as defined in 29 CFR 29, including any “apprentice” from signatory Unions performing work on the Contract pursuant to the terms of the CTA’s Multi-Project Labor Agreement.
- C. “Bid”** means a Contractor’s response to a solicitation from the CTA Purchasing Department, including, as applicable, Invitation for Bids (IFB), Letters of Interest and Qualifications

(LIQ), Request for Proposal (RFP), Request for Qualifications (RFQ), Work Order Solicitations, or Task Order Solicitations.

- D. “Bidder”** means a firm or organization that submits as a prime contractor for a Bid; includes bidder and contractors. The terms **“Bidder”** and **“Contractor”** are used interchangeably in these Special Conditions.
- E. “Good Faith Efforts”** means efforts to achieve one or more of the Workforce Goals as specified in Section VII hereof.
- F. “New Hire”** means an Apprentice, Section 3 Worker, WIOA Worker, or Service Area EDA Resident that is hired by the Contractor or a Subcontractor and whose hire date is after the date of execution of the Contract.
- G. “Section 3 Worker”** means any worker who currently fits or when hired within the past five years fit at least one of the following categories: 1) the worker’s income for the previous or annualized calendar year is below the income limit established by the U.S. Department of Housing and Urban Development (HUD), 2) the worker is employed by a Section 3 business concern, or 3) the worker is a YouthBuild participant, in each case as described and defined in 24 CFR 75.5. An individual’s hours will be recognized for credit under the Careers Opportunity Goal as long as they qualify as a Section 3 Worker under the Section 3 Regulations.
- H. “Service Area”** means the CTA’s statutory service area, defined in the Metropolitan Transit Authority Act, 70 ILCS 3605/3, as being “All the territory in the County of Cook, State of Illinois, lying east of the east line of Range Eleven, East of the Third Principal Meridian of the United States Government Survey.”.
- I. “Service Area Economically Disadvantaged Area” or “Service Area EDA”** means an area defined by the boundaries of any zip code which (1) meets the applicable threshold for median household income, and (2) is located, in whole or in part, within the Service Area, as included in the list made available on the CTA website at the time of the Bid, at <https://www.transitchicago.com/db/workforce-initiatives/>.
- J. “Service Area EDA Resident”** means an individual who lives in a zip code listed as a Service Area EDA zip code, in each case based on the individual’s state-issued identification or other proof of residency. An individual’s hours will be recognized for credit under the Service Area EDA Goal as long as they reside within a Service Area EDA.
- K. “Subcontractor”** means the individual or firm that has a subcontract of any tier to that of the Contractor to provide materials, equipment, supplies, services or labor is performed.
- L. “WIOA Worker”** means an economically disadvantaged or dislocated worker who meets the eligibility requirements under the Workforce Innovation and Opportunity Action (“WIOA”), 29 USC § 3102 and its implementing regulations 20 CFR 680, as determined by

a WIOA workforce center.

M. “Workforce Partner” means one or more consultants procured by CTA to assist with the implementation of the Workforce Goals.

N. “Workforce Plan” means any commitments in the Contractor’s Bid with respect to its workforce outreach and training programs or meeting the Workforce Goals.

III. APPRENTICE GOAL

A. The aforementioned percentage of labor hours should be attained by hiring and utilizing Apprentices.

B. The Contractor is responsible for submitting Apprentice Certificates to CTA for each Apprentice through LCPtracker in order to receive credit by no later than 5 business days after the end of the Apprentice’s first week of work. Apprentice Certificates documentation must be re-submitted every ninety (90) days.

C. For any Contract where the total labor hours exceed 50,000, 10% of the hours worked under this goal must be worked by New Hires.

IV. CAREERS OPPORTUNITY GOAL

A. The aforementioned percentage of labor hours should be attained by hiring and utilizing WIOA Workers or Section 3 Workers.

B. The Contractor is responsible for submitting verification documentation from a WIOA workforce center to CTA for each WIOA Worker through LCPtracker in order to receive credit by no later than 5 business days after the end of the WIOA Worker’s first week of work. WIOA verification documentation is valid for five (5) years from date of enrollment. WIOA verification renewal documentation must be submitted thirty (30) prior to expiration.

C. The Contractor is responsible for submitting verification documentation to CTA for each Section 3 Worker through LCPtracker in order to receive credit by no later than 5 business days after the end of the Section 3 Worker’s first week of work. Section 3 Resident’s verification documentation must be re-submitted in the event of a change in Section 3 status.

D. For any Contract where the total labor hours exceed 50,000, 10% of the hours worked under this goal must be worked by New Hires.

V. SERVICE AREA ECONOMICALLY DISADVANTAGED AREA GOAL

A. The aforementioned percentage of labor hours should be attained by hiring and utilizing Service Area EDA Residents.

B. The Contractor and their subcontractor(s) are responsible for submitting verification

documentation to CTA for the status of each Service Area EDA Resident in order to receive credit by no later than 5 business days after the end of the Service Area EDA Resident's first week of work. Service Area EDA Resident's verification documentation must be re-submitted in the event of an address change of the Service Area EDA Resident.

- C. For any Contract where the total labor hours exceed 50,000, 10% of the hours worked under this goal must be worked by New Hires.

VI. TRACKING

- A. Contractor and their subcontractor(s) must report labor hours for all Workforce Goals via certified payroll using CTA's web-based reporting tool, LCPtracker, within 5 business days of the end of the applicable work week.
- B. Each report of labor hours will be deemed to include a certification by the Contractor and any Subcontractor, as applicable, that the labor hours reported are true and correct, and that the status of any worker who qualified under the Workforce Goals continues to hold the relevant status (Apprentice, Section 3 Worker, WIOA Worker, or Service Area EDA Resident, as applicable) as of the date the hours are reported. All documentation establishing the relevant status of each applicable worker must be retained and made available for inspection in accordance with the requirements of the Contract for retention and inspection of records.
- C. The Contractor and their Subcontractor(s) are responsible for verifying workers' addresses and inputting accurate addresses for each worker into LCPtracker, on or before any time for that worker is submitted.
- D. CTA staff will conduct site visits throughout the Contract to interview employees. Contractors and their Subcontractor(s) are responsible for making employees available for interviews including, but not limited to, confirming their name, address, craft, and rate of pay.

VII. WORKFORCE PARTNERS

- A. The CTA, from time to time, may procure one or more Workforce Partners to assist with outreach and recruitment efforts to inform qualified candidates about job opportunities on CTA projects, and assist such candidates with WIOA Worker certification, entry into pre-apprenticeship and apprentice programs to become Apprentices, and related requirements related to Workforce Goals. Workforce Partners are intended to assist with the creation of a pool of candidates that are eligible to be hired by the Contractor.
- B. The Contractor and their subcontractor(s) as applicable will partner with any Workforce Partner to host community outreach and recruitment events as needed and will utilize any Workforce Partners candidate pools as a hiring resource to meet the Workforce Goal.
- C. Notwithstanding the efforts of any Workforce Partners, or any successes or failures of any Workforce Partners, it is the Contractor's obligation to (1) meet the Workforce Goal and (2)

recruit and hire a workforce with the technical abilities and skills to achieve all requirements of the Contract.

VIII. REPORTING

- A.** No later than 30 Days after Notice to Proceed, the Contractor will provide a projection of the number of labor hours for each Workforce Goal expected to be created and/or retained by this Contract, whether from the Contractor's own workforce or any Subcontractor.
- B.** To the extent that the Contractor submitted a Workforce Plan, Contractor must report to the CTA on the implementation of Workforce Plan efforts, upon request by CTA.

