

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF CHICAGO  
AND CHICAGO TRANSIT AUTHORITY**

This Intergovernmental Agreement (the "Agreement") is entered into as of July 8, 2011 (the "Closing Date") by and between the City of Chicago, a municipal corporation (the "City"), acting through its Department of Housing and Economic Development ("DHED"), and the Chicago Transit Authority ("CTA"), an Illinois municipal corporation duly organized and existing under the laws of the State of Illinois.

WHEREAS, the City is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City is authorized, under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended (the "Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, in accordance with the provisions of the Act, and pursuant to three ordinances adopted on June 27, 2001 and published at pages 62342-62452 of the Journal of Proceedings of the City Council (the "Journal") of such date, the City Council of the City: (i) approved a certain redevelopment plan and project (the "Plan") for the Wilson Yard Redevelopment Project Area (the "Area") within the City; (ii) designated the Area as a redevelopment project area; and (iii) adopted tax increment allocation financing (the "TIF Adoption Ordinance") for the Area; and

WHEREAS, in accordance with the provisions of the Act, and pursuant to ordinances adopted (a) on November 18, 2009 and published at pages 74053-74131 of the Journal of such date, and (b) on February 10, 2010 and published at pages 83890-83990 of the Journal of such date, the City Council of the City amended the Plan (the Plan, as amended, the "Amended Plan"); and

WHEREAS, under the Act and the TIF Adoption Ordinance, certain ad valorem taxes are allocated and, when collected, are paid to the Treasurer of the City for deposit by the Treasurer into the Wilson Yard TIF Fund established to pay redevelopment project costs incurred in the Area, which taxes may be used to pay all or a portion of the costs of construction of public improvements within the Area that are incurred or that are to be incurred in furtherance of the objectives of the Amended Plan, to the extent the municipality by written agreement accepts and approves such costs; and

WHEREAS, pursuant to the Amended Plan, certain TIF-funded City programs and redevelopment agreements have been established by the City Council of the City as of the Closing Date, which programs and agreements pledge portions of the Wilson Yard TIF Fund (collectively, the "Prior Obligations"); and

WHEREAS, the CTA proposes to undertake the rehabilitation of its Wilson rapid transit station (the "Project") on the Red Line, which project is located within the Area, and which is

described in more detail in Exhibit A, incorporated and attached hereto; and

WHEREAS, the City and the CTA have agreed that the City will pay not more than \$3,000,000 toward the CTA's costs of the Project (the "City Contribution") from Available Incremental Taxes (as defined below) or from any other source of funds available to and selected by the City; and

WHEREAS, the Project is the type of public improvement that is contemplated by the Amended Plan, and therefore the costs of the Project qualify as redevelopment project costs under the Amended Plan; and

WHEREAS, the City and the CTA wish to enter into this Agreement; and

WHEREAS, the City and the CTA have authority to enter into this Agreement pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and

WHEREAS, on October 6, 2010, the City Council adopted an ordinance (the "Authorizing Ordinance") authorizing the execution of this Agreement; and

WHEREAS, on February 10, 2010, the Chicago Transit Board passed an ordinance (the "CTA Ordinance") authorizing the execution of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. RECITALS**

The foregoing recitals are hereby incorporated into this Agreement by reference.

**SECTION 2. [intentionally omitted]**

**SECTION 3. THE PROJECT**

(a) The parties acknowledge that the Project shall begin in 2010 and shall be completed not later than December 31, 2013.

(b) The CTA shall provide the City any plans and specifications pertaining to the Project that the City may reasonably request from time to time during the Term of this Agreement, and shall notify DHED of any significant changes to said plans.

(c) The CTA hereby certifies that the Project has to date and shall continue to comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders as may be in effect at the time of the Project's completion.

(d) The CTA hereby certifies to the City that the City Contribution, together with available CTA funds, shall be sufficient to complete the Project.

**SECTION 4. FINANCING**

(a) CTA funds shall be used to pay the Project's costs.

(b) City Funds (as defined below) shall be used only to pay or reimburse the CTA for its costs of TIF-Eligible Improvements that constitute Redevelopment Project Costs, contingent upon receipt by the City of documentation satisfactory in form and substance to DHED evidencing such costs. "TIF-Eligible Improvements" means those improvements of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Amended Plan, and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. "Redevelopment Project Costs" means redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget set forth in the Amended Plan or otherwise referenced in the Amended Plan. The City agrees that Exhibit A hereto represents certain TIF-Eligible Improvements for the Project and sets forth, by approximate line item amounts, the minimum amount of TIF-Eligible Improvements the CTA plans to expend for the Project. The CTA may implement changes to the Project that cause variations in the line item amounts shown on Exhibit A, provided that all the changes qualify as TIF-Eligible Improvements.

(c) Subject to the terms and conditions of this Agreement, the City shall pay to the CTA an amount not to exceed \$3,000,000 in City funds from Available Incremental Taxes ("City Funds") to pay all or any portion of the City Contribution. If the actual costs of the Project total less than \$3,000,000, then the maximum the City shall be liable for under this Agreement is 100% of those Project costs that constitute TIF-Eligible Improvements. If the actual costs of the Project exceed \$3,000,000, then the CTA shall be solely responsible for such excess costs.

(d) "Available Incremental Taxes" means such ad valorem taxes and such retail, use and service taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the Wilson Yard TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof, and which are not encumbered or pledged for the payment of Prior Obligations.

(e) The City warrants that it has available and has segregated on the books of the City an amount of City Funds sufficient to make the City Contribution, and covenants that the City Funds will not be used for any purpose other than the City Contributions during the Term of this Agreement.

(f) The City Funds being provided hereunder are being granted on a conditional basis, subject to the CTA's compliance with the provisions of this Agreement.

(g) Only those expenditures made by CTA with respect to the Project prior to the Closing Date hereof, evidenced by documentation satisfactory to DHED and approved by DHED as satisfying costs covered in the budget for the Project, shall be considered as previously contributed CTA funds ("Prior Expenditures"). Exhibit D hereto sets forth the prior expenditures approved by DHED as of the date hereof as Prior Expenditures.