IX. GOOD FAITH EFFORTS

- A.** The Contractor and its subcontractor(s) agree to make sufficient and reasonable good faith efforts to achieve the Workforce Goals for this Contract. Good faith efforts require that the Contractor and its subcontractor(s) consider all qualified applicants who are Apprentices, WIOA Workers, Section 3 Workers, or Service Area EDA Residents, as applicable.
- B.** In the event the Contractor and its subcontractors do not meet the Workforce Goals, Contractor must provide documented evidence of sufficient and reasonable good faith efforts to CTA.
- C.** The following, which is not exclusive or exhaustive, are examples of the types of actions which indicate good faith efforts to meet the Workforce Goals:
 - 1.** Implementation of outreach, training, and utilization efforts and documentation of such efforts.
 - 2.** Publicized notification of work opportunities on the project, including, but not limited to, direct notices to WIOA workforce centers and signatory Unions where applicable.
 - 3.** With respect to the Apprentice Goal, utilizing the maximum ration of apprentices from each signatory union where applicable performing on the Contract.
 - 4.** Collaborate with Workforce Partner(s) and utilize the Workforce Partner(s)'s candidate pool as a hiring resource to achieve the Workforce Goals.
 - 5.** To the extent that the Contractor submitted a Workforce Plan:
 - i.** Contractor will comply with the commitments made in its Workforce Plan. Contractor's failure to implement the efforts described in its Workforce Plan is considered a material breach of this Contract.
 - ii.** Contractor will use the methods detailed in its Workforce Plan to reach out to, utilize, and train a diverse pool of individuals and achieve its Workforce Goals.

X. NON-COMPLIANCE

- A.** As the actual amount of damages resulting from such failure would be difficult or impossible to ascertain, Contractor's failure to meet any Workforce Goal and failure to demonstrate sufficient and reasonable good faith efforts as determined by CTA may result in the assessment of liquidated damages in addition to other remedies available as described in the Contract.
- B.** Liquidated damages will be calculated as follows: The number of labor hours shortfall for the applicable Workforce Goal multiplied by the average of the prevailing wages applicable to the Contract. The average prevailing wage will be calculated using a weighted average by labor hours of the applicable prevailing wages utilized on the Contract.
- C.** Assessment of liquidated damages, if any, shall occur at the time of the final progress payment, except as otherwise determined by CTA's Director, Purchasing.

Annex D-2: Wage Rates

"General Decision Number: IL20230020 08/25/2023

Superseded General Decision Number: IL20220020

State: Illinois

Construction Types: Building Landscape, Heavy Landscape,
Highway Landscape and Residential Landscape

Counties: Boone, Cook, De Kalb, Du Page, Grundy, Henry,
Kane,
Kankakee, Kendall, Lake, McHenry, McLean, Ogle, Peoria,
Rock
Island, Tazewell, Will, Winnebago and Woodford Counties in
Illinois.

LANDSCAPING WORK ON BUILDING, RESIDENTIAL, HEAVY AND
HIGHWAY
CONSTRUCTION PROJECTS.

Note: Contracts subject to the Davis-Bacon Act are
generally
required to pay at least the applicable minimum wage rate
required under Executive Order 14026 or Executive Order
13658.

Please note that these Executive Orders apply to covered
contracts entered into by the federal government that are
subject to the Davis-Bacon Act itself, but do not apply to
contracts subject only to the Davis-Bacon Related Acts,
including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered	. Executive Order 14026
into on or after January 30,	generally applies to the
2022, or the contract is	contract.
renewed or extended (e.g., an	. The contractor must pay

option is exercised) on or	all covered workers at
after January 30, 2022:	least \$16.20 per hour (or
	the applicable wage rate
	listed on this wage
	determination, if it is
	higher) for all hours
	spent performing on the
	contract in 2023.

If the contract was awarded on	. Executive Order 13658
or between January 1, 2015 and	generally applies to the
January 29, 2022, and the	contract.
contract is not renewed or	. The contractor must pay
all	covered workers at least
extended on or after January	\$12.15 per hour (or the
30, 2022:	applicable wage rate
listed	on this wage
determination,	if it is higher) for all
	hours spent performing on
	that contract in 2023.

The applicable Executive Order minimum wage rate will be

adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	05/12/2023
2	08/25/2023

* ENGI0150-013 06/01/2023

BUILDING AND HIGHWAY CONSTRUCTION (LANDSCAPE WORK): The landscape work for the Landscape Equipment Operator excludes the preparation of sub-grade prior to application of finish landscape materials and the utilization of any equipment over one cubic yard.

BOONE, COOK, DUPAGE, GRUNDY, KANE, KENDALL, LAKE, MCHENRY, AND WILL COUNTIES

	Rates	Fringes
Operators:.....	\$ 36.55	9.00+A+B
Includes Angle Dozer, Small; Bobcat and other similar type machines, 1 cu yd or less; Chipping Machine; Combination Backhoe and Front End Loader 1 cu yd or less; Fork Lift Truck;		

Hi-Reach and High-Ranger;Hydraulic Boom with Clam;Log
Skidder;
Sttrow Blower and Seeder; Stump Machine;Tractors,
Crawlers,
Rubber Tire Tractors, Highlift Shovels or Front End
Loaders 1
cu yd or less; Tree Spades, all; Utility Tractor and
attachments, and Rubber Tire Front End loader or similar
machine of 1 to 1.5 cu yd solely used for placement of
large
decorative boulders, trees with balled soil, and other
decorative landscape material too large to be
accommodated in
a 1 cu yd bucket. All other equipment utilized for
performing
landscape work, tree trimming or removal of stees, and to
install plants; transport trees; excavate plant pits;
place
soil and other landscape materials; and apply finish
landscape
material on subgrade prepared by others

FOOTNOTE:

A. Health and Welfare contribution is \$1,496.00 per
month.

B. Paid Holidays: New Year's Day; Memorial Day; Fourth
of
July; Labor Day; Thanksgiving Day; and Christmas Day
provided that all such employees shall have in fact
worked
their regularly scheduled work day immediately preceding
and the regularly scheduled work day immediately
succeeding
the occurrence of such holiday.

* ENGI0150-023 06/01/2023

HIGHWAY CONSTRUCTION (LANDSCAPE WORK): The landscape work
for

the Landscape Equipment Operator excludes the preparation of sub-grade prior to application of finish landscape materials and the utilization of any equipment over one cubic yard.

HENRY, MCLEAN, OGLE, PEORIA, ROCK ISLAND, TAZEWELL, WINNEBAGO, and WOODFORD COUNTIES

	Rates	Fringes
Operators:.....	\$ 36.55	9.00+A+B
Includes the following: Angle Dozer, Small; Bobcat and other similar type machines, 1 cu yd or less; Chipping Machine; Combination Backhoe and Front End Loader 1 cu yd or less; Fork Lift Truck; Hi-Reach and High-Ranger; Hydraulic Boom with Clam; Log Skidder; Sttrow Blower and Seeder; Stump Machine; Tractors, Crawlers, Rubber Tire Tractors, Highlift Shovels or Front End Loaders 1 cu yd or less; Tree Spades, all; Utility Tractor and attachments, and Rubber Tire Front End loader or similar machine of 1 to 1.5 cu yd solely used for placement of large decorative boulders, trees with balled soil, and other decorative landscape material too large to be accommodated in a 1 cu yd bucket. All other equipment utilized for performing landscape work, tree trimming or removal of stees, and to install plants; transport trees; excavate plant pits; place soil and other landscape materials; and apply finish landscape material on subgrade prepared by others		

FOOTNOTE:

A. Health and Welfare contribution is \$1,496.00 per month.

B. Paid Holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; and Christmas Day provided that all such employees shall have in fact worked their regularly scheduled work day immediately preceding and the regularly scheduled work day immediately succeeding the occurrence of such holiday.

LAB00032-004 05/01/2021

HIGHWAY CONSTRUCTION

WINNEBAGO COUNTY

	Rates	Fringes
Landscape Laborer.....	\$ 38.75	34.91

LAB00362-003 05/01/2018

HIGHWAY CONSTRUCTION

MCLEAN COUNTY

	Rates	Fringes
Landscape Laborer.....	\$ 31.08	24.43

LAB00751-004 05/01/2021

HIGHWAY CONSTRUCTION

KANKAKEE COUNTY

	Rates	Fringes
Landscape Laborer.....	\$ 39.44	32.54

LABO0852-004 05/01/2006

HIGHWAY CONSTRUCTION

ROCK ISLAND AND HENRY COUNTIES

	Rates	Fringes
Landscape Laborer.....	\$ 21.94	12.79

LABO0996-004 05/01/2018

HIGHWAY CONSTRUCTION

PEORIA, TAZEWELL, AND WOODFORD COUNTIES

	Rates	Fringes
Landscape Laborer.....	\$ 32.73	23.74

TEAM0026-005 05/01/2020

MCLEAN (South of a straight line from where Route 24 intersects the Woodford County line in a Southeast direction to the South Southwest corner of Livingston County) COUNTY

	Rates	Fringes
TRUCK DRIVER		
Group 1.....	\$ 38.93	20.39
Group 2.....	\$ 39.50	20.39
Group 3.....	\$ 39.77	20.39
Group 4.....	\$ 40.14	20.39
Group 5.....	\$ 41.21	20.39

CLASSIFICATIONS:

GROUP 1: Drivers on 2 axles hauling less than 9 tons;
air
compressor & welding machines and brooms, including those
pulled by separate units; Truck Driver Helper, warehouse
employees; Mechanic Helpers; greasers and tiremen; pick-
up
trucks when hauling material, tools, or workers to and
from
and on the job site; and forklifts up to 6,000 lb
capacity.