## **SECTION 5. PAYMENT**

(a) The CTA shall request the payment of the City Funds on a properly completed

Requisition Form in the form set forth on Exhibit C hereto ("Disbursement Request"), which the CTA may file with the City on a bi-monthly basis following incurrence of Redevelopment Project Costs. Prior to or simultaneous with the delivery of a Disbursement Request to the City, the CTA shall submit documentation substantiating its applicable incurrence of Redevelopment Project Costs (including TIF-Eligible Improvements) to DHED.

(b) Delivery by the CTA to DHED of a Disbursement Request hereunder shall, in addition to the items expressly set forth therein, constitute a certification to the City, as of the date of the Disbursement Request, that:

(i) the total amount of the Disbursement Request represents the actual amount already incurred by the CTA for its own work or incurred by the CTA and owing to the general contractor(s), subcontractors or other parties who have performed work on or otherwise provided goods or services in connection with the Project;

(ii) the CTA has approved all work and materials for the Disbursement Request; and

(iii) the work that is the subject of the Disbursement Request was performed in accordance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders at the time of its completion.

(c) Upon presentation of a Disbursement Request from the CTA, the City shall review it and its supplemental documentation for, among other things, evidence that the CTA incurred and paid TIF-Eligible Expenditures in an amount that equals or exceeds the amount of City Funds agreed to herein, and shall inform the CTA of any questions or comments about same as soon as practicable.

(d) Once a Disbursement Request is approved by the City, the City, by check or wire transfer, shall pay the approved amount of the City Contribution amount not later than [30 days] following such approval.

## **SECTION 6. TERM**

The term of this Agreement ("Term") shall commence on the Closing Date and shall expire on December 31, 2023 or on the date of termination of this Agreement according to its terms, whichever occurs first.

## **SECTION 7. ENVIRONMENTAL MATTERS; SAFETY; INSPECTION**

(a) The City makes no covenant, representation or warranty as to the environmental condition of the Project or the suitability of the Project for any public rapid transit use whatsoever.

(b) The CTA shall be solely responsible for the safety and protection of the public in connection with the Project.

(c) The City reserves the right to inspect the Project from time to time as it is being undertaken or after its completion.

## **SECTION 8. INSURANCE**

(a) The CTA is self-insured. During the term of this Agreement, the CTA shall provide and maintain, at the CTA's own expense, or cause to be provided, insurance or self-insurance equivalent to the coverages and requirements specified below concerning all operations related to this Agreement.

(b) Workers Compensation and Employers Liability. Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

(c) Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent self-insurance with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability. The City of Chicago will be considered an additional insured on a primary, non-contributory basis for any liability arising directly from the work. For those contracts already let or for work already performed prior to the Closing Date, the CTA shall recognize the City of Chicago as an additional insured on a primary, non-contributory basis for any liability arising directly from such work.

(d) Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the CTA shall provide self-insured Automobile Liability coverage with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

(e) Professional Liability. When any architects, engineers or professional consultants engaged by the CTA perform work in connection with this Agreement, the CTA shall provide self-insured Professional Liability covering acts, errors, or omissions with limits of not less than \$1,000,000.

(f) Prior to the Closing Date, the CTA will furnish the City a letter of self insurance evidencing the required coverage to be in force on the Closing Date. After the Closing Date, the CTA will furnish the City similar evidence if the coverages change from self-insurance to purchased insurance during the term of this Agreement and prior to the completion of the Project. The receipt of any self-insurance does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the self-insurance is in compliance with all Agreement requirements.

(g) Non-conforming self-insurance shall not relieve the CTA of the obligation to provide or cause to be provided insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop the CTA's work until proper evidence of insurance is provided, or this Agreement may be terminated.

(h) The required general liability self-insurance shall provide for sixty (60) days prior written notice to be given to the City or the CTA in the event coverage is substantially changed, canceled, or non-renewed. The CTA shall promptly notify the City in the event the CTA

receives any such notice.

(i) Any and all self-insured retentions on referenced insurance coverages shall be borne by the CTA and its contractors.

(j) The CTA shall waive its rights of subrogation against the City, its employees, elected officials, agents, or representatives.

(k) The CTA expressly understands and agrees that any coverage and limits furnished by the CTA shall in no way limit the CTA's liabilities and responsibilities specified by this Agreement or by law.

(l) The CTA expressly understands and agrees that any insurance or self insurance programs maintained by the City shall not contribute with insurance provided by the CTA under this Agreement.

(m) The required self-insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

(n) The CTA shall require all contractors for the Project to provide the insurance required herein or the CTA may provide the coverages for contractors. All contractors shall be subject to the same insurance requirements as is the CTA unless otherwise specified herein. In all contracts relating to the Project that are let after the Closing Date, the CTA agrees to require the contractor to name the City as an additional insured on insurance coverages as provided above and to require the contractor to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses including but not limited to attorney's fees arising out of or resulting from work on the Project by the contractor or contractor's suppliers, employees, or agents.

## **SECTION 9. EMPLOYMENT OBLIGATIONS**

9.01 Employment Opportunity. CTA, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its general contractors, subcontractors or any Affiliate of the CTA operating in connection with the Project (collectively, with CTA, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to CTA and during the period of any other party's provision of services to CTA in connection with the construction of the Project, to the extent not in conflict with CTA's procurement requirements or applicable federal and state law:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time ("Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-

discriminatory manner with regard to all job-related matters, including without limitation: 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. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(b) As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Employer ensures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Employer receives Federal assistance awarded by the U.S. DOT or FTA.

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate undertaking any portion of the Project, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

9.02 Construction Worker Hours. Because the Project is federally assisted, CTA has affirmative action requirements or goals for the Project that impose construction worker hours participation by utilization of minorities and women, respectively. The CTA shall comply, and shall cause its general contractors to comply, therewith.

9.03 [intentionally omitted.]

9.04 CTA's DBE Commitment. The CTA agrees for itself and its successors and assigns, that because the construction of the Project involves use of federal funds as part of CTA's contribution, CTA will meet and satisfy its 30% DBE contract goal. Attached hereto as

Exhibit E is a description of CTA contract participation requirements for DBEs predicated on such federal requirements applicable to the Project. The CTA shall provide evidence to the City, in conjunction with its other reporting to the City with respect to compliance matters, that it is complying with federal requirements relating to the hiring of DBEs during the construction of the Project.

For purposes of this Section 9.04, "DBE(s)" shall mean disadvantaged business enterprises certified as such by the Illinois Universal Certification Program, of which CTA is a member, pursuant to the U.S. Department of Transportation regulations set forth at 49 CFR Part 26.

**SECTION 10. INDEMNIFICATION**

Except for the City's own negligence or wrongful acts, the CTA shall release, indemnify and hold harmless, to the maximum extent permitted by law, the City and its officials, employees and agents (the "City Indemnitees") from and against any and all claims, suits, liabilities, losses and damages, including court costs and attorneys' fees and expenses incidental thereto, of whatever nature, arising out of or in connection with the CTA's construction of the Project, and any failure of performance or negligent or wrongful performance by the CTA, or any contractor or subcontractor for the CTA, and their respective officers, agents or employees, in connection with the Project, including, but not limited to, claims for damage to property, and/or injury to or death of any person or persons.

**SECTION 11. NOTICES**

(a) All notices and demands by the CTA to the City shall be in writing and shall be delivered personally or sent by United States mail or reputable overnight or same day courier service, postage prepaid, addressed to the City as specified below, or to such other address as the City may from time to time designate by notice to the CTA hereunder:

To the City:                      City of Chicago  
   Department of Housing and Economic Development  
   Attention: Commissioner  
   City Hall, Room 1000  
   121 N. LaSalle Street  
   Chicago, Illinois 60602  
   (312) 744-9476  
   (312) 744-2271 (Fax)

With copies to:                      City of Chicago  
   Department of Law  
   Attention: Finance and Economic Development Division  
   City Hall, Room 600  
   121 N. LaSalle Street  
   Chicago, Illinois 60602  
   (312) 744-0200  
   (312) 744-8538 (Fax)



(b) All notices and demands by the City to the CTA shall be in writing and shall be delivered personally or sent by United States mail or reputable overnight or same day courier service, postage prepaid, addressed to the CTA as specified below, or to such other address as the CTA may from time to time designate by notice to the City hereunder:

To the CTA:                    President  
Chicago Transit Authority  
567 W. Lake Street  
Chicago, IL 60661  
(312) 681-5000  
(312) 681-5005 (Fax)

With copies to:            General Counsel  
Chicago Transit Authority  
567 W. Lake Street  
Chicago, IL 60661  
(312) 681-2700

**SECTION 12. GENERAL PROVISIONS**

(a) This Agreement constitutes the entire understanding of the parties with respect to the Project and the payment of the City Contribution, and no representations or promises have been made that are not fully set forth herein. The parties understand and agree that no modification of this Agreement shall be binding unless duly accepted and executed by both parties in writing.

(b) This Agreement will be governed in all respects in accordance with the laws of the State of Illinois. A court located in Chicago, Illinois, will hear any disputes which arise hereunder.

(c) Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions of this Agreement. Words of any gender will be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document will be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity will be deemed to include any person or entity succeeding to the rights, duties, and obligations of such person or entity in accordance with the terms of this Agreement.


(d) The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

(e) This Agreement may be executed in one or more counterparts, and all such counterparts will constitute one and the same Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, through their duly authorized representatives, as of the date set forth at the beginning of this Agreement.

CITY OF CHICAGO, a municipal corporation, through its  
Department of Housing and Economic Development

  
\_\_\_\_\_  
Andrew J. Mooney, Commissioner

CHICAGO TRANSIT AUTHORITY, a municipal corporation

  
\_\_\_\_\_  
Terry Peterson, Chairman

Approved as to form and legality,  
for the sole benefit of CTA. Subject  
to proper authorization and exe-  
cution thereof.

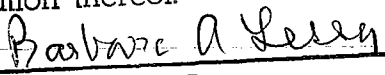
  
\_\_\_\_\_  
Attorney

Exhibit A  
Project Description and Budget  
[see attached]

## **PROJECT DESCRIPTION**

### **Wilson Station –Gerber Building Exterior Improvements Scope Outline**

The CTA will receive \$3,000,000 of Tax Increment Financing (TIF) District funds for improvements at Wilson Station on the Red Line. Improvements are targeted primarily at preservation efforts for the 1923 station house building (the “Gerber building”). Neighborhood residents will benefit from these renovations to the Gerber building, including rehabilitation of retail spaces that can then be leased. CTA customers will also directly benefit from the upgrades, experiencing an improved, more functional environment within the station.

#### **Primary Scope:**

Improvements will include a new roof on the Gerber building, new storefront windows and framing, clean-up and renovation of the retail spaces, which will include plumbing, heating and cooling systems, a new electrical service for the Gerber building, LED illumination on the exterior of the building, and any necessary asbestos or lead paint remediation. Inside the station house, the Customer Assistant booth and the turnstiles will be relocated from the mezzanine area to the first floor lobby, and an additional turnstile will be added for capacity. The second side of the stairwell will be re-opened, new tile will be installed on the floors, the walls will be cleaned and refinished, and the mezzanine passageway to Track 1 will be sealed off to create a janitor closet.

#### **Secondary Scope:**

If additional funding is made available, or if the items in the primary scope can be completed for less than \$3,000,000, the CTA will pursue the secondary scope. This may include rehabilitation and cleaning of exterior terracotta walls, demolition of un-used platforms for Tracks 1 and 4, demolition of 1114 W. Wilson (the “Broadway Mall”) and installation of a new parking lot area and a street-facing masonry arcade or “green wall” to blend with surrounding buildings

<b>Wilson Yard TIF</b>	
<b>Item</b>	<b>Project Cost</b>
<b>Gerber building / exterior</b>	
Roof	\$ 600,000
New storefronts	\$ 350,000
Electrical	\$ 470,000
Plumbing	\$ 90,000
HVAC	\$ 220,000
LED lighting on Gerber	\$ 110,000
<b>Gerber building / exterior total</b>	<b>\$ 1,840,000</b>
<b>Retail concession spaces interior</b>	
Interior demo	\$ 540,000
Drywall, plaster, doors & frames	\$ 100,000
<b>Retail concession interior total</b>	<b>\$ 640,000</b>
<b>Station interior</b>	
Relocate Fare Array to first level	\$ 370,000
New flooring	\$ 74,000
New handrailing	\$ 12,000
new demising walls @ lobby	\$ 21,000
wall treatments in lobby	\$ 29,000
venting/grating on stairwell windows	\$ 7,000
seal off exit to track 1 platform	\$ 7,000
<b>Station interior total</b>	<b>\$ 520,000</b>
<b>WILSON STATION TOTAL</b>	<b>\$ 3,000,000</b>