GROUP 2: 2 or 3 axles hauling more than 9 tons but
hauling
less than 16 tons; A-frame winch trucks; hydrolift
trucks;
Vactor Trucks or similar equipment when used for
transportation purposes; Forklift over 6,000 lb.capacity;
winch trucks; and four axle combination units.

GROUP 3: 2, 3 or 4 Axles hauling 16 tons or more; 5-
Axles or
more combination units; drivers on water pulls;
articulated
dump trucks; mechanics and working forepersons.

GROUP 4: Low Boy and Oil Distributors.

GROUP 5: Drivers who require special protective clothing
while employed on hazardous waste work.

* TEAM0179-004 06/01/2017

GRUNDY, KENDALL, MCLEAN (North of a straight line starting
at
the intersection of McLean-Woodford Counties line & Route
24 in
a Southeastern direction to the South Southwest corner of
Livingston County), WILL, and WOODFORD (Northeast corner
east

of Route 51/251 & North of Route 24) COUNTIES

	Rates	Fringes
TRUCK DRIVER		
2-3 AXLES.....	\$ 37.68	0.15+a
4 AXLES.....	\$ 37.83	0.15+a
5 AXLES.....	\$ 38.03	0.15+a
6 AXLES.....	\$ 38.23	0.15+a

FOOTNOTES:

a. \$733.20 per week.

b. Lowboy rate based on number of axles

An additional \$.20 per axle shall be paid for all vehicles with more than six (6) axles.

CLASSIFICATIONS:

Group 1 - Frame Truck when used for transportation purposes;

Air Compressor and Welding Machines, including those pulled

by cars, pick-up trucks and tractors; Ambulances;

Articulated Dumps; Batch Gate Lockers; Batch Hopperman; Car

and Truck Washers; Carry Alls; Forl Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors,

two-man operation; Pavement Breakers; Pole Trailer, up to 40 feet; Pothole Repair Trucks; Power Mower Tractors; Quick

Change Barrier; Self-Propelled Chip Spreader; Shipping and

Receiving Clerks and Checkers; Skipman; Slurry Trucks, two-man operation; Slurry Trucks, Conveyor Operated - 2 or

3 man operation; Teamsters; Unskilled Dumpmen; Warehousemen

and Dockmen; Truck Drivers hauling warning lights, barricades, and portable toilets on the job site

Group 2 - Dispatcher; Dump Crets and Adgetators under 7 yards; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment under 16 cubic yards; Mixer Trucks under 7 yards; Ready-Mix Plant Hopper Operator; Winch Trucks, 2 Axles

Group 3 - Dump Crets and Adgetators, 7 yards and over; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment over 16 cubic yards; Explosives and/or Fission Material Trucks; Mixer Trucks 7 yards or over; Mobile Cranes while in transit;

Oil Distributors, one-man operation; Pole Trailer, over 40 feet; Pole and Expandable Trailers hauling material over 50 feet long; Slurry Trucks, one-man operation; Winch Trucks, 3 axles or more; Mechanic - *Truck Welder and *Truck Painter*These classifications shall only apply in areas where and when it has been a past area practice; Asphalt Plant Operators in areas where it has been past practice

Group 4 - Dual-purpose vehicels, such as mounted crane tucks with hoist and accessories; Foreman; Master Mechanic; Self-loading equipment like P.B. and trucks with scoops on the front

* TEAM0179-008 06/01/2019

KANKAKEE COUNTY

	Rates	Fringes
TRUCK DRIVER		
2 or 3 axles.....	\$ 39.20	0.25+a

4 axles.....	\$ 39.35	0.25+a
5 axles.....	\$ 39.55	0.25+a
6 axles.....	\$ 39.75	0.25+a
All Lowboy Trucks.....	\$ 39.75	0.25+a

FOOTNOTES:

a. \$829.20 per week.

An additional \$.20 per axle shall be paid for all vehicles with more than six (6) axles.

CLASSIFICATIONS:

Group 1 - Frame Truck when used for transportation purposes;

Air Compressor and Welding Machines, including those pulled by cars, pick-up trucks and tractors; Ambulances; Articulated Dumps; Batch Gate Lockers; Batch Hopperman; Car

and Truck Washers; Carry Alls; Forl Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors,

two-man operation; Pavement Breakers; Pole Trailer, up to 40 feet; Pothole Repair Trucks; Power Mower Tractors; Quick

Change Barrier; Self-Propelled Chip Spreader; Shipping and

Receiving Clerks and Checkers; Skipman; Slurry Trucks, two-man operation; Slurry Trucks, Conveyor Operated - 2 or

3 man operation; Teamsters; Unskilled Dumpmen; Warehousemen

and Dockmen; Truck Drivers hauling warning lights, barricades, and portable toilets on the job site

Group 2 - Dispatcher; Dump Crets and Adgetators under 7 yards; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment under 16 cubic

yards; Mixer Trucks under 7 yards; Ready-Mix Plant Hopper

Operator; Winch Trucks, 2 Axles

Group 3 - Dump Crets and Adgetators, 7 yards and over;
Dumpsters, Track Trucks, Euclids, Hug Bottom Dump
Turnapulls or Turnatrailers when pulling other than
self-loading equipment or similar equipment over 16 cubic
yards; Explosives and/or Fission Material Trucks; Mixer
Trucks 7 yards or over; Mobile Cranes while in transit;
Oil

Distributors, one-man operation; Pole Trailer, over 40
feet; Pole and Expandable Trailers hauling material over
50
feet long;

Slurry Trucks, one-man operation; Winch Trucks, 3 axles
or

more; Mechanic - *Truck Welder and *Truck Painter*These
classifications shall only apply in areas where and when
it

has been a past area practice; Asphalt Plant Operators in
areas where it has been past practice

Group 4 - Dual-purpose vehicels, such as mounted crane
tucks

with hoist and accessories; Foreman; Master Mechanic;
Self-loading equipment like P.B. and trucks with scoops
on
the front

* TEAM0301-001 06/01/2019

LAKE AND MCHENRY COUNTIES

	Rates	Fringes
TRUCK DRIVER		
2-3 AXLES.....	\$ 39.34	10.75+a
4 AXLES.....	\$ 39.49	10.75+a
5 AXLES.....	\$ 39.69	10.75+a
6 AXLES.....	\$ 39.89	10.75+a

FOOTNOTES:

a. 380.00 per week pension.

b. Lowboy rate based on number of axles

An additional \$.20 per axle shall be paid for all vehicles with more than six (6) axles.

Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

900 straight time hours or more in 1 calendar year for the same employer shall receive 1 week paid vacation; 3 years - 2 weeks paid vacation; 10 years - 3 weeks paid vacation; 20 years - 4 weeks paid vacation.

CLASSIFICATIONS:

Group 1 - Frame Truck when used for transportation purposes;
Air Compressor and Welding Machines, including those pulled by cars, pick-up trucks and tractors; Ambulances; Articulated Dumps; Batch Gate Lockers; Batch Hopperman; Car and Truck Washers; Carry Alls; Forl Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors, two-man operation; Pavement Breakers; Pole Trailer, up to 40 feet; Pothole Repair Trucks; Power Mower Tractors; Quick Change Barrier; Self-Propelled Chip Spreader; Shipping and Receiving Clerks and Checkers; Skipman; Slurry Trucks, two-man operation; Slurry Trucks, Conveyor Operated - 2 or 3 man operation; Teamsters; Unskilled Dumpmen; Warehousemen and Dockmen; Truck Drivers hauling warning lights, barricades, and portable toilets on the job site

Group 2 - Dispatcher; Dump Crets and Adgetators under 7

yards; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump
Turnapulls or Turnatrailers when pulling other than
self-loading equipment or similar equipment under 16
cubic

yards; Mixer Trucks under 7 yards; Ready-Mix Plant Hopper
Operator; Winch Trucks, 2 Axles

Group 3 - Dump Crets and Adgetators, 7 yards and over;
Dumpsters, Track Trucks, Euclids, Hug Bottom Dump
Turnapulls or Turnatrailers when pulling other than
self-loading equipment or similar equipment over 16 cubic
yards; Explosives and/or Fission Material Trucks; Mixer
Trucks 7 yards or over; Mobile Cranes while in transit;
Oil

Distributors, one-man operation; Pole Trailer, over 40
feet; Pole and Expandable Trailers hauling material over
50

feet long;
Slurry Trucks, one-man operation; Winch Trucks, 3 axles
or
more; Mechanic - *Truck Welder and *Truck Painter*These
classifications shall only apply in areas where and when
it
has been a past area practice; Asphalt Plant Operators in
areas where it has been past practice

Group 4 - Dual-purpose vehicels, such as mounted crane
tucks
with hoist and accessories; Foreman; Master Mechanic;
Self-loading equipment like P.B. and trucks with scoops
on
the front

* TEAM0325-004 06/01/2020

BOONE and WINNEBAGO COUNTIES

	Rates	Fringes
TRUCK DRIVER		
2 - 3 Axles.....	\$ 39.87	22.60
4 Axles.....	\$ 40.02	22.60

5 Axles.....	\$ 40.22	22.60
6 Axles.....	\$ 40.33	22.60

FOOTNOTE: An additional \$.20 per axle shall be paid for all

vehicles with more than six (6) axles.

CLASSIFICATIONS:

Group 1 - Frame Truck when used for transportation purposes;

Air Compressor and Welding Machines, including those pulled

by cars, pick-up trucks and tractors; Ambulances; Batch Gate Lockers; Batch Hopperman; Car and Truck Washers; Forl

Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors, two-man operation; Pavement Breakers

Pole Trailer, up to 40 feet; Power Mower Tractors; Skipman;

Slurry Trucks, two-man operation; Teamsters; Truck Drivers

hauling warning lights, barricades, and portable toilets on the job site

Group 2 - Dump Crets and Adgetators under 7 yards; Dumpsters,

Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment under 16 cubic yards;

Mixer Trucks under 7 yards; Ready-Mix Plant Hopper Operator; Winch Trucks, 2 Axles

Group 3 - Dump Crets and Adgetators, 7 yards and over; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment over 16 cubic yards; Explosives and/or Fission Material Trucks; Mixer Trucks 7 yards or over; Mobile Cranes while in transit; Oil

Distributors, one-man operation

Pole Trailer, over 40 feet; Pole and Expandable Trailers hauling material over 50 feet long, additional \$0.50 per hour; Slurry Trucks, one-man operation; Winch Trucks, 3 axles or more

*Mechanic*Truck Welder and Truck Painter; *Winter Rate: Between Dec. 15 and Feb. 28 the mechanic and welder rate shall be \$2.00 less than the scheduled scale. Truck

Painter

and Truck Welder classifications shall only apply in areas

where and when it has been a past area practice;
Dual-purpose vehicles, such as mounted crane trucks with hoist and accessories

Group 4 - Foreman; Master Mechanic; Self-loading equipment

like P.B. and trucks with scoops on the front

* TEAM0330-004 06/01/2017

DEKALB and OGLE (North of Route 72/East of Route 251, Adeline, Byron, Creston, Dement, Forreston North of Route 72, Leaf River North of Route 72, Lynnville, Monroe, Rochelle, & Scott) COUNTIES

	Rates	Fringes
TRUCK DRIVER		
2-3 AXLES.....	\$ 36.64	0.15+a
4 AXLES.....	\$ 36.79	0.15+a
5 AXLES.....	\$ 36.99	0.15+a
6 AXLES.....	\$ 37.19	0.15+a

FOOTNOTE: a. \$780.90 per week

An additional \$.20 per axle shall be paid for all vehicles

with more than six (6) axles.

Paid Holidays: New Year's Day, Memorial Day,
Independence
Day, Labor Day, Thanksgiving Day, and Christmas Day.

900 straight time hours or more in 1 calendar year for
the
same employer shall receive 1 week paid vacation; 3 years
-
2 weeks paid vacation; 10 years - 3 weeks paid vacation;
20
years - 4 weeks paid vacation.

CLASSIFICATIONS:

Group 1 - Frame Truck when used for transportation
purposes;
Air Compressor and Welding Machines, including those
pulled
by cars, pick-up trucks and tractors; Ambulances;
Articulated Dumps; Batch Gate Lockers; Batch Hopperman;
Car
and Truck Washers; Carry Alls; Forl Lifts and Hoisters;
Helpers; Mechanics Helpers and Greasers; Oil
Distributors,
two-man operation; Pavement Breakers; Pole Trailer, up to
40 feet; Pothole Repair Trucks; Power Mower Tractors;
Quick
Change Barrier; Self-Propelled Chip Spreader; Shipping
and
Receiving Clerks and Checkers; Skipman; Slurry Trucks,
two-man operation; Slurry Trucks, Conveyor Operated - 2
or
3 man operation; Teamsters; Unskilled Dumpmen;
Warehousemen
and Dockmen; Truck Drivers hauling warning lights,
barricades, and portable toilets on the job site

Group 2 - Dispatcher; Dump Crets and Adgetators under 7
yards; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump
Turnapulls or Turnatrailers when pulling other than
self-loading equipment or similar equipment under 16
cubic
yards; Mixer Trucks under 7 yards; Ready-Mix Plant Hopper
Operator; Winch Trucks, 2 Axles

Group 3 - Dump Crets and Adgetators, 7 yards and over;
 Dumpsters, Track Trucks, Euclids, Hug Bottom Dump
 Turnapulls or Turnatraillers when pulling other than
 self-loading equipment or similar equipment over 16 cubic
 yards; Explosives and/or Fission Material Trucks; Mixer
 Trucks 7 yards or over; Mobile Cranes while in transit;
 Oil

Distributors, one-man operation; Pole Trailer, over 40
 feet; Pole and Expandable Trailers hauling material over
 50
 feet long;
 Slurry Trucks, one-man operation; Winch Trucks, 3 axles
 or
 more; Mechanic - *Truck Welder and *Truck Painter*These
 classifications shall only apply in areas where and when
 it
 has been a past area practice; Asphalt Plant Operators in
 areas where it has been past practice

Group 4 - Dual-purpose vehicels, such as mounted crane
 tucks
 with hoist and accessories; Foreman; Master Mechanic;
 Self-loading equipment like P.B. and trucks with scoops
 on
 the front

 TEAM0371-004 05/01/2022

HENRY and ROCK ISLAND COUNTIES

	Rates	Fringes
TRUCK DRIVER		
Group 1.....	\$ 41.00	22.37
Group 2.....	\$ 41.58	22.37
Group 3.....	\$ 41.90	22.37
Group 4.....	\$ 42.25	22.37
Group 5.....	\$ 43.36	22.37

CLASSIFICATIONS:

GROUP 1: Drivers on 2 axles hauling less than 9 tons;
air
compressor & welding machines and brooms, including those
pulled by separate units; Truck Driver Helper, warehouse
employees; Mechanic Helpers; greasers and tiremen; pick-
up
trucks when hauling material, tools, or workers to and
from
and on the job site; and forklifts up to 6,000 lb
capacity.

GROUP 2: 2 or 3 axles hauling more than 9 tons but
hauling
less than 16 tons; A-frame winch trucks; hydrolift
trucks;
Vactor Trucks or similar equipment when used for
transportation purposes; Forklift over 6,000 lb.capacity;
winch trucks; and four axle combination units.

GROUP 3: 2, 3 or 4 Axles hauling 16 tons or more; 5-
Axles or
more combination units; drivers on water pulls;
articulated
dump trucks; mechanics and working forepersons.

GROUP 4: Low Boy and Oil Distributors.

GROUP 5: Drivers who require special protective clothing
while employed on hazardous waste work.