**Exhibit B**

**[intentionally omitted]**

Exhibit C  
Requisition Form

STATE OF ILLINOIS )  
  ) SS  
COUNTY OF COOK )

The Chicago Transit Authority (the "CTA"), hereby certifies that with respect to that certain Intergovernmental Agreement between the CTA and the City of Chicago dated as of \_\_\_\_\_, 2010 (the "Agreement"):

A. Expenditures (final cost) for the Project have been made in the total amount of:

\$ \_\_\_\_\_

B. This paragraph B sets forth and is a true and complete statement of all costs of TIF-Eligible Improvements for the Project expended by the CTA and reimbursed by the City to date:

\$ \_\_\_\_\_ [**\$0.00**]

C. The CTA requests reimbursement for the following costs of TIF-Eligible Improvements:

\$ \_\_\_\_\_

D. None of the costs referenced in paragraph C above has previously been reimbursed by the City.

E. The CTA hereby certifies to the City that, as of the date hereof:

(i) the total amount of the disbursement request herein represents the actual amount already expended by the CTA for its own work or paid by the CTA to the general contractor(s), subcontractors or other parties who have performed work on or otherwise provided goods or services in connection with the Project;

(ii) the CTA has approved all work and materials for the disbursement request;

(iii) the work that is the subject of the disbursement request herein was performed in accordance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders at the time of its completion; and

(iv) the representations and warranties contained in the Agreement are true and correct and the CTA is in compliance with all applicable covenants contained therein.

All capitalized terms which are not defined herein have the meanings given such terms in the Agreement.

**Chicago Transit Authority**, an Illinois municipal corporation

By: \_\_\_\_\_  
Name  
Title: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Agreed and accepted:

City of Chicago, by and through its Department of Housing and Economic Development

\_\_\_\_\_  
Andrew J. Mooney, Commissioner

Date: \_\_\_\_\_



**Exhibit D**  
**Prior CTA Expenditures**

**None.**

**Exhibit E**

**CTA's DBE Special Conditions of Contract**

**[see attached]**

**SPECIAL CONDITIONS  
DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT  
REQUEST FOR PROPOSALS FOR JOB ORDER CONTRACTS**

**I. POLICY AND TERMS**

- A. The policy of the Chicago Transit 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 C.F.R. Part 26 can complete fairly for contracts financed in whole or in part with federal funds.
- B. The Authority has established the following DBE participation goal for this project:
- Disadvantaged Business Enterprise Goal: 30%**
- C. **The submitted proposal is to include a written commitment that the proposer will comply with the DBE goal over the term of the contract inclusive of all amendments, modifications, options and change orders.**
- D. The DBE participation goal shall be expressed as a percentage of the total contract price. The proposer may also meet the goal by showing good faith efforts to meet the goal as described in 49 C.F.R. Part 26 and as set forth in Section V below.
- E. The DBE participation goal shall apply to the total dollar value of this contract, inclusive of all amendments, modifications, options, and change orders. The proposer agrees to make its best effort to include DBE participation in any contract modification work.
- F. The goal may be met, as further explained in Section IV hereof, by the proposer's status as a DBE, by a joint venture with one or more DBEs, by subcontracting a portion of the work to one or more DBEs, by the purchase of materials used in the performance of the contract from one or more DBEs or by any combination of the above or through a showing of good faith efforts as defined in Section V hereof.
- G. A proposer who fails to commit in writing to exercise good faith efforts to meet the DBE goal over the term of the Job Order Contract ("JOC") inclusive of all amendments, modifications, options and change orders at the time of submitting the proposal shall not be eligible to be awarded the contract.
- H. The Authority prohibits agreements between a proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers.

**II. DEFINITIONS**

- A. **"Area of Specialty"** means the description of the DBE's business, which has been determined by the General Manager, DBE Program, to be most reflective of the DBE's claimed specialty or expertise. Credit toward the DBE participation 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 proposer to determine the capability and capacity of the DBE firms to satisfactorily perform the work proposed.**

- B. “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.**
- C. “Directory” means the Directory of Certified Disadvantaged Business Enterprises maintained and published by IL UCP and entitled the “IL UCP DBE Directory.” The directory will be available on the Authority’s web site. Proposers are responsible for verifying the current certification status of all proposed DBE’s.**
- D. “Good Faith Efforts” means efforts to achieve a DBE contract goal as specified in 49 CFR, Part 26 and Section V hereof.**
- E. “Job Order Contract” means a contract over a term of years in which the successful contractor commits to perform work in response to Authority issued work orders for costs and fees identified in its response to the Request for Proposals. A job order contract is referred to herein as a JOC contract. The term “work order” is defined in the contract documents.**
- F. “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. Proposers 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.
- G. “Proposal” includes the following Authority purchasing requests: Request for Proposals (RFP).**
- H. “Proposer” includes bidders, consultants and contractors as well as proposers. The terms “Proposer,” “Consultant,” “Bidder” and “Contractor” may be used interchangeably in these Special Conditions.**
- I. “Purchasing Agent” means the Authority employee who holds the position of General Manager, Purchasing, or the successor position.**
- J. “Small Business Concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or groups of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.570 million, or as revised from time to time, over the three (3) previous fiscal years.**
- K. “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 General Manager, DBE Program, 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.

L. **“USDOT” or “DOT”** refers to the U.S. Department of Transportation.

### III. JOINT VENTURES

The General Manager, DBE Program, 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 General Manager, DBE Program, 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 proposal submitted to the Authority.

### IV. COUNTING DBE PARTICIPATION TOWARD THE CONTRACT GOAL

The inclusion of any DBE by the proposer in its submittal in response to a work order request from the Authority shall not conclusively establish the proposer’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 General Manager, DBE Program, of the specific duties which will be performed by the DBE.