TEAM0627-004 05/01/2019

PEORIA, TAZEWELL, and WOODFORD COUNTIES

	Rates	Fringes
TRUCK DRIVER		
Group 1.....	\$ 38.06	19.62
Group 2.....	\$ 38.61	19.62
Group 3.....	\$ 38.87	19.62
Group 4.....	\$ 39.23	19.62
Group 5.....	\$ 40.27	19.62

CLASSIFICATIONS:

GROUP 1: Drivers on 2 axles hauling less than 9 tons;
air
compressor & welding machines and brooms, including those
pulled by separate units; Truck Driver Helper, warehouse
employees; Mechanic Helpers; greasers and tiremen; pick-
up
trucks when hauling material, tools, or workers to and
from
and on the job site; and forklifts up to 6,000 lb
capacity.

GROUP 2: 2 or 3 axles hauling more than 9 tons but
hauling
less than 16 tons; A-frame winch trucks; hydrolift
trucks;
Vactor Trucks or similar equipment when used for
transportation purposes; Forklift over 6,000 lb.capacity;
winch trucks; and four axle combination units.

GROUP 3: 2, 3 or 4 Axles hauling 16 tons or more; 5-
Axles or
more combination units; drivers on water pulls;
articulated
dump trucks; mechanics and working forepersons.

GROUP 4: Low Boy and Oil Distributors.

GROUP 5: Drivers who require special protective clothing
while employed on hazardous waste work.

* TEAM0673-003 06/01/2019

DU PAGE and KANE COUNTIES

	Rates	Fringes
TRUCK DRIVER		
2-3 AXLES.....	\$ 38.47	0.25+a
4 AXLES.....	\$ 38.62	0.25+a

5 AXLES.....	\$ 38.82	0.25+a
6 AXLES.....	\$ 39.02	0.25+a

FOOTNOTE: a. \$861.10 per week.

An additional \$.20 per axle shall be paid for all vehicles with more than six (6) axles.

Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

900 straight time hours or more in 1 calendar year for the same employer shall receive 1 week paid vacation; 3 years - 2 weeks paid vacation; 10 years - 3 weeks paid vacation; 20 years - 4 weeks paid vacation.

CLASSIFICATIONS:

Group 1 - Frame Truck when used for transportation purposes;
 Air Compressor and Welding Machines, including those pulled by cars, pick-up trucks and tractors; Ambulances; Articulated Dumps; Batch Gate Lockers; Batch Hopperman; Car and Truck Washers; Carry Alls; Forl Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors, two-man operation; Pavement Breakers; Pole Trailer, up to 40 feet; Pothole Repair Trucks; Power Mower Tractors; Quick Change Barrier; Self-Propelled Chip Spreader; Shipping and Receiving Clerks and Checkers; Skipman; Slurry Trucks, two-man operation; Slurry Trucks, Conveyor Operated - 2 or 3 man operation; Teamsters; Unskilled Dumpmen; Warehousemen and Dockmen; Truck Drivers hauling warning lights,

barricades, and portable toilets on the job site

Group 2 - Dispatcher; Dump Crets and Adgetators under 7 yards; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment under 16 cubic yards; Mixer Trucks under 7 yards; Ready-Mix Plant Hopper Operator; Winch Trucks, 2 Axles

Group 3 - Dump Crets and Adgetators, 7 yards and over; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment over 16 cubic yards; Explosives and/or Fission Material Trucks; Mixer Trucks 7 yards or over; Mobile Cranes while in transit;

Oil Distributors, one-man operation; Pole Trailer, over 40 feet; Pole and Expandable Trailers hauling material over 50 feet long; Slurry Trucks, one-man operation; Winch Trucks, 3 axles or more; Mechanic - *Truck Welder and *Truck Painter*These classifications shall only apply in areas where and when it has been a past area practice; Asphalt Plant Operators in areas where it has been past practice

Group 4 - Dual-purpose vehicels, such as mounted crane tucks with hoist and accessories; Foreman; Master Mechanic; Self-loading equipment like P.B. and trucks with scoops on the front

TEAM0722-005 05/01/2015

OGLE (North of Route 72/East of Route 251) COUNTY

Rates

Fringes

TRUCK DRIVER

Group 1.....	\$ 34.10	17.09
Group 2.....	\$ 34.60	17.09
Group 3.....	\$ 34.82	17.09
Group 4.....	\$ 35.14	17.09
Group 5.....	\$ 36.06	17.09

CLASSIFICATIONS:

GROUP 1: Drivers on 2 axles hauling less than 9 tons;
air
compressor & welding machines and brooms, including those
pulled by separate units; Truck Driver Helper, warehouse
employees; Mechanic Helpers; greasers and tiremen; pick-
up
trucks when hauling material, tools, or workers to and
from
and on the job site; and forklifts up to 6,000 lb
capacity.

GROUP 2: 2 or 3 axles hauling more than 9 tons but
hauling
less than 16 tons; A-frame winch trucks; hydrolift
trucks;
Vactor Trucks or similar equipment when used for
transportation purposes; Forklift over 6,000 lb.capacity;
winch trucks; and four axle combination units.

GROUP 3: 2, 3 or 4 Axles hauling 16 tons or more; 5-
Axles or
more combination units; drivers on water pulls;
articulated
dump trucks; mechanics and working forepersons.

GROUP 4: Low Boy and Oil Distributors.

GROUP 5: Drivers who require special protective clothing
while employed on hazardous waste work.

TEAM0731-001 06/01/2017

COOK COUNTY - HEAVY AND HIGHWAY

	Rates	Fringes
TRUCK DRIVER		
2 or 3 Axles.....	\$ 35.60	22.10
4 Axles.....	\$ 35.85	22.10
5 Axles.....	\$ 36.05	22.10
6 Axles.....	\$ 36.25	22.10

FOOTNOTES:

A. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

B. 900 straight time hours or more in 1 calendar year for the same employer shall receive 1 week paid vacation; 3 years - 2 weeks paid vacation; 10 years - 3 weeks paid vacation; 20 years - 4 weeks paid vacation.

C. An additional \$.20 per axle shall be paid for all vehicles with more than six (6) axles.

TEAM0786-001 06/01/2017

COOK COUNTY - BUILDING AND RESIDENTIAL

	Rates	Fringes
TRUCK DRIVER		
2 & 3 Axles.....	\$ 39.942	0.25+a
4 Axles.....	\$ 39.75	0.25+a
5 Axles.....	\$ 39.967	0.25+a
6 Axles.....	\$ 40.184	0.25+a

FOOTNOTES:

a. \$719.00 per week.

An additional \$.20 per axle shall be paid for all vehicles with more than six (6) axles.

Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

900 straight time hours or more in 1 calendar year for the same employer shall receive 1 week paid vacation; 3 years - 2 weeks paid vacation; 10 years - 3 weeks paid vacation; 20 years - 4 weeks paid vacation.

* SUIL1993-001 01/19/1993

BUILDING CONSTRUCTION (LANDSCAPE WORK):

	Rates	Fringes
LABORER		
BOONE, GRUNDY, KANE, KENDALL, LAKE, MCHENRY, & WILL COUNTIES		
LANDSCAPE LABORERS.....	\$ 7.25 **	
COOK COUNTY		
LANDSCAPE LABORERS.....	\$ 7.25 **	
LANDSCAPE PLANTSMAN.....	\$ 9.80 **	1.82
DE KALB COUNTY		
LANDSCAPE LABORERS.....	\$ 7.25 **	
LANDSCAPE OPERATORS.....	\$ 7.25 **	
LANDSCAPE PLANTSMAN.....	\$ 9.66 **	.26
DU PAGE COUNTY		
LANDSCAPE LABORERS.....	\$ 7.25 **	
LANDSCAPE PLANTSMAN.....	\$ 9.04 **	1.16
GRUNDY, LAKE & WILL COUNTIES		
LANDSCAPE DRIVER 2 & 3 Axles.....		
	\$ 11.86 **	2.81
LANDSCAPE PLANTSMAN.....	\$ 12.00 **	3.32

* SUIL1993-002 01/19/1993

HEAVY CONSTRUCTION (LANDSCAPE WORK)

	Rates	Fringes
LABORER		
BOONE, GRUNDY, KANE, KENDALL, LAKE, MCHENRY & WILL COUNTIES:		
LANDSCAPE DRIVER, 2 & 3		
AXLES.....\$	11.94 **	2.42
LANDSCAPE LABORERS.....\$	7.25 **	
LANDSCAPE OPERATORS.....\$	13.11 **	3.01
LANDSCAPE PLANTSMAN.....\$	9.73 **	2.05
COOK COUNTY:		
LANDSCAPE DRIVER, 2 & 3		
AXLES.....\$	9.93 **	1.89
LANDSCAPE LABORERS.....\$	7.25 **	
LANDSCAPE OPERATORS.....\$	10.98 **	2.12
LANDSCAPE PLANTSMAN.....\$	10.08 **	2.06
DE KALB COUNTY:		
LANDSCAPE LABORERS.....\$	7.25 **	
LANDSCAPE OPERATORS.....\$	7.25 **	
LANDSCAPE PLANTSMAN.....\$	9.66 **	.26
DU PAGE COUNTY:		
LANDSCAPE DRIVER, 2 & 3		
AXLES.....\$	8.32 **	1.02
LANDSCAPE LABORERS.....\$	7.25 **	
LANDSCAPE OPERATORS.....\$	10.75 **	
LANDSCAPE PLANTSMAN.....\$	10.65 **	

* SUIL1993-003 01/19/1993

HIGHWAY CONSTRUCTION (LANDSCAPE WORK):

	Rates	Fringes
LABORER		
DE KALB COUNTY		
LANDSCAPE LABORERS.....\$	7.25 **	

LANDSCAPE OPERATORS.....	\$ 7.25 **	
LANDSCAPE PLANTSMAN.....	\$ 9.66 **	.26
KANKAKEE COUNTY:		
LANDSCAPE DRIVER.....	\$ 8.75 **	.17
LANDSCAPE OPERATOR.....	\$ 16.57	3.56
PEORIA, TAZEWELL, & WOODFORD COUNTIES:		
TRUCK DRIVERS 2 & 3 AXLES..	\$ 17.58	5.88

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons

resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or

"UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the

wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination

- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable,
an
interested party may appeal directly to the Administrative
Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are
final.

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END OF GENERAL DECISIO"

Annex D-3: Intentionally Left Blank

Annex E: Key Personnel

Annex E: Key Personnel

1. Project Executive

Description: Responsible for overall execution and administration of the Contractor's responsibilities for the Project, with authority to represent, make decisions for, and oversee the performance of, the Contractor.

Qualifications: Will have a minimum of 15 years' experience in construction and management-of-construction of major rail infrastructure projects that include work of a similar scope, nature, and complexity as included in this Project and has Design-Build experience.

Initial Person: *[insert name]*

2. Project Manager

Description: Responsible for the overall design and construction of the Project and for managing the Contractor's team. The Project Manager shall ensure that the Project is designed and constructed in accordance with the Contract. The Project Manager may only hold this one Key Personnel position.

Qualifications: Will have a minimum of 15 years' experience in construction and management-of-construction of rail infrastructure projects with similar size, scope of work and complexity as this Project, including projects with environmental and social sensitivity (natural and community), compressed time-lines, and community information requirements. Such experience in construction and management-of-construction will include at least one rail construction project having a construction value in excess of \$500,000,000.

Initial Person: *[insert name]*

3. Deputy Project Manager

Description: Responsible for assisting and, as required, acting for, the Project Manager, to whom the Deputy Project Manager will directly report.

Qualifications: Will have a minimum of 10 years' demonstrated experience in rail and/or major infrastructure construction experience as a project manager, deputy project manager or lead superintendent, and experience as a project

manager, deputy project manager or lead superintendent with at least one rail infrastructure construction project having a construction value in excess of \$500,000,000.

Initial Person: *[insert name]*

4. Design Manager

Description: Responsible for ensuring that the overall Project design is completed and design criteria requirements are met. Responsible for managing the design team personnel to ensure all design Work necessary to meet the Technical Requirements of the Contract is completed.

Qualifications: Will be licensed as a Professional Engineer in the State of Illinois, will be an owner or employee of the Contractor and will have a minimum of 15 years' demonstrated experience in managing design for multi-disciplinary rail infrastructure projects of similar scope and complexity as this Project. The Design Manager, who will have Design-Build experience, will have specific experience with railway design including civil, track, signal, operations control and communications systems, power systems, bridge design complex foundations, station design and designs in environmentally sensitive areas (natural and community), including rail systems integration on projects of similar size and type.

Initial Person: *[insert name]*

5. Lead Designer

Description: Responsible for ensuring that the overall Project design is completed and design criteria requirements are met.

Qualifications: Will be licensed as a Professional Engineer, Structural Engineer, or Architect in the State of Illinois, and will have demonstrated a minimum of 15 years' experience in rail infrastructure design, including civil and track, steel and concrete superstructures, station design, operations control and communications, and systems integration.

Initial Person: *[insert name]*

6. Lead Geotechnical Engineer

Description: Responsible for leading the geotechnical investigation and design work for all elements across all Design Packages regarding foundation design and construction including settlement and supporting the Design Manager in ensuring that all design criteria requirements, pertaining to geotechnical requirements, are met.

Qualifications: Will be licensed as a Professional Engineer in the State of Illinois and will have demonstrated a minimum of 15 years' experience in the design of deep foundations in the Chicago metropolitan area.

Initial Person: *[insert name]*

7. Lead Bridge Structural Designer¹

Description: Responsible for leading the structural design work for right-of-way structures across all Design Packages and supporting the Design Manager in ensuring that all design criteria requirements, pertaining to right-of-way structural design, are met.

Qualifications: Will be a licensed Structural Engineer in the State of Illinois and will have demonstrated a minimum of 15 years' experience in AREMA designed railroad bridge design (structures supporting continuously welded rail with elevated stations preferred), including steel and concrete super-structures and including deep foundations.

Initial Person: *[insert name]*

8. Lead Architectural Designer

Description: Responsible for leading the architectural work and supporting the Design Manager in ensuring that all design criteria requirements, pertaining to architecture, are met.

¹ **Note to Proposers:** the Lead Structural Designer previously identified in the RFQ is now referred to as the Lead Bridge Structural Designer; otherwise, the required qualifications remain the same.

Qualifications: Will be a licensed Architect registered in the State of Illinois with a minimum of 15 years' demonstrated experience as an architectural designer, including experience as lead architect, with a record of successful collaboration with major rail and station projects of comparable scale, prominence, and complexity as the Project.

Initial Person: *[insert name]*

9. Lead Systems Integrator

Description: Responsible for managing system integration, ensuring that component systems and subsystems are integrated into one aggregate, operable system in accordance with all requirements of the Contract.

Qualifications: Will have demonstrated a minimum of 15 years' experience in the system integration of rail projects of the size and complexity of this Project.

Initial Person: *[insert name]*

10. Construction Manager

Description: Responsible for ensuring that the Project is constructed in accordance with all requirements of the Contract. Responsible for managing and scheduling the Contractor's construction personnel, communicating construction activities to various stakeholders, and ensuring the Project site complies with all codes, standards, and contract requirements.

Qualifications: Will have a minimum of 15 years' demonstrated construction experience in civil works projects with experience in managing the site heavy rail transit construction projects in urban areas. Experience will include work of the nature anticipated in the Project, and should include Design-Build contracts, public and environmental sensitivity, and utility relocation.

Initial Person: *[insert name]*

11. Quality Manager

Description: Responsible for overseeing the overall quality program and the preparation, implementation and update of the CQMS in accordance with the Contract. Responsible for managing the quality program team.

Qualifications: Will be a Certified Manager of Quality/Organizational Excellence (CMQ/OE) with a minimum of 15 years' demonstrated experience in management of quality assurance and quality control activities for heavy rail transit and/or major infrastructure design and construction. Experience must include at least five years in a position having the authority to define, execute or control projects/processes and to be responsible for the outcome. Experience must include preparation, applicability reviews, and implementation of Quality Management Systems that included quality standards for all phases and levels of design and construction activities. Familiarity with ISO 9001 and FTA policies and guidelines highly preferred. The Quality Manager can hold only this Key Personnel position.