**The proposer may count toward its DBE goal only expenditures to firms which are currently certified by the IL UCP and which perform a commercially useful function.** A firm is considered to perform a commercially useful function when it is responsible for the performance of a distinct element of the work and carries out its responsibilities by actually performing, managing and supervising the work involved.

To determine whether a firm is performing a commercially useful function, the General Manager, DBE Program, will evaluate the amount of work subcontracted, industry practices and other relevant factors. The General Manager, DBE Program, reserves the right to deny or limit DBE credit to the proposer 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 proposer 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.
- C. Consistent with normal industry practices, a DBE may enter into 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 proposer 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 proposer 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 proposer 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 C.F.R. Part 26.55(e)(1)(ii) and (2)(ii).
- F. The proposer 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 C.F.R. Part 26. However, the General Manager, DBE Program, 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 proposer 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 proposer must commit in writing at the time of submitting its response to the RFP to make good faith efforts to meet the DBE participation goal set forth in this Request for Proposals over the term of the JOC contract, including all amendments, options, change orders and modifications. Furthermore, the response by proposer to each Authority work order must be accompanied by written documentation prepared by the 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 participation to meet the contract DBE participation goal. Mere *pro forma* efforts are not acceptable and will be rejected by the General Manager, DBE Program.

Good Faith Efforts require that the proposer consider all qualified DBEs, who express an interest in performing work under the contract. This means that the proposer cannot reject a DBE as unqualified unless the proposer 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 affiliation (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the Contractor's efforts to meet the contract DBE 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 proposer 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 proposal and the type of contract involved.

- A. Attendance at a pre-proposal meeting, if any, scheduled by the Authority to inform DBEs of subcontracting opportunities under a given solicitation.
- B. Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.
- C. Written notification to capable DBEs that their interest in the contract is solicited.
- D. 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.
  - 3. A statement explaining why additional agreements with DBEs were not reached.
- E. For each DBE the proposer contacted but rejected as unqualified, the reason for the proposer's conclusion.
- F. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the proposer or the Authority.
- G. Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs.
- H. Documentation that the proposer has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.
- I. 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.
- J. Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

## **VI. GOOD FAITH EFFORTS RECONSIDERATION**

If it is determined that the apparent successful low proposers have failed to meet the requirements of the contract goal/good faith efforts, the Authority will provide them with **ONE** opportunity for administrative reconsideration, before the Authority awards the contract. This reconsideration will include the following:

- A. The proposer 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 proposal met the DBE goal and/or showed good faith efforts to do so.
- B. The Authority's Reconsideration Officer will review the evidence presented by the proposer and issue a written determination that the proposer 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, its funding agencies or the USDOT.
- D. The Authority will not award a contract to any proposer who does not meet the contract DBE participation goal or show good faith efforts to meet that goal. Thus, it is essential that all proposers submit ALL relevant documentation concerning the DBE goal and/or good faith efforts in the envelope or package containing their sealed proposal or upon request from the Authority prior to award of the Proposal.

**VII. PROCEDURE TO DETERMINE COMPLIANCE WITH PROPOSAL REQUIREMENTS**

- A. A proposer must complete and sign a commitment to meet the overall DBE goal over the term of the contract, inclusive of all amendments, options, modifications and change orders. Such written commitment must be submitted with the response to this RFP in order for the proposer to be deemed responsible.
- B. The proposer has been provided with Schedules B, C and D with this RFP document. The successful proposer will be required to submit completed Schedules B, C and D with each response to an Authority generated work order as follows:

The successful proposer must complete and sign Schedule D to the Contract documents and must sign Schedule C. If the proposer is a joint venture, the bidder **MUST** complete and sign Schedule B. Schedule C **MUST** be completed and signed by the DBE subcontractor(s). All three Schedules **MUST** be submitted at the same time as or prior to submittal of the response to each work order or promptly upon request from the Authority, when applicable. In addition, any documentation evidencing the successful proposer's good faith efforts to meet the contract DBE goal must be submitted concurrently with submission of said Schedules. If the successful proposer submits a response to a work order without completed and executed Schedules B, C ( if applicable) and D and/or evidence of good faith efforts, if applicable, said proposer will be deemed non-responsible. If the successful proposer does not submit such schedules promptly upon request from the Authority, it will not be awarded a contract under the proposed work order.

**C. Letters of Certification**

1. A copy of each proposed DBE firm's current Letter of Certification or Re-certification from the IL UCP must be submitted with the response to each work order. **ALL CERTIFICATIONS BY THE IL UCP MUST BE PRE-CERTIFICATIONS as set forth in 49 CFR Part 26.55. This means that the DBE's certification must be issued by the IL UCP before the date of the response to the work order.**
2. All Letters of Certification or Re-certification issued by the IL UCP include a statement of the DBE firm's area of specialization and appropriate DBE goal credit (see Section IV. COUNTING DBE PARTICIPATION TOWARD THE CONTRACT GOAL). The DBE firm'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 firm must request an expansion of its area of specialization from the Authority in writing plus any other documentation required by the Authority to



process said request prior to the issuance of the work order by the Authority. Further, the DBE's request must be agreed to by the General Manager, DBE Program, and the DBE firm must be certified prior to **DATE OF RESPONSE TO THE WORK ORDER.**

#### **B. Joint Ventures**

1. Where the proposer proposes to include in its proposal a DBE, which is a joint venturer, the proposer must submit a fully executed copy of the joint venture agreement with its proposal. 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, the proposed joint venture agreement shall include specific details related to: 1) 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; 4) the DBE management, supervisory and operating personnel to be dedicated to the performance of the project; and (5) the authority of each joint venturer to contractually obligate the joint venture and to expend funds. Failure to submit a copy of the joint venture agreement will cause the firm to be considered by the Authority to be non-responsible.