Initial Person: *[insert name]*

12. Safety Manager

Description: Responsible for overseeing the overall system safety and security program and preparation, implementation, and update of the System Safety and Security Program (SSSP) in accordance with the Contract. Responsible for ensuring that all safety and security requirements set out in the Contract are met.

Qualifications: Will have a minimum of 15 years' experience in the management of safety for complex infrastructure projects, which will include a minimum of 5 years implementing and leading safety programs for heavy transit rail infrastructure projects. Must be a Certified Safety Professional (CSP) and hold a current 30-hour card for OSHA Construction. The Safety Manager can hold only this Key Personnel position.

Initial Person: *[insert name]*

13. Safety and Security Certification Lead

Description: Responsible for directing Contractor's role in the Project Safety and Security Certification (SSC) efforts and prosecution of the Contractor's Safety and Security Certification Plan (CSSCP) and SSC deliverables.

Responsible for facilitation of all SSC workshops and meetings, direct oversight of populating and tracking completion of Design Criteria Conformance Checklist (DCCC), Construction Specification Conformance Checklist (CSCC), and Certifiable Elements List / Certifiable Items List (CEL / CIL) documents including verification documentation required. Manage preparation of Safety and Security Certificates of Conformance (CoC) and Safety and Security Certification Verification Report (SSCVR). Represent Contractor on CTA's Safety and Security Review Committee (SSRC). Directly oversee Contractor's SSC management personnel throughout the Project.

Qualifications: Will have a minimum of 10 years' experience with Federal Transit Administration (FTA) Safety and Security Certification requirements across at least two large transit capital construction programs (construction value in excess of \$500,000,000); direct leadership of SSC activities within the listed programs highly preferred. Program experience must have demonstrated coordination across disciplines, from design through operational implementation to achieve certification. Experience with directly leading Threat and Vulnerability Analysis (TVA) workshops and preparation of TVA reports preferred. Transportation Safety Institute (TSI) Transit Safety and Security Program (TSSP) Certificate holder highly preferred.

Initial Person: *[insert name]*

14. Community Liaison Lead

Description: Responsible for managing the Contractor's Communication and Public Outreach Support Plan.

Qualifications: Will have a minimum of 7 years of experience in public affairs, community relations, media relations or a related field and will be responsible for Contractor's community engagement program

Initial Person: *[insert name]*

15. Commissioning Agent

Description: Responsible for oversight and management of all testing, inspection and commissioning activities on the Project and lead the development and implementation of the testing, inspection and commissioning plan. The Commissioning Agent will coordinate activities of the Lead System Integrator with the overall commissioning effort

Qualifications: The Commissioning Agent will have at least ten years of relevant experience in the commissioning systems similar in size and type to those provided in the Project.

Initial Person: *[insert name]*

Annex F: Forms

Annex F-1: Notice of Claim Form

Annex F-1: Form of Notice of Claim

Instructions

(to be deleted prior to submitting form)

- (a) Please see generally Section 15 of the Contract and the italicized and footnoted instructions in the forms that follow. In addition:
- (b) Each notice shall relate to an individual Relief Event, although references can be made (as necessary) to other Relief Events (e.g., to differentiate the effect of multiple events).
- (c) The Contractor shall modify or delete bracketed items as the context and any additional instruction notes may require.
- (d) Each notice shall include a "Claim Tracking Number" in the format of "X.Y" as follows:
- (e) "X" shall be the sequential number of the Relief Event for which a notice or submission (of any type) is submitted by the Contractor; and
- (f) "Y" shall be the number of the submission made with respect to a particular Relief Event where:
 - i. "0" shall be reserved to refer to the initial claim submission with respect to such Relief Event; and
 - ii. any update or amendment to a previously made submission, shall be numbered in sequence "1", "2", "3", etc.
- (g) The Contractor may (and, as indicated must) attach supporting materials, provided that the relevance and nature of such attachments are described in the main body of the submission.

Form of Notice of Claim

[date]

From: [Contractor]

To: Chief Infrastructure Officer, CTA

Re: RLE Project: Notice of Claim

Claim Tracking No: []

I am submitting this Notice of Claim on behalf of the Contractor pursuant to Section 15 of the Design-Build Contract for the Red Line Extension -Mainline Design-Build Project (the "Contract") dated as of [date]. For ease of reference, all capitalized terms used in this submission shall have the same meaning given to them in the Contract.

The Relief Event to which this Notice of Claim relates (check one):

- ☐ is ongoing, and therefore pursuant to Section 15.8.a does not require CTA action at this time; or
- ☐ is completed, and therefore pursuant to Section 15.8.a. requires CTA action at this time.

Please be advised of the following¹:

A. Background Information

1. Identification of Relief Event and Summary of Claim

This submission relates to a Relief Event that is a [Cost and Delay Event / Delay Event] as defined in paragraph [] of the definition of such type of event.

2. Occurrence and Duration

The Relief Event to which this notice relates occurred on [or about] [date]. This event [concluded on [or about] [date] / is continuing].

3. Description and Qualification as a Relief Event

¹ In each submission, including in any revised or amended submission, the Contractor shall include the following statement immediately under the relevant headings below and prior to any narrative text inserted by the Contractor relating to the specific Relief Event: "The following [has / has not] been amended since the prior related submission no. [X].[X]."

[Insert narrative² description of Relief Event, including an explanation as to how such event qualifies as a Relief Event (i.e., satisfies the definitional requirements to be a Relief Event) and is distinguished from, or related to, other events (whether or not such events qualify as Relief Events).]

4. Mitigation

[Insert narrative description of steps taken, or expected to be taken, by the Contractor to avoid and/or mitigate the effects of the Relief Event as required by Section 15.1. of the Contract.]

B. Time and Cost Impact

1. Summary of Claim and Requested Resolution

As a consequence of such Relief Event, Contractor requests [an adjustment to the Contract Time pursuant to Sections 15.2 and 15.8 of the Contract] [and] [an adjustment to the Contract Price / a payment from an Allowance pursuant to Sections 15.2 and 15.8 of the Contract] as further described below.

2. Contract Time Impact Analysis

[Insert a time impact analysis of any claimed Delay; otherwise, indicate “Not applicable”: If no Contract Price adjustments and/or payment in respect of any [list relevant Cost and Delay Events] from an Allowance are sought. If not yet prepared to provide or calculate, indicate “To provide in a subsequent update.” Please see Section 15.5 of Part 1 regarding the duty to update.]

3. Cost Impact Analysis

[Insert proposed cost and compensation, if applicable and to the extent permitted under Section 15. If not yet prepared to provide or calculate, indicate “To provide in a subsequent update.” Please see Section 15.5 of Part 1 regarding the duty to update.]

C. Documentation

1. Documentation of Relief Event Occurrence and/or Continuation

[Insert description of (and, if appropriate, attach) all materially relevant available documentation and/or communications, to document occurrence and/or continuation of Relief Event.]

2. Documentation of Contract Time Impact Analysis

² The narrative description should, to the extent reasonably possible and in addition to any other information that the Contractor deems relevant (and that is not required to be provided in a separate part of this form), describe or identify: (a) the event; (b) such event’s source/origin/cause; and (c) affected location(s) / Phases.

[Insert description of (and, if appropriate, attach) all materially relevant documentation to substantive Contract Time impact analysis.]

3. Documentation of Contract Time Price Analysis

[Insert description of (and, if appropriate, attach) all materially relevant documentation to substantive Contract Price impact analysis.]

D. Additional Information

[Insert any additional information that the Contractor believes is relevant to the CTA's consideration of the Relief Event, and / or which the CTA has previously requested in connection with such event, or otherwise indicate "None".]

* * *

Under penalty of perjury, the undersigned certifies on behalf of the Contractor that:

- (a) The Contractor has fully reviewed this Notice of Claim and has determined (after due inquiry) that the requests, claims, representations, statements, disclosures and information contained in this submission: comply, to the best of the Contractor's knowledge (after due inquiry), with the Contract; and are otherwise correct, complete (other than as expressly indicated herein) and not materially misleading.
- (b) To the best of the Contractor's knowledge and belief, the Contract Time and/or Contract Price adjustment and/or Allowance payment requested (if any) reflects the adjustment that CTA is responsible for under the terms of the Contract.
- (c) An approval by the CTA of requested relief (if any) would be in full satisfaction of the Contract adjustment the CTA is responsible for under the terms of the Contract for the events and circumstances which form the basis of the Notice of Claim
- (d) The signatory is authorized to certify the claim on behalf of the Contractor.