### **VIII. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT**

- A. The proposer shall, within seven (7) calendar days of assignment of each work order by the Authority, or prior to any work being performed by the DBE subcontractor, execute formal subcontracts or purchase orders with the DBE subcontractors included in the proposal. In the event the proposer cannot complete the agreement with one or more DBE subcontractors within this five day period, the proposer must provide a written explanation for the delay and an estimate date by which the written agreement will be completed to the General Manager, DBE Program. These written agreements shall be made available to the General Manager, DBE Program, upon request. All contracts between the proposer and its subcontractors must contain a prompt payment clause as set forth in Section IX herein.
- B. During the term of annual contracts, the proposer shall submit regular "Status Reports of DBE Subcontract Payments" in a form acceptable to the Authority. The frequency with which these reports are to be submitted, will be determined by the General Manager, DBE Program, but in no event will reports be required less frequently than quarterly. **In the absence of written notice from the General Manager, DBE Program, the proposer's first "Status Report of DBE Subcontract Payments" will be due ninety (90) days after the date of contract award, with additional reports due quarterly thereafter.**
- C. In the case of a one-time procurement with either a single or multiple deliveries, a "Status Report of DBE Subcontract Payments," in a form acceptable to the Authority, indicating final DBE payments shall be submitted directly to the General Manager, DBE Program. The information must be submitted prior to or at the same time as the proposer's final invoice to the Authority user department identified in the solicitation. (NOTICE: The original invoices must be submitted directly to the Authority's department identified in the contract documents and the Status Report of DBE Subcontract Payments must be submitted directly to the General Manager, DBE Program.) **Failure to follow these directions may delay final payment.**
- D. The address for the General Manager, DBE Program, is: CTA General Manager, DBE/EEO Programs/Contract Compliance Department, 567 W. Lake Street, P.O. Box 7562, Chicago, IL 60680-7562.

### **IX. PROMPT PAYMENT TO SUBCONTRACTORS**

- A. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than seven (7) calendar days after the Contractor has received payment from the Authority.

All of the Contractor's contracts with its Subcontractors must state that the Subcontractor will receive payment within 7 days of the date that the Contractor has received payment from the Authority.

- B.** In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than fourteen (14) calendar days after the Subcontractor has, in the opinion of the VP Construction, satisfactorily completed its portion of the Work. All of the Contractor's contracts with its Subcontractors must state that the Subcontractor will receive payment of Retainage within fourteen (14) calendar days of the date that the Subcontractor has, in the opinion of the VP Construction, satisfactorily completed its portion of the Work.
- C.** A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the General Manager, Purchasing.
- 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 identifies 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 the 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 is subject to the provisions of 50 ILCS 505/9.

## **X. DBE SUBSTITUTIONS**

- A.** Arbitrary changes by the proposer of the commitments previously indicated in **Schedule D** are prohibited. No changes may be made by the proposer to the DBE firms listed on Schedule D after submitting a response to a work order request from the Authority. However, in the event the Purchasing Agent, after consulting with the DBE Department, determines that a critical DBE subcontractor is non-responsible, the Authority may require that proposer replace the non-responsible DBE subcontractor prior to commencing work under the relevant work order. In that event, proposer must replace the non-responsible DBE subcontractor with a responsible, certified DBE subcontractor or show adequate good faith efforts as set forth Section V hereof, must submit all information required in subsection C.5 hereof, and must receive the prior written approval of the General Manager, DBE Program for such substitution.
- B.** Further, after entering into each approved DBE subcontract, the Contractor shall neither terminate the subcontract for convenience, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without receiving prior written approval of the General Manager, DBE Program. Such approval is required even if the DBE agrees with the change to the DBE's contract desired by the Contractor.
- C.** It may become necessary, at times, to substitute a new subcontractor in order to complete the contract work. The substitution procedure to be followed is:
  - 1. The Contractor must immediately notify the General Manager, DBE Program, 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. 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.
  3. 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).
  4. If the subcontractor to be substituted for the DBE is not a DBE, the Contractor must show adequate good faith efforts as set forth in Section V hereof.
  5. 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.
  6. The Authority will evaluate the submitted documentation and respond within fifteen (15) calendar days to the request for approval of a substitution. The Authority's response may approve the request, seek more information, 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.
  7. 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 General Manager, DBE Program.
- C. 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 failure to use DBEs as stated in the proposal constitutes a material breach of contract. The General Manager, DBE Program, shall have the discretion to recommend to the Authority's Purchasing Agent that the Purchasing Agent 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; 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. 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. 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 set forth in Section VIII hereof, 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.
- D. The Contractor, sub recipient 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.

The Contractor agrees to include this assurance in all subcontracts.

## **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 and its Inspector General, its Federal and/or State funding agencies, the U.S. Department of Justice, the USDOT and any duly authorized representatives thereof. In addition, the Contractor shall, at all times, cooperate with the Authority’s Inspector General.

The proposer must also create a bidders list, consisting of information about all subcontractors that submitted a proposal 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. Failure to submit this information will result in the firm being deemed non-responsible for the contract.

### **XIII. MINORITY FINANCIAL INSTITUTIONS**

The proposer is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the Authority as evidence of proposer's willingness to do business with DBEs. Information about such institutions is available in the Authority's DBE Program Directory, which is available on-line at [www.transitchicago.com](http://www.transitchicago.com) and a hard copy is available at the Authority's DBE Program Office, 567 West Lake Street, 4<sup>th</sup> floor, Chicago, Illinois 60661-1498.

## DBE Technical Assistance Agencies

*The following agencies are available to the perspective proposers for assistance.*

<p><b>Alliance of Business Leaders &amp; Entrepreneurs (ABLE)</b>          150 North Michigan Avenue, Suite 2800          Chicago, IL 60601          Contact: Donna Gaines, Executive Director          Phone: (312) 624-7733          Fax: (312) 275-7841          Email: <a href="mailto:dgaines@ablechicago.com">dgaines@ablechicago.com</a>          Website: <a href="http://www.ablechicago.com">www.ablechicago.com</a></p>	<p><b>Association of Asian Construction Enterprises (AACE)</b>          5500 West Touhy Avenue, Unit K          Skokie, IL 60077          Contact: Perry A. Nakachi, President          Phone: (847) 673-7377          Fax: (847) 673-2358          Email: <a href="mailto:nakmancorp@aol.com">nakmancorp@aol.com</a>          Website: N/A</p>
<p><b>Black Contractor United (BCU)</b>          400 West 76<sup>th</sup> Street, Suite 200          Chicago, IL 60620          Contact: Florence Cox, Executive Director          Phone: (773) 483-4000          Fax: (773) 483-4150          Email: <a href="mailto:bcunewera@ameritech.net">bcunewera@ameritech.net</a>          Website: <a href="http://www.blackcontractorsunited.com">www.blackcontractorsunited.com</a></p>	<p><b>Chatham Business Association (CBA)</b>          8441 South Cottage Grove Avenue          Chicago, IL 60619          Contact: Melinda Kelly, Executive Director          Phone: (773) 994-5006          Fax: (773) 994-9871          Email: <a href="mailto:melkelcba@sbcglobal.net">melkelcba@sbcglobal.net</a>          Website: <a href="http://www.cbaworks.org">www.cbaworks.org</a></p>
<p><b>Chicago Area Gay &amp; Lesbian Chamber of Commerce (GLCC)</b>          3656 North Halsted          Chicago, IL 60613          Contact: Christina Pinson, Executive Director          Phone: (773) 303-0167          Fax: (773) 303-0168          Email: <a href="mailto:cpinson@glchamber.org">cpinson@glchamber.org</a>          Website: <a href="http://www.glchamber.org">www.glchamber.org</a></p>	<p><b>Chicago Minority Business Development Council, Inc. (CMBDC)</b>          1 East Wacker Drive, Suite 1200          Chicago, IL 60601          Contact: Shelia Hill, President          Contact: Phillip Barreda, VP          Phone: (312) 755-8880          Fax: (312) 755-8890          Email: <a href="mailto:shill@cmbdc.org">shill@cmbdc.org</a>          Email: <a href="mailto:pbarreda@cmbdc.org">pbarreda@cmbdc.org</a>          Website: <a href="http://www.cmbdc.org">www.cmbdc.org</a></p>
<p><b>Chicago Urban League (CUL)</b>          4510 South Michigan Avenue          Chicago, IL 60653          Contact: Herman Brewer          Phone: (773) 285-5800          Fax: (773) 285-7772          Email: <a href="mailto:hbrewer@thechicagourbanleague.org">hbrewer@thechicagourbanleague.org</a>          Website: <a href="http://www.thechicagourbanleague.org">www.thechicagourbanleague.org</a></p>	<p><b>Chicagoland Chamber of Commerce (CCC)</b>          Aon Center, 200 East Randolph Street, Suite 2200          Chicago, IL 60601          Contact: Gerald "Jerry" Roper, President &amp; CEO          Contact: Michael "Mike" Mini          Phone: (312) 494-6710 / (312) 494-6787          Fax: (312) 861-0660          Email: <a href="mailto:jroper@chicagolandchamber.org">jroper@chicagolandchamber.org</a>          Email: <a href="mailto:mmini@chicagolandchamber.org">mmini@chicagolandchamber.org</a>          Website: <a href="http://www.chicagolandchamber.org">www.chicagolandchamber.org</a></p>

## DBE Technical Assistance Agencies (Continued)

<p><b>Cosmopolitan Chamber of Commerce (COSMO)</b>                  203 North Wabash Street, Suite 518                  Chicago, IL 60661                  Contact: Carnice Carey, Executive Director                  Contact: Miriam Cleary, Program Assistant                  Phone: (312) 499-0611                  Fax: (312) 701-0095                  Email: <a href="mailto:ccarey@cosmococ.org">ccarey@cosmococ.org</a>                  Email: <a href="mailto:mcleary@cosmococ.org">mcleary@cosmococ.org</a>                  Website: <a href="http://www.cosmococ.org">www.cosmococ.org</a></p>	<p><b>Federation of Women Contractors (FWC)</b>                  5650 South Archer Avenue                  Chicago, IL 60638                  Contact: Beth Doria, Executive Director                  Phone: (312) 360-1122                  Fax: (312) 360-0239                  Email: <a href="mailto:www.fwcchicago@aol.com">www.fwcchicago@aol.com</a>                  Website: <a href="http://www.fwcchicago.com">www.fwcchicago.com</a></p>
<p><b>Hispanic-American Construction Industry Association (HACIA)</b>                  901 West Jackson Blvd., Suite 205                  Chicago, IL 60607                  Contact: Paul Cerpa, Executive Director                  Contact: Jackie Gomez, Program Director                  Phone: (312) 666-5910 / ext. 22                  Fax: (312) 666-5692                  Email: <a href="mailto:pcerpa@haciaworks.org">pcerpa@haciaworks.org</a>                  Email: <a href="mailto:jgomez@haciaworks.org">jgomez@haciaworks.org</a>                  Website: <a href="http://www.haciaworks.org">www.haciaworks.org</a></p>	<p><b>Illinois Hispanic Chamber of Commerce (IHCC)</b>                  111 West Washington Blvd., Suite 1600                  Chicago, IL 60602                  Contact: Omar Duque, President &amp; CEO                  Contact: Silvia Bonilla, Director                  Phone: (312) 425-9500 / (312) 492-9960                  Fax: (312) 425-9510                  Email: <a href="mailto:oduque@ihccbbusiness.net">oduque@ihccbbusiness.net</a>                  Email: <a href="mailto:sbonilla@ihccbbusiness.net">sbonilla@ihccbbusiness.net</a>                  Website: <a href="http://www.ihccbbusiness.net">www.ihccbbusiness.net</a></p>
<p><b>Illinois SBDC at Chicago Community Ventures (CCV)</b>                  105 West Adams, Suite 2300 (Entrance on Clark St.)                  Chicago, IL 60603                  Contact: Anita Collins, Co-President                  Contact: Tom Cassell, Director                  Phone: (312) 960-0322                  Fax: (312) 960-0310                  Email: <a href="mailto:ahollins@chiventures.org">ahollins@chiventures.org</a>                  Email: <a href="mailto:tcassell@chiventures.org">tcassell@chiventures.org</a> / <a href="mailto:sbdc@chiventures.org">sbdc@chiventures.org</a>                  Website: <a href="http://www.chiventures.org">www.chiventures.org</a></p>	<p><b>Illinois SBDC at Greater Northwest Chicago Development Corp. (GNCDC)</b>                  6600 West Armitage Avenue – 2<sup>nd</sup> Floor                  Chicago, IL 60707-3908                  Contact: Reid Mackin, Director                  Phone: (773) 637-2416 ext. 230 / (773) 637-2768                  Fax: (773) 637-2698                  Email: <a href="mailto:sbdc@gncdc.org">sbdc@gncdc.org</a>                  Website: <a href="http://www.gncdc.org">www.gncdc.org</a></p>
<p><b>Illinois SBDC at Industrial Council of Near west Chicago (ICNC)</b>                  2010 West Fulton Street, Suite 280                  Chicago, IL 60612                  Contact: Andrew Fogaty, Director                  Contact: Denise Ching, Manager                  Phone: (312) 433-2373 / (312) 421-3941                  Fax: (312) 421-1871                  Email: <a href="mailto:sbdc@industrialcouncil.com">sbdc@industrialcouncil.com</a>                  Website: <a href="http://www.industrialcouncil.com">www.industrialcouncil.com</a></p>	<p><b>Illinois SBDC, PTAC, ITC and NOC at North Business &amp; Industrial Council (NORBIC)</b>                  5353 West Armstrong Avenue – 2<sup>nd</sup> Floor                  Chicago, IL 60646-6509                  Contact: Pam McDonough, CEO &amp; President                  Contact: Jack McInerney, Director                  Phone: (773) 594-9292                  Fax: (773) 594-9416                  Email: <a href="mailto:jmcinerney@norbic.org">jmcinerney@norbic.org</a>                  Website: <a href="http://www.norbic.org">www.norbic.org</a></p>