By: _____

[insert name]

Contractor's Representative

Annex F-2: Contractor Proposed Change Form

Annex F-2: Contractor Proposed Change Form

[date]

From: [Contractor]

To: Chief Infrastructure Officer, CTA

Re: RLE Project: Contractor Proposed Change

I am submitting this Contractor Proposed Change Form on behalf of the Contractor pursuant to Section 14.2 of the Design-Build Contract for the Red Line Extension - Mainline Design-Build Project (the “Contract”) dated as of [date]. For ease of reference, all capitalized terms used in this submission shall have the same meaning given to them in the Contract.

A. Overview Description

Narrative overview description of the proposed Contractor Proposed Change.

[The Contractor to provide]

B. Rationale

Explanation of how, where and why the Contractor Proposed Change would be used on the Project, including how it aligns with the Project goals.

[The Contractor to provide]

C. Impacts

A preliminary analysis of the following potential impacts (positive and negative).

- 1. Environmental Impacts:** *[The Contractor to provide]*
- 2. Health & Safety Impacts:** *[The Contractor to provide]*
- 3. Social & Community Impacts:** *[The Contractor to provide]*
- 4. Level of Service Impacts (during and after construction):** *[The Contractor to provide]*
- 5. Revenue and Funding Impacts:** *[The Contractor to provide]*
- 6. Traffic Impacts:** *[The Contractor to provide]*
- 7. Operations and Maintenance Impacts:** *[The Contractor to provide]*
- 8. Risk Allocation Impacts:** *[The Contractor to provide]*

9. **Schedule and Time Certainty Impacts:** *[The Contractor to provide]*

10. **Third Party Impacts:** *[The Contractor to provide]*

11. **Workforce and Labor Impacts:** *[The Contractor to provide]*

12. **Technological Impacts:** *[The Contractor to provide]*

13. **Other Impacts:** *[The Contractor to provide]*

D. Cost and Benefit Analysis

An estimate of likely costs, and savings, that are likely to result from implementation of such Contractor Proposed Change, including reference to assumptions on which such estimate is based.

[The Contractor to provide]

E. Schedule Analysis

An estimate of likely design and construction time period impacts (positive and negative) of such Contractor Proposed Change, including reference to assumptions on which such estimate is based.

[The Contractor to provide]

F. Conceptual Drawings

At the Contractor's discretion, unless otherwise requested by the CTA, conceptual drawings.

[The Contractor to attach]

G. Past Use

Identification of other projects on which the Contractor Proposed Change (or a substantially similar approach) has been implemented, regardless of the results, and the relevance of such experience.

[The Contractor to provide]

H. Risks

To the extent not otherwise addressed by the responses above, an analysis of any additional risks to the Contractor, the CTA, or third parties associated with implementation of the

Contractor Proposed Change, including discussion of how such risks are allocated under the terms of the Contract.

[The Contractor to provide]

I. List of Required Approvals

A list of required, or likely to be required, Permits and third-party approvals.

[The Contractor to provide/attach]

J. Proposed Drafting Revisions

(a) List all Contract Documents requirements that are inconsistent with the proposed Contractor Proposed Change and (b) at the Contractor's discretion, unless otherwise requested by the CTA, attach in the form of a mark-up (for amendments to existing drafting) and/or a rider (with respect to newly proposed drafting) proposed revisions to address those inconsistencies.

[The Contractor to provide/attach]

K. Other Information

As requested by the CTA.

[The Contractor to provide/attach]

* * *

Under penalty of perjury, the undersigned certifies on behalf of the Contractor that:

- (a) The Contractor has fully reviewed this Contractor Proposed Change Form and has determined (after due inquiry) that the requests, claims, representations, statements, disclosures and information contained in this submission: comply, to the best of the Contractor's knowledge (after due inquiry), with the Contract; and are otherwise correct, complete (other than as expressly indicated herein) and not materially misleading.
- (b) The signatory is authorized to certify the claim on behalf of the Contractor.

By: _____

[insert name]

Contractor's Representative

Exhibit 1: Proposal Extracts

[To be attached based on Preferred Proposer's Proposal]

Exhibit 1: Proposal Extracts

The Proposal (including the ATC Extracts) is attached hereto as Exhibit 1 and incorporated into this Exhibit 1 in its entirety as the Proposal Extracts.

Proposal Table of Contents

- Volume 1 - Administrative Submissions
 - 1.0 Table of Contents
 - 1.1 Proposal Letter (Form A) (*Proposal 8/17/18*)
 - 1.2 Organizational and Authorizing Documents
 - 1.3 Affidavits and Certifications
 - Form B-1: Buy America Certification
 - Form B-2: Affidavit of Minimum Wage Payment
 - Form B-3: Affidavit of Prompt Payment
 - Form B-4: Workforce Initiatives Commitment Form
 - 1.4 Organizational Conflict of Interest Disclosure Statement (Form C)
 - 1.5 DBE Commitment (Form D)
 - 1.6 DBE Schedules
- Volume 2 - Financial Submissions
 - 2.1 Pricing Proposal
 - Form E-1: Pricing Proposal
 - Form E-2: Adjusted Pricing Proposal Worksheet
 - Form E-3: Pricing Proposal Standard Cost Category (SCC) Breakdown Estimate

- 2.2 *Material Changes in Financial Condition*
 - 2.3 *Financial Statements*
 - 2.4 Form of Bonds
 - 2.5 Guaranties
- Volume 3 - Technical Submissions
 - 3.1 Detailed Technical Proposal
 - 3.2 Technical Forms
 - Form G-1: Guideway Structure Project Element Limits and Milestones)
 - Form G-2: Project Milestones – Proposed Milestone Date Form)
 - 3.3 Technical Proposal Appendices
 - Appendix 3.A: Draft Project Management Plan
 - Appendix 3.B: Draft Design Management Plan
 - Appendix 3.C: Draft Construction Management Plan
 - Appendix 3.D: Proposal Schedule
 - Appendix 3.E: Organizational Chart and Resumes
 - Appendix 3.F: DBE Outreach Plan
 - Appendix 3.G: Workforce Outreach and Training Plan
 - Appendix 3.H: for Utilization of Minority-Owned Financial Institutions or Community Banks
 - 3.4 Incorporated ATCs
- Statement of Qualifications

Special Note re: ATC Extracts

- a. Each of the ATCs incorporated by the Contractor in its Proposal and listed in Table 1 below are attached hereto as part of the Proposal Extracts and therefore incorporated into this Exhibit 1 in their entirety as the ATC Extracts.

Table 1: ATC Extracts

<u>ATC</u>	<u>CTA Response Date</u>	<u>ATC Extract Page Total</u>

- b. Subject to Section 63.3. of Part 1, with effect from the date of Contractor's satisfaction and compliance with all applicable conditions set forth in the "Comments/Conditions" section of the CTA response to the ATCs identified in the ATC Extracts (except, for certainty, those conditions that by their nature cannot be completed in advance of Work necessary to carry out the intent of the ATC Extracts, or conditions otherwise waived in full or part by CTA in its discretion), the applicable provisions of Parts 2 through 5 will be modified as set forth in the

specific ATC Extract or as otherwise approved by CTA in order to implement such ATC as conditionally approved.

- c. If however at any time the Contractor is unable to satisfy, or is no longer able to satisfy, any ATC condition set forth in the “Comments/Conditions” section of the CTA response to the ATCs identified in the ATC Extracts with respect to any ATC:
 - i. Contractor will notify CTA of such inability within 10 Business Days of determining that it is unable to satisfy, or no longer able to satisfy, any such ATC condition and Contractor will include in such notice its proposed course of action in response (taking into account the following (ii) and (iii));
 - ii. pursuant to Section 6.4.c. of Part 1, Contractor will thereafter comply with the requirements of this Contract without giving effect to the applicable ATC modifications without any resulting entitlement to an extension of time, relief and/or compensation; and
 - iii. Contractor will bear all risk of delay and/or all risk of cost and expense (including by way of reimbursement to CTA) for having sought to satisfy any such ATC condition or otherwise sought to proceed with such ATC.