## DBE Technical Assistance Agencies (Continued)

<p><b>Illinois SBDC at University of Illinois at Chicago (UIC)</b>          College of Business Administration (MC 090)          815 West Van Buren, Suite 320          Chicago, IL 60607          Contact: Joseph A. DeLaGarza, Director          Contact: Victoria Gheorghe, Assistant Director          Phone: (312) 413-8139 / (312) 413-8130          Fax: (312) 355-3604          Email: <a href="mailto:delagarza@uic.edu">delagarza@uic.edu</a> / <a href="mailto:sbdc@uic.edu">sbdc@uic.edu</a>          Email: <a href="mailto:gheorghe@uic.edu">gheorghe@uic.edu</a>          Website: <a href="http://www.cub.cba.uic.edu">www.cub.cba.uic.edu</a></p>	<p><b>Philippine American Chamber of Commerce of Greater Chicago (PACCGC)</b>          3413 North Milwaukee Avenue          Chicago, IL 60641          Contact: James V. Villar          Phone: (773) 545-4330          Fax: (773) 545-4373          Email: <a href="mailto:james@paccgc.org">james@paccgc.org</a>          Website: <a href="http://www.paccgc.org">www.paccgc.org</a></p>
<p><b>The Illinois Black Chamber of Commerce (BCC)</b>          331 Fulton Street, Suite 530          Peoria, IL 61602          Contact: Larry D. Ivory, President          Phone: (309) 740-4430          Contact: Michael "Mike" George, VP          Phone: (309) 672-1365 / (309) 363-1020 - cell          Fax: (309) 672-1379          Email: <a href="mailto:larryivory@illinoisblackchamber.org">larryivory@illinoisblackchamber.org</a>          Email: <a href="mailto:ilbcc2@gmail.com">ilbcc2@gmail.com</a>          Website: <a href="http://www.ilbcc.org">www.ilbcc.org</a></p>	<p><b>The Resurrection Project</b>          1818 South Paulina Avenue          Chicago, IL 60608          Contact: Raul Raymundo, CEO          Contact: Patricia DeAnda, Program Manager          Phone: (312) 666-1323 ext. 207 / ext. 212          Fax: (312) 942-1123          Email: <a href="mailto:rarmundo@resurrectionproject.org">rarmundo@resurrectionproject.org</a>          Email: <a href="mailto:pdeanda@resurrectionproject.org">pdeanda@resurrectionproject.org</a>          Website: <a href="http://www.resurrectionproject.org">www.resurrectionproject.org</a></p>
<p><b>Uptown Center Hull House          Jane Addams Hull House Association</b>          4520 North Beacon Street          Chicago, IL 60640          Contact: Curt Roeschely, Director of SBD          Phone: (773) 561-3500 ext. 215          Fax: (773) 561-3507          Email: <a href="mailto:croeschley@hullhouse.org">croeschley@hullhouse.org</a>          Website: <a href="http://www.hullhouse.org">www.hullhouse.org</a></p>	<p><b>Women Construction Owner &amp; Executive (WCOE)</b>          Chicago Caucus          308 Circle Avenue          Forest Park, IL 60130          Contact: Mary Kay Minaghan          Phone: (708) 366-1250          Fax: (708) 366-5418          Email: <a href="mailto:mkm@mkmservices.com">mkm@mkmservices.com</a>          Website: <a href="http://www.wcoeusa.org">www.wcoeusa.org</a></p>
<p><b>Women's Business Development Center (WBDC)</b>          8 South Michigan Avenue, 4<sup>th</sup> Floor          Chicago, IL 60603          Contact: Hedy M. Ratner, Executive Director          Contact: Deon Crayton, Program Director          Phone: (312) 853-3477          Fax: (312) 853-0145          Email: <a href="mailto:hkratner@wbdc.org">hkratner@wbdc.org</a>          Email: <a href="mailto:dcrayton@wbdc.org">dcrayton@wbdc.org</a>          Website: <a href="http://www.wbdc.org">www.wbdc.org</a></p>	



## **DBE Technical Assistance Agencies (Continued)**

*Project information and current DBE directory of certified local and out-of-state companies are available.*

<p>Chicago Transit Authority <b>Project Information</b> c/o Marina Popovic Purchasing Department 567 W. Lake Street P.O. Box 7560 Chicago, IL 60680-7560 Phone: (312) 681-2400 Fax: (312) 681-2405 E-mail: <a href="mailto:mpopovic@transitchicago.com">mpopovic@transitchicago.com</a></p>	<p>Chicago Transit Authority <b>DBE Directory</b> c/o Enrique Orozco, Jr. Diversity &amp; Small Business Compliance Programs Dept. 567 W. Lake Street P.O. Box 7562 Chicago, IL 60680-7562 Phone: (312) 681-2600 Fax: (312) 681-2605 E-mail: <a href="mailto:erozco@transitchicago.com">erozco@transitchicago.com</a></p>
